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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

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9 SolarCity Corporation,
10 Plaintiff,

No. CV-15-00374-PHX-DLR

ORDER

11 v.

12 Salt River Project Agricultural
13 Improvement and Power District,
14 Defendant.

15
16 Before the Court are Plaintiff SolarCity Corporation's motion to seal (Doc. 268),
17 and Defendant Salt River Project Agricultural Improvement and Power District's motion
18 to seal (Doc. 295). Neither party filed a responsive motion or requested oral argument.
19 For the following reasons, Plaintiff's motion (Doc. 268) is granted and Defendant's
20 motion (Doc. 295) is granted in part and denied in part.

21 **I. Legal Standard**

22 Where, as here, parties seek leave to file under seal documents attached to a
23 dispositive motion, they must show compelling reasons for doing so. *Pintos v. Pac.*
24 *Creditors Ass'n*, 605 F.3d 665, 678-79 (9th Cir. 2009) (citing *Kamakana v. City & Cty. of*
25 *Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006)). The standard is high because the
26 resolution of a dispute on the merits "is at the heart of the interest in ensuring the
27 'public's understanding of the judicial process and of significant public events.'" *Kamakana*,
28 447 F.3d at 1179 (citation omitted).

1 **II. Plaintiff’s Motion to Seal (Doc. 268)**

2 Plaintiff seeks to file under seal: an unredacted version of its Renewed Motion for
3 Summary Judgment (Motion); an unredacted version of its Separate Statement of
4 Undisputed Facts (SSUF); and unredacted versions of the exhibits cited in the Motion
5 and the SSUF. (Doc. 268 at 2.) The documents included in this request fall into three
6 categories, which the Court discusses in turn.

7 First, Plaintiff seeks to seal “certain portions of deposition transcripts” of two
8 employees because they contain “highly sensitive business information and trade
9 secrets.” (*Id.* at 4.) Specifically, these depositions discuss “strategic pricing decisions
10 and their effect on internal financial metrics,” the public disclosure of which Plaintiff
11 argues would give its competitors an advantage in “determining how to profitably price
12 their own offerings and better compete” against Plaintiff. (*Id.*) Importantly, because the
13 portions Plaintiff seeks to seal concern service areas not at issue in this case, disclosure
14 offers limited assistance to the public in better understanding the judicial proceedings.
15 *See e.g., Aviva USA Corp. v. Vazirani*, 902 F. Supp. 2d 1246, 1273-74 (D. Ariz. 2012)
16 (finding that sealing document did not interfere with understanding of the judicial process
17 because the dispositive motion did not address information found in that document). The
18 Court therefore finds that compelling reasons justify sealing these portions of the
19 identified depositions.

20 Next, Plaintiff requests that the Court seal portions of its Motion and SSUF
21 containing private consumer information. Plaintiff argues that release of this information
22 would result in an invasion of privacy interests of third parties, and that consumers’
23 identities should be sealed because disclosure is not necessary for the public to
24 understand the parties’ positions or the Court’s rulings. Plaintiff notes, correctly, that
25 consumer identities become a matter of the public record if they testify at trial. The
26 Court finds that compelling reasons justify sealing the identified portions of Plaintiff’s
27 Motion and SSUF.

28 Finally, at Defendant’s request, Plaintiff has lodged under seal a series of exhibits

1 that Defendant designated as confidential pursuant to the Court’s Protective Order.
2 Plaintiff “does not agree that th[ese] exhibits should be sealed, but has agreed to lodge
3 them under seal” in accordance with the Court’s Protective Order and Local Rule 5.6.
4 (Doc. 268 at 2; Doc. 56.) In turn, Defendant filed a separate motion to seal these
5 documents, which the Court discusses below.

