

Panel should not treat solar firms as utilities

by **Clint Bolick and Sandy Bahr** - Oct. 24, 2009 12:00 AM
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Many aspects of environmental and energy policy divide the authors of this column. But we join together to urge the Arizona Corporation Commission not to squelch an innovative approach to solar energy that benefits private and public entities alike.

At issue are solar-service agreements, in which solar companies install and maintain solar panels on schools and other tax-exempt organizations for free. The schools receive power for a low monthly fee over an extended period of time. The solar companies collect renewable-energy tax credits for which tax-exempt entities are not eligible.

Such solar-service agreements are a reality with unlimited potential in Arizona - but only if the commission decides in the coming days not to treat the solar companies as public utilities and subject them to costly and burdensome regulation.

Regulating the solar firms as utilities would require them to secure a certificate of public convenience and necessity and for approval of rates and other business operations, which in turn would greatly inflate the cost of solar installation and maintenance.

The likely effect would be to send the firms packing to other states that do not regulate them like utilities.

Such an outcome also would conflict with the commission's own policies that aggressively promote renewable energy, including distributed roof-top solar generation. Indeed, the commission requires utility companies to generate certain amounts of energy from renewable resources. While we may disagree as to the wisdom of these policies, we most certainly agree that if the commission subjects solar firms to regulation that inhibits the installation of solar devices by tax-exempt property owners, it could have the perverse effect of reducing the amount of energy generated from renewable sources.

The main reason why the commission should not treat the solar firms as utilities is because they are not utilities. They are not producing energy; rather, they are facilitators that enable private entities to generate their own energy. They assist entities that could not afford to construct solar facilities and that are unable to access the tax credits that otherwise could make such facilities economically feasible.

The normal circumstances that would allow the commission to regulate the firms as utilities do not apply. The firms are not a "natural monopoly" - to the contrary, the solar firms operate in an extremely competitive environment. They are not required to provide service. Their customers are fully informed participants in the solar service agreements. Therefore they should not be subject to regulation as public utilities.

Schools across the state, which are copious consumers of energy, are anxious to reap the benefits of solar service agreements.

The escalating and constantly gyrating costs of energy can play havoc with a school district's budget. The solar service agreements ensure a steady supply of energy at low fixed costs, which means savings from which both students and taxpayers benefit.

But the opportunity to pursue such agreements rests in large measure on the commission's imminent decision whether to seek to expand its jurisdiction to encompass the solar firms.

The commission's decision comes down to either expanding its power or accomplishing its renewable energy mission. In this instance, it can best achieve its mission by recognizing that these solar firms should not be treated as utilities.

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