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AZ CORP COMMISSION
DOCKET CONTROL

Attorney for SolarCity Corporation

BEFORE THE ARIZONA CORPORATION COMMISSION

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CHAIRMAN

SANDRA D. KENNEDY
COMMISSIONER

PAUL NEWMAN
COMMISSIONER

GARY PIERCE
COMMISSIONER

BOB STUMP
COMMISSIONER

**IN THE MATTER OF THE)
APPLICATION OF ARIZONA)
PUBLIC SERVICE COMPANY FOR)
APPROVAL OF ITS 2011)
RENEWABLE ENERGY STANDARD)
IMPLEMENTATION PLAN AND)
DISTRIBUTED ENERGY)
ADMINISTRATIVE PLAN AND)
REQUEST FOR RENEWABLE)
ENERGY ADJUSTOR.)**

DOCKET NO. E-01345A-10-0262
E-01345A-10-0166

SOLARCITY'S EXCEPTIONS TO
STAFF'S RECOMMENDED ORDER

SolarCity Corporation ("SolarCity"), by and through its undersigned counsel, hereby files its Exceptions to Staff's Recommended Order (the "RO") issued in the above referenced matter.

RESPECTFULLY SUBMITTED this 19th day of November, 2010.

Court S. Rich
Rose Law Group pc
6613 N. Scottsdale Road, Ste 200
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Attorney for SolarCity Corporation

Arizona Corporation Commission
DOCKETED
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1 **Original plus 13 copies of the foregoing**
2 **filed this 14 day of November 2010, with:**

3 Docket Control
4 Arizona Corporation Commission
5 1200 W. Washington Street
6 Phoenix, Arizona 85007

7 *I hereby certify that I have this day served the foregoing documents on all parties of record in*
8 *this proceeding by sending a copy via electronic mail to:*

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10 Chief Administrative Law Judge
11 Arizona Corporation Commission
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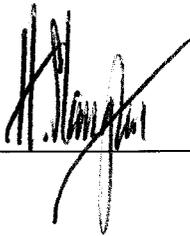
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1 **I. Introduction**

2 SolarCity believes there are several important items that must be modified before the
3 Commission considers adoption of the RO. These items focus on improving the solar market in
4 Arizona for solar customers, solar providers, and the utility. The following is a brief discussion
5 of each issue and proposes amendments to the RO to solve the identified problems.
6

7 **II. Discussion**

8 A. APS should not be permitted to own projects on school rooftops

9 APS' proposal to own up to half of the solar facilities made available to schools in its
10 Schools and Government Solar Program should be rejected because it: 1) is bad for the school
11 ratepayers; 2) creates a conflict of interest for the utility; and 3) does not fill a need in the market.
12

13 **1. APS Ownership is More Expensive for the Schools**

14 The proposed utility ownership is bad for the school ratepayers because APS proposes to
15 provide the schools solar services at an above market rate that will cost schools millions of
16 dollars in potential savings. APS proposes a tariff of \$0.09293/kWh to schools that choose to
17 have APS provide them with solar services. The market for solar services right now as
18 evidenced by the numerous Solar Service Agreements on record with the Commission is
19 generally between \$0.07-\$0.09/kWh.¹ As a result any school that chooses APS to provide its
20 solar services will be costing itself substantially more money over the life of any such agreement.
21

22 Even if APS were to lower its proposed rate it would be depriving its customers of the
23 opportunity to go seek a lower rate through a Request for Proposal ("RFP"). As a regulated
24 utility APS can only bid rates at the Commission pre-approved level and as a result its
25 participation in this highly competitive market is just not conducive to driving down prices.
26

27 **2. APS Ownership Creates a Conflict of Interest for the Utility**

28 _____
¹ See Dockets 10-0199 and 10-0012 for examples

1 APS' participation in the market that it oversees would create a very real conflict of
2 interest that cannot be ignored and that should not be allowed to exist. Through the application
3 for rebate reservation process APS is privy to all solar developers' proposed dealings with
4 schools and sits in the position of actually selecting the projects that qualify for the award of
5 rebate under the Performance Based Incentive ("PBI") program. While there is no reason to
6 believe that APS would abuse this process it is also easy to imagine the types of advantages this
7 could present to the regulated monopoly utility that is now also a participant in the market.

