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December 28, 2010

2011 JAN -5 A 11: 39

Commissioner Paul Newman

Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007

AZ CORP COMMISSION
DOCKET CONTROL

E-01345A-10-0262
E-01345A-10-0166

Arizona Corporation Commission
DOCKETED

JAN 5 2011

Re: APS 2011 Implementation plan

DOCKETED BY

Dear Commissioner Newman:

APS' 2011 implementation plan and the provisional position of the commission beg a number of questions.

Whether or not they are questions in law is a matter for someone other than me, but certainly a shadow of suspicion could be cast that might be politically awkward. It does not serve any of the interested parties to give the impression of impropriety or to be forced into a rearguard of public justification. I am writing now so that if you think the questions I'm about to raise would benefit from greater consideration, the opportunity is not lost.

This year the Commission ruled in a landmark case. By allowing schools, non-profits and municipalities to benefit from the economics of 3rd party non-regulated ownership of solar systems, the commissioners kept integrity with all parties and at the same time demonstrated an acceptance of the reality of innovation in technology and upholding the intent and purpose of the constitution. (Paving the way, incidentally, for many millions of dollars to find investment opportunity in AZ from out of state and overseas, while increasing the number of jobs that are being created.)

Approving APS' request to become solar array owners in direct competition to solar companies, we believe, would be a mistake. However well intentioned, if flawed, the argument, such a policy change represents a clear and unfair advantage. This advantage only exists because of the 'necessary' monopoly 19th century technology and method of electricity generation and distribution dictated. Our traditional and existing portfolio of electrical power generation is fueled principally by coal-fired power plants cooled by vast quantities of fresh water, as you know. It's been explained to me that the ACC was tasked to independently maintain the balance between consumer and utility interests in recognition of this necessary monopoly. The REP was designed to incentivize the state's move into the 21st century to better manage natural resources and develop clean energy generation and distribution technologies.*

That being the case, we believe there are better and more equitable ways in which the market can be developed fairly without exacerbating clear conflicts of interest and unfair advantage, as I will example below.

1. Am I correct in believing that APS as a regulated monopolistic industry is guaranteed a profit under the Arizona constitution? As non-regulated solar developers, we are required to survive within this ever changing market (much of it controlled by the utilities) without any such protection. (The essence of the centrally controlled socialist model rather than free markets, surely?)

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2. APS, having control of the distribution infrastructure, is able to make use of electricity generated by a solar system where a system's 'host' may be in default. This unique position is in stark contrast to the position of 3rd party array owners or investors who do not have equal access to the grid.
3. Am I also correct in stating that APS is not required to pay even wholesale rates for the electricity being produced by a system abandoned by a 'host'? Such an investor hazard exists for independent energy generators who at present are not allowed to use the existing grid independently .
4. The 'middleman' control enjoyed by APS extends further. Disconnecting service on a defaulted 'host' or abandoned premises would force 3rd party owners out of integrity on either a production based or up front incentive contract. Again, this legitimate investor concern would be made irrelevant by an APS owned system.
5. Today solar (and all independent renewable energy generation owners) have to consider the federal implications of 'recapture'. In event of APS disconnecting a defaulted 'host's' service, 3rd party investors/owners would be exposed to demands from the treasury for part 'recapture' of grant or tax credit funds. No similar external threat exists for APS they alone have the power of disconnection.
6. It is a testament to the esteem in which APS are held that we all accept without question that APS is the collector of the Renewable Energy Portfolio Tariff and the allocator of the money it collects to qualifying applicants. (That said it is a very clear case of the 'practical' trumping the 'preferable'. Obviously, though presently impractical, an impartial 3rd party administration would be preferable.) APS would be competing externally for projects for which it is already an authority having jurisdiction, in more than one capacity!

APS and its corporate parent, Pinnacle West, employ a number of extremely talented people whose collective job it is to make sure shareholders retain faith in their stewardship. Being as they are in the electricity generation and distribution business, it is to be expected that they want to capitalize on the state's policy of 'distributed generation'. Indeed, it seems reasonable they should; however, I respectfully suggest that the above issues need to be considered. I am requesting that you support my request to table further review of the 2011 implementation plan and in particular the question of allowing APS to compete with solar integrators for REST funds and commercial projects.

Yours sincerely,

BRILLIANT GREEN ENERGY, INC.

Toby Rolt

Toby Rolt
CEO

*Donald Brant (CEO, Pinnacle West) has arranged for me to meet with Brad Albert (APS' Strategic Planner) to discuss a way in which APS could be fairly, usefully and profitably included in this emerging and revolutionary market.