IN THE SUPREME COURT OF THE UNITED STATES

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No. 17-368

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, PETITIONER

v.

TESLA ENERGY OPERATIONS, INC., FKA SOLARCITY CORPORATION

_____

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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MOTION OF THE UNITED STATES FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE AND FOR DIVIDED ARGUMENT

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Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in the oral argument in this case as amicus curiae supporting respondent and that the United States be allowed 10 minutes of argument time. Respondent has agreed to cede 10 minutes of argument time to the United States and therefore consents to this motion.

This case presents the question whether a public entity has the right to an immediate appeal under the collateral-order doctrine from a district court's determination that the entity's conduct is not state action beyond the reach of the Sherman Act. The court of appeals held that petitioner has no right to such an

appeal in this case. Pet. App. 1a-17a. The United States has filed a brief as amicus curiae supporting respondent, contending that the court of appeals correctly concluded that such an appeal does not satisfy the requirements of the collateral-order doctrine.

The United States has a substantial interest in the disposition of this case. The Department of Justice and the Federal Trade Commission have primary responsibility for enforcing the federal antitrust laws and a strong interest in their correct application. As the Nation's most frequent litigator in federal court, the United States also has a strong interest in the correct application of the collateral-order doctrine. The United States, through the Department of Justice, filed an amicus brief supporting respondent in the court of appeals.

The government has previously presented oral argument as amicus curiae on questions concerning application of the state-action doctrine under the federal antitrust laws. See, e.g., 324 Liquor Corp. v. Duffy, 479 U.S. 335 (1987); Hoover v. Ronwin, 466 U.S. 558 (1984). The government has also participated in oral argument as amicus curiae in previous cases concerning the scope of the collateral-order doctrine. See, e.g., Mohawk Indus., Inc. v. Carpenter, 558 U.S. 100 (2009); Behrens v. Pelletier, 516 U.S. 299 (1996). We therefore believe that participation by the United

States in the oral argument in this case would be of material assistance to the Court.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

FEBRUARY 2018