6 **III. Defendant’s Motion to Seal (Doc. 295)**

7 Defendant seeks to have sealed 20 exhibits that Plaintiff filed in support of its
8 motion for partial summary judgment, arguing that these exhibits contain information that
9 “affect[s] net revenue” and is “not the sort of information a utility typically makes
10 public.” (Doc. 295 at 2-5.) Defendant offers a brief explanation as to why each exhibit
11 should be sealed. For example, Defendant argues that Exhibit 8 consists of internal
12 emails discussing pricing decisions “that necessarily affect” Defendant’s net revenue.
13 (Doc. 295 at 2.) Defendant also argues that Exhibit 9 consists of an internal presentation
14 concerning strategic decision making that is “related to issues that affect [Defendant’s]
15 overall net revenue.” (*Id.*) In support of its arguments, Defendant cites four cases in
16 which business confidentiality and competitive standing have been deemed sufficient
17 reasons to justify sealing court records. (*Id.* (citing *Ctr. for Auto Safety v. Chrysler Grp.*
18 *LLC*, 809 F.3d 1092, 1098 (9th Cir. 2016); *Bean v. Pearson Educ., Inc.*, No. CV 11-
19 8030-PCT-PGR, 2013 WL 2455930, at *4 (D. Ariz. June 5, 2013); *TriQuint*
20 *Semiconductor, Inc. v. Avago Techs. Ltd.*, No. CV 09-1531-PHX-JAT, 2011 WL
21 4947343, at *2 (D. Ariz. Oct. 18, 2011); *Aviva*, 902 F. Supp. 2d at 1273).)

22 The Court agrees that, in some circumstances, business confidentiality and
23 competitive standing can be compelling reasons justifying sealing court records, and
24 acknowledges that there is some plausibility to Defendant’s concerns. But the Court also
25 has doubts as to the concreteness of the harm Defendant claims would result from public
26 disclosure of the documents at issue. For example, Defendant argues that certain
27 information it seeks to seal is not “the kind of information a utility would ordinarily make
28 public.” (Doc. 295 at 4.) Simply because information is not ordinarily made public does

1 not mean its publication necessarily results in harm. Lawsuits regularly result in the
2 public disclosure of information that otherwise would remain private. Without a more
3 specific explanation linking public disclosure with concrete harm, the Court is left with
4 guesswork.

5 Moreover, Defendant's requests seem overbroad. In close cases involving some
6 degree of conjecture as to the harm that would result from public disclosure of
7 information, courts may grant a motion to seal provided that sealing the document will
8 not interfere with the public's interest in understanding the judicial process. *See Aviva*
9 *USA Corp.*, 902 F. Supp. 2d at 1273. The Court, however, has reviewed the exhibits at
10 issue and finds that the information contained within is valuable to the public's
11 understanding of the case.

12 Plaintiff brings claims under the Sherman Antitrust Act. The central allegation in
13 this case is that Defendant has monopoly power over the electrical grid and has used a
14 pricing strategy to eliminate competition from Plaintiff and other distributed solar entities
15 by assessing a penalty against customers who use solar energy systems but still need grid
16 access. (Doc. 39 ¶¶ 2, 4.) Plaintiff alleges that this pricing strategy exploits the practical
17 reality that customers using solar energy systems are unable to completely disconnect
18 from the grid. According to Plaintiff, "[t]he penalty is so significant that it eliminates the
19 economic value to customers of generating their own power." (¶ 5.)

20 With this context, the Court is concerned that the exhibits Defendant seeks to seal
21 contain information necessary for the public to understand the parties' positions and the
22 Court's rulings. For example, Defendant seeks to seal Exhibit 6 in its entirety. The
23 exhibit consists of emails between Defendant's employees in which the employees
24 discuss the amount of kilowatt-hours required for its average customer to completely
25 disconnect from the grid. Without this information, the public lacks critical information
26 for understanding why Plaintiff believes the fee imposed on customers using distributed
27 solar is inescapable (i.e., that as a practical reality, customers are unable to produce and
28 store enough energy to completely disconnect from the grid).