8
9 APS will know which schools are in the market for solar. APS will know before even the
10 providers or the schools themselves know- which schools got awards under the PBI program and
11 which schools did not. APS would be in a position where it would be to its financial advantage
12 to deny a school a PBI award for an application with a private solar service provider in an effort
13 to then step in and take that business as a utility owned project. Again, it is important that we be
14 clear that there is no reason to believe APS would act in such a way but there is also no
15 justifiable reason to place APS in this position when there is no need and no benefit to the market
16 of utility ownership of this class of assets.

17
18 **3. There is no need for Utility Ownership of Solar on Schools**

19 Schools have had no problems finding willing partners to install solar since this
20 Commission approved the use of Solar Service Agreements to serve schools. APS suggests that
21 somehow its presence in the market would allow additional financially challenged schools to
22 acquire solar however, facts cannot support that claim. Poor schools and wealthy schools alike
23 all have the same opportunity to get the benefits of solar with *no upfront costs* through Solar
24 Service Agreements. APS' ownership proposal is more expensive to the schools than market
25 rates and adds nothing new to make it a benefit to schools.

1 **PROPOSED AMENDMENT**

2
3 To remove the utility ownership option as described above SolarCity respectfully requests that
4 the following Amendment be adopted:

5
6 Page 6, Line 21 and 22

7 **DELETE** the following: “To maximize opportunities for solar installers and developers”

8
9 Page 8, Line 1

10 **DELETE** lines 1 through3 and **INSERT**: “We find that the rate to be charged for the utility
11 owned systems is above market rates for solar services agreements and that a utility is not well
12 suited to participate in schools and governments’ competitive bidding processes.”

13
14 Page 22, Line 18

15 **INSERT** new Ordering Paragraph as follows: “**IT IS FURTHER ORDERED** that Arizona
16 Public Service Company’s Schools and Government Program is approved with its full requested
17 funding but that Arizona Public Service Company’s request to own up to half of the School and
18 Government Program’s solar facilities is denied.”

19
20 B. The Lengthy Rebate Waiting Times must be Eliminated

21 The Adoption of this Implementation Plan provides the perfect opportunity to eliminate
22 the single biggest problem facing the residential solar customer and provider; the possibility for
23 exceedingly long, market crushing wait times between application for rebate and approval of the
24 rebate application. SolarCity supports the implementation of the following four proposals, each
25 of which would help deal with this problem:

1 **1. Implementation of Rapid Reservation program at 5% below the**
2 **prevailing rebate rate.**

3 SolarCity believes that the rapid reservation concept is a good one, however, SolarCity
4 believes that for the system to work the rapid reservation price should not be less than 5% below
5 the prevailing rebate amount. SolarCity believes that rational market players cannot afford to
6 make the \$1.00/watt rebate amount work and that such an offer will create unhealthy market
7 pressures in a still scaling market if irrational participants begin to accept the rebate and the
8 losses associated with taking it. SolarCity would like to clarify that as a result of further
9 financial modeling and investigation SolarCity no longer supports its earlier suggestion that the
10 rapid reservation amount should be set at \$0.20 below the prevailing rate and proposes the 5%
11 below prevailing rates suggested herein.

12
13 **PROPOSED AMENDMENT**

14
15 Page 22, Line 15

16 DELETE everything after the word, “approved” and INSERT: “and that the reservations shall be
17 offered at 5% below the prevailing rebate rate at the time the reservation is accepted and not at
18 \$1.00/watt as proposed.”

19
20 **2. Allow customers to choose to install solar while waiting on rebate.**

21 In 2010 many solar customers became frustrated that they could not install their systems
22 when they wanted and instead had to wait 200 days from the date they decided to go solar and
23 applied for a rebate to the date that they were permitted to install their systems. APS’
24 Distributed Energy Administration Plan (the “DEAP”) included provisions that indicated that
25 customers actually *could* install their system while they waited in the queue for their rebate to be
26 approved, however, in practice APS forbid this from occurring.

