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Subject: Supreme Court to settle judicial procedure dispute in solar pricing case

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The Supreme Court has agreed to hear an appeal stemming from a lawsuit over solar power pricing, but the justices will only weigh in on a dispute over judicial procedure in the case, not the underlying pricing issue.

The case involves a lawsuit brought by SolarCity against the Salt River Project Agricultural Improvement and Power District, an Arizona governmental entity and power supplier. The solar installer alleges the district created a penalty for homeowners who obtain their own electricity that caused a 96 percent drop in applications for home solar arrays in that area.

During proceedings in a trial court, the district argued to have the case dismissed because it is authorized by the state to set prices and thus should be considered immune from federal antitrust challenges. The trial judge denied that request.

The district subsequently challenged that ruling in the 9th Circuit Court of Appeals through what is supposed to be a narrow exception to how judicial orders are appealed known as the "collateral-order doctrine." Neither the 9th Circuit nor the Supreme Court has ever weighed in on whether "state-action" antitrust immunity can be appealed that way.

The 9th Circuit concluded in June that it cannot because it is "a defense to liability and not an immunity from" lawsuits. That decision was consistent with similar rulings from the 4th and 6th Circuits — but at odds with rulings from the 5th and 11th Circuits. The Supreme Court is more inclined to hear cases in which lower courts disagree.

WHAT'S NEXT: Oral arguments likely will occur in late winter or early spring of next year. The case is *Salt River Project Agricultural Improvement and Power District v. SolarCity*, 17-368.

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