1 Defendant also seeks to seal Exhibit 11, an internal presentation concerning
2 “Emerging Customer Programs.” (Doc. 295 at 3.) Defendant argues that the presentation
3 contains “internal forecasts and analyses related to potential future strategies.” (*Id.*)
4 After reviewing the exhibit, the Court notes that the presentation characterizes several
5 solar providers as “competition” and offers information on these various entities. The
6 presentation also shows the effect on Defendant’s revenue if it does nothing to counteract
7 the competition it faces. Given the nature of the claims against Defendant, this
8 information likely is relevant and valuable to the public’s understanding of the case. (*See*
9 *e.g.*, Doc. 39 ¶ 147 (“[Defendant’s pricing plan] has the purpose and effect of excluding
10 competition from distributed solar, including by actually foreclosing competition in the
11 market and preventing entry).)

12 There might be select pieces of information contained within these exhibits that is
13 not relevant or only tangentially related to the proceedings before the Court. The Court,
14 however, is unable to grant Defendant’s broad requests without also depriving the public
15 of other vital information contained within these documents. For example, Defendant
16 seeks to seal the entirety of Exhibit 14, an internal strategic planning chart. In part, the
17 chart discusses effects of the economy, cybersecurity, and water supply on Defendant’s
18 business. Arguably, not all of that information is relevant to this case. The chart,
19 however, also includes information on the impact of varying degrees of market
20 penetration of distributed solar. If Defendant’s interest in confidentiality pertains only to
21 a discrete portion of a document, then its motion to seal should be appropriately limited.

22 For these reasons, the Court denies Defendant’s request as it pertains to Exhibits 1,
23 4-20, and 22. The Court, however, grants in part Defendant’s request to seal Exhibit 21.
24 The exhibit “contains confidential customer information relating to non-sanctioned
25 consumer generation as well as aggregated customer data concerning use of certain
26 renewable energy technologies.” (Doc. 295 at 5.) Defendant argues that the exhibit
27 should be sealed in its entirety because “internal customer data is not the kind of
28 information typically made public.” (*Id.*) As discussed, although the Court finds this

1 explanation somewhat plausible, the Court also finds that Defendant's concern somewhat
2 conjectural. The Court will not seal the entire exhibit because information contained
3 within the exhibit is useful to the public, but in light of customers' privacy interests, the
4 Court will require that customer last names included in the document be redacted from
5 the publicly filed version of the exhibit.

6 **IT IS ORDERED** that Plaintiff's motion to seal (Doc. 268) is **GRANTED**. The
7 Clerk of Court shall file under seal Exhibits 2 and 3 (lodged at Doc. 271-2 and 271-3)
8 and Plaintiff's Motion and SSUF (lodged Docs. 276 and 277).

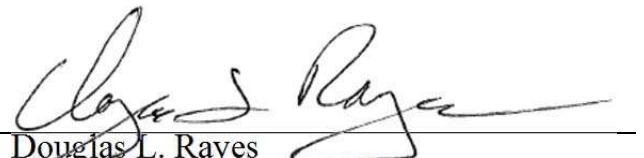
9 **IT IS FURTHER ORDERED** that Defendant's motion (Doc. 295) is
10 **GRANTED IN PART** and **DENIED IN PART** as follows:

11 1. Defendant's motion to seal Exhibits 1, 4-20, and 22 (lodged at Doc. 271-1,
12 272-4 through 271-11, 272-1 through 272-9, 272-11) is denied. Within **10 days** of the
13 date of this order, Plaintiff shall publicly file unredacted versions of these exhibits.

14 2. Defendant's motion to seal Exhibit 21 (lodged at 272-10) is granted in part.
15 The Clerk shall file Exhibit 21 under seal, but within **10 days** of the date of this order
16 Plaintiff shall publicly file a revised version of Exhibit 21 that redacts only customer
17 names.

18 **IT IS FURTHER ORDERED** that, within **10 days** of the date of this order,
19 Plaintiff shall publicly file a revised version of its Motion and SSUF that redacts only the
20 information the Court has ordered to be sealed.

21 Dated this 8th day of December, 2017.

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26 Douglas L. Rayes
27 United States District Judge
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