1 Allowing customers the option to install their solar systems after making application to
2 the utility for their rebate is a great tool that should be made available to the public. Not only is
3 it good for customers who can begin saving money on electric bills 200 days earlier but, it is also
4 good for employers (solar installers) in the state who want to keep their crews busy and working.
5 Unfortunately, APS has applied to the Commission to change the language of the DEAP to
6 forbid customers from installing their systems in advance of having their rebate reservation
7 request approved. This means that customers will *not* have the ability to install their solar
8 systems while they wait in the long line for the rebate. This restriction will deprive the solar
9 customer of the ability to save money on electricity through solar while they wait in line for the
10 rebate.

11
12 It is important to note that once a customer is in line for the rebate the fact that they
13 install their solar facility changes nothing. They do not jump ahead of others in line in front of
14 them waiting for their rebates; they do not receive a different rebate amount when the rebate is
15 ultimately granted; and the price of their solar system does not change. Certainly, many
16 customers may not want to install their solar panels until they have the rebate approval firmly in
17 hand, however, allowing this option to willing participants will have *no* impact on customers
18 who would rather wait for the approval before installing.

19
20 **PROPOSED AMENDMENT**

21
22 Page 17, Line 22

23 **INSERT** new Finding of Fact: “APS proposes changing the Distributed Energy Administration
24 Plan to no longer state that any system installed within 180 days of the date that APs receives the
25 rebate application is considered new. Under the current Distributed Energy Administration Plan
26 a customer can install a solar facility and still receive its rebate from the utility if the customer
27 applies for the rebate within one hundred eighty (180) days of installing the solar facility. Under
28 the proposed revision to the Distributed Energy Administration Plan, APS would only classify a

1 system as new if it is built within 180 days of the approval of a rebate and not of the application
2 for such rebate.”

3
4 Page 17, Line 26

5 After the words “...equipment in the incentive program.” **INSERT** the following: “A
6 customer’s ability to install its solar system after making application to APS for a rebate enables
7 some customers to choose to avoid the need to wait for hundreds of days for a solar rebate to be
8 granted before installing their solar panels. APS proposes to eliminate this option and the
9 Commission finds that this alteration will not be helpful and will eliminate one tool that could be
10 used to shorten often overwhelming wait times. In denying APS’ request, the Commission is not
11 seeking to guarantee or have APS guarantee rebates, their amount, or even their availability, but
12 rather merely looking to allow informed consumers to choose to install solar when they want it
13 rather than waiting many months for a rebate application to be granted. It appears that by the
14 end of December 2010, if not sooner, a new residential solar customer will have to wait until at
15 least April 2011 to get its rebate granted. These customers should not be deprived of the
16 opportunity to choose to install their systems in advance of receiving the reservation. In order to
17 make sure that the customer is aware that the rebate amount is not guaranteed if it chooses to
18 install solar in advance of receiving the rebate, we recommend including a disclaimer to that
19 effect on all rebate applications to be executed by all customers electing this option.”

20
21 Page 22, Line 28

22 **INSERT** new Ordering Paragraph: “**IT IS FURTHER ORDERED** that Arizona Public Service
23 Company’s proposed change to the Distributed Energy Administration Plan wherein a system
24 installed ‘more than 180 days prior to the date APS *approves* the reservation request will not be
25 considered “new” under this Plan’ is rejected in favor of the current language of that Plan
26 providing that a system installed ‘more than 180 days before the date APS *receives* the
27 reservation request will not be considered “new” under this Plan.’ In addition, Arizona Public
28 Service shall insert into the Plan the following language, ‘The online rebate application program

1 will include a notice to the public and a disclaimer, prominently displayed and in bold writing,
2 providing notice to any customer who wishes to install a system before the corresponding rebate
3 reservation request is approved that the amount of the rebate is subject to change based on utility
4 and Commission action and that the customer is not guaranteed a rebate amount or a timeframe
5 for the payment of such rebate and is not guaranteed that a rebate even will be available. The
6 application will include a specific field for a required electronic signature from the customer
7 indicating that they have read and understand this notice and disclaimer and that they legally
8 waive the right to bring any claims against the utility if the rebate is lower than they expected,
9 takes longer than anticipated, or is not approved.””

