



## Ruling on Discovery Disputes in “SolarCity” Cash Grant Litigation

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The thrust of the parties’ dispute is whether certain information relating to other Section 1603 applicants and internal Treasury policies/guidelines is relevant to plaintiffs’ claims and is discoverable. At the hearing, the DOJ, arguing on behalf of Treasury, asserted that plaintiffs’ requests were overly broad and irrelevant, insofar as they sought information concerning approaches taken by Treasury with respect to other, unrelated applicants and the development of Treasury’s general screening policies and benchmarks used in evaluating and adjusting applications. While Judge Bruggink mainly agreed with the DOJ’s arguments, he also recognized the potential relevance of such information to how Treasury evaluated and adjusted plaintiffs’ cash grant awards, noting that even the DOJ’s explanation of Treasury’s approach to Section 1603 adjustments suggested a certain amount of imprecision in the process.

Accordingly, Judge Bruggink generally limited plaintiffs’ discovery requests to information and documents concerning what Treasury had done with respect to their applications, although he also ruled currently discoverable other applications used by Treasury as a basis of comparison to adjust plaintiffs’ awards and, with respect to Treasury benchmarks that were higher than the amounts claimed by plaintiffs, information concerning how such benchmarks were derived. He deferred making a final ruling on the other information and documents sought by plaintiffs until after this material had been produced and reviewed.

Fact discovery is currently scheduled to conclude by November 19, 2014 (which will be followed by expert reports and discovery), although Judge Bruggink expressed understandable doubt during the August 29 hearing that such discovery would indeed be complete by this date.

## Categories

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