11 **3. Implement a continuous funding cycle**

12 The third tool for reducing the long and damaging wait for residential incentives involves
13 implementing a continuous funding cycle that does not rely on quarterly breaks that cause
14 customers to wait for their incentive to be granted. If the program is carefully laid out and
15 budgeted including step downs based on demand then there is no reason why such a program can
16 not be a huge success. If the Commission is interested in exploring such a funding concept we
17 recommend that APS be asked to propose such a concept and bring it back for consideration at a
18 meeting in December. Even if it is ultimately not adopted it appears to be important enough that
19 such a funding alternative should be fully explored.

21 **4. Additional funds should be moved to the residential fund to help** 22 **eliminate the current backlog**

23 The fourth tool for reducing wait times for customers is to work through the current
24 backlog. SolarCity supports transferring funds to pay for this residential backlog retirement.
25 SolarCity supports transferring some or all of the funds from the following budgetary items to
26 pay for retiring the residential backlog:

27
28 Marketing and Outreach: \$5.3 million total budget

1
2 Research and Development: \$2.0 million total budget

3
4 Implementation: \$3.7 million total budget

5
6 Administration: \$1.4 million total budget

7
8 SolarCity is not suggesting that it is appropriate to transfer the full amount of these funds
9 however, it has identified these line items as those most likely to include amounts that are not
10 necessary to the smooth operation of the program. In particular, the solar providers are capable
11 of promoting and marketing their own services and do not believe that APS money is well spent
12 promoting its rebates to potential solar customers.

13
14 In addition, SolarCity supports the injection of supplementary funds into the program on
15 a one time basis to help retire the backlog and essentially “reset” the program so that new
16 customers can be awarded their reservations concurrently with the application beginning January
17 1st. This, in conjunction with the other suggestions included in this section can help eliminate
18 the backlog issue.

19
20 C. The solar industry and APS agree that there should be no rebate cap

21 SolarCity agrees with APS and the rest of the solar industry that has commented that
22 there should no longer be any cap on the amount of a project that utility rebates can fund. Staff
23 disagrees with APS and the solar industry and proposes to cap rebates such that they can only
24 fund up to half of a system’s total project’s value.

25
26 There is sufficient competition in the solar industry today that project prices and
27 incentive amounts are being driven down at a very quick pace. Further, having the cap in place
28 puts the project owner in a difficult and challenging position. With the incentive cap in place the

1 developer is unable to know exactly how much of the rebate he will be receiving until the project
2 is completed. While the rebate amount is based on system size and output, the total project value
3 includes the financing costs and is not known until the project is built. As a result, the developer
4 can never really be sure how much of the rebate the developer will get until the project is
5 finalized which in turn complicates the ability to acquire financing. Not knowing how much of
6 the rebate you will get makes securing financing difficult.

7
8 **PROPOSED AMENDMENT**

9
10 The following language will eliminate the cap in APS service territory.

11
12 Page 14, Line 4

13 DELETE Finding of Fact No. 60 and INSERT the following: “The Commission supports APS’
14 proposal to eliminate the incentive cap for residential and non-residential systems.”

15
16 Page 21, Line 8

17 DELETE Finding of Fact 94(H) in its entirety.

18
19 Page 22, Line 20

20 DELETE lines 20 and 21.

21
22 D. Revisions to PBI reverse auction procedures to screen for project viability

23 It appears that the industry believes that some additional project viability screens could
24 be a benefit to the PBI auction process. There is evidence to suggest a high dropout rate from the
25 program (TEP reported at the workshop that it plans for a standard 25% drop out rate from its
26 program) and SolarCity supports implementing procedures to try and lower the dropout rate.
27 SolarCity would support steps including for example; requiring that an applicant for a PBI hold a
28

1 valid contractor's license in Arizona; and requiring that an applicant for a PBI produce a signed
2 contract with the customer at the time of application for the PBI.

3
4 **III. Conclusion**

5 SolarCity respectfully requests that the Commission consider the matters set forth herein
6 and adopt the proposed Amendment at its upcoming hearing on this matter.