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-BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH-

In the Matter of the Investigation of the
Costs and Benefits of PacifiCorp's Net
Metering Program

Docket No. 14-035-114

DIRECT TESTIMONY OF DAN BLACK FOR VIVINT SOLAR, INC.

June 8, 2017

Submitted on behalf of Vivint Solar, Inc.

/s/Stephen F. Mecham

1 **Q. Please state your name and business address.**

2 A. My name is Dan Black. My business address is 1800 West Ashton Boulevard
3 Lehi, UT 84043.

4 **Q. For whom are you testifying in this proceeding?**

5 A. Vivint Solar, Inc. (“Vivint Solar”)

6 **Q. What is your position at Vivint Solar?**

7 A. I am Chief Legal Officer and Executive Vice President of the company. Before assuming
8 the Chief Legal Officer role, I was Associate General Counsel.

9 **Q. Have you testified before the Commission before?**

10 A. Yes. I testified in the earlier phase of this proceeding in September 2015.

11 **Q. What is the purpose of your testimony?**

12 A. The purpose of my testimony is to support Rocky Mountain Power’s proposal to
13 grandfather the net metering structure for existing rooftop solar customers if the
14 Commission changes the net metering program in this proceeding, and to explain why
15 this is important to the solar industry. To be effective, grandfathering must apply to the
16 meter at the home where a solar energy system is installed and not to the individual
17 customer. If a customer sells their home, grandfathering must apply to the new buyer's
18 meter to protect the value of the rooftop solar energy system. I also make
19 recommendations below, including when any such change should take effect.

20 **Q. Where did Rocky Mountain Power propose to grandfather rates?**

21 A. On lines 223 to 233 of Gary Hoogeveen’s direct testimony and in its filing titled Net
22 Metering Compliance Filing on page 15. Mr. Hooegeveen said, “We acknowledge that
23 current customers made investments based on the current structure and respect the

24 customers' need for reasonable certainty for recovery of their investment." Vivint Solar
25 strongly concurs.

26 **Q. Did Mr. Hoogeveen recommend the length of time solar customers' rates be**
27 **grandfathered?**

28 A. No.

29 **Q. Does Vivint Solar have a recommendation?**

30 A. Yes. We believe the grandfathering period should be at least 25 years.

31 **Q. Why?**

32 A. For the reason Mr. Hoogeveen stated: the net metering customers purchased and installed
33 their solar energy systems under the current structure and rates and assumed both would
34 remain in place long enough for them to recover and benefit from their investment.

35 Almost universally, solar panels carry a 25-year warranty and performance guaranty.

36 The useful life of a rooftop solar system exceeds 30 years. Customers will often enter
37 into 20-year lease agreements, 20-year power purchase agreements, or 20 plus year loan
38 agreements to finance the purchase of a solar energy system for their home or business.

39 The Commission should protect customers who purchased solar energy systems under the
40 current structure by grandfathering them for at least 25 years under that this existing
41 regime. To do otherwise would be the equivalent of a bait and switch and would not be in
42 the public interest.

43 **Q. How should the Commission treat new customers after this case is decided?**

44 A. Vivint Solar encourages the Commission to maintain a robust net metering program in
45 Utah that enables customer choice to purchase and install rooftop solar energy systems
46 that provide both short-term and long-term benefits to Rocky Mountain Power and all

47 ratepayers. If the Commission changes its net metering policy in this proceeding, new
48 solar customers, like current customers, must have stability and the opportunity to
49 recover and benefit from their financial investment. Instability in the rooftop solar
50 industry will kill the industry in Utah, stifling competition, and eliminating consumer
51 choice.

52 **Q. Are you suggesting that new customers' rates cannot change during the time they**
53 **are recovering their capital investment?**

54 A. No. Rates can change. What cannot change is the rate regime or the net metering policy.
55 The rate regime (e.g., retail net metering, where excess energy is compensated at the
56 retail rate) must remain stable for customers to recover and benefit from their investment
57 and for the solar industry to survive. Of course, new customers must be fairly
58 compensated for the excess power they generate and for the other benefits they provide
59 Rocky Mountain Power, the grid, and all other ratepayers, but rates (i.e., the volumetric
60 rate) can change just as they do for other Rocky Mountain Power residential customers.

61 **Q. Are there any impediments to grandfathering existing net metering customers on**
62 **their current rate regime?**

63 A. To my knowledge, there are no impediments to grandfathering residential net metering
64 customers on their current rate regime. Although Utah Code Ann. § 54-3-8 prohibits
65 preferential rates between classes of service, the Commission has grandfathered
66 customers in the past.

67 **Q. When did the Commission grandfather customers' rates?**

68 A. Rocky Mountain Power cites three instances on page 15 of its Net Metering Compliance
69 Filing where the Commission grandfathered rates in tariffs that were being terminated.

70 And though the cited cases occurred in the telecommunications industry where there is an
71 exception to Section 54-3-8, the Commission grandfathered rates in two of the cases
72 before the legislature made that exception in 2005.¹ There is clear precedent that
73 grandfathering customers on the current rate regime is permitted under Section 54-3-8.

74 **Q. Are you aware of any other cases in which the Commission grandfathered rates?**

75 A. I am aware of Rocky Mountain Power's all-electric tariff, Schedule 5, which the
76 Commission ultimately discontinued in 1999. Although the Commission did not use the
77 word "grandfathering," it effectively grandfathered the rates from Schedule 5 for many
78 years to ensure those ratepayers who made the investment could recover and benefit from
79 their investment.

80 **Q. Do you know the history of Rocky Mountain Power's Schedule 5?**

81 A. My understanding is that Schedule 5 was implemented when Rocky Mountain Power had
82 excess capacity from new generating plants built in the 1970s. The company offered
83 incentives in Schedule 5 for residential customers who invested in and installed all
84 electric appliances and developed all-electric homes. The schedule fell out of favor and
85 was closed to new customers in 1991.² The tariff was left in place, however, to avoid rate
86 shock and to give Schedule 5 customers the time required to recover and benefit from
87 their investment. The Commission ordered that customers not be moved from Schedule 5
88 until their bills would be lower under Schedule 1.³

89 **Q. Was there no date or time period set for that to occur?**

90 A. No.

¹ Senate Bill 108, 2005 General Legislative Session. See <https://le.utah.gov/~2005/bills/static/SB0108.html>.

² Direct testimony of William Griffiths for Rocky Mountain Power, Docket No. 97-035-01, at p. 6. Pages 1 - 7 are attached..

³ *Id.*

91 **Q. When did the Commission finally terminate Schedule 5?**

92 A. In 1999 in Docket No. 97-035-01 in an order dated March 4, 1999. That case gave the
93 Commission the opportunity to merge Schedule 5 with Schedule 1. It was a general rate
94 case and the Commission reduced Rocky Mountain Power's rates so significantly that
95 Schedule 1 rates were then lower than those in Schedule 5. That enabled the Commission
96 to merge the schedules without harming customers in Schedule 5 and they became
97 Schedule 1 customers. That is what the Commission intended when they closed the
98 schedule in 1991. Vivint Solar is seeking similar treatment for rooftop solar net metering
99 customers for the same reason. They made their investment decision under the current
100 rate structure. Now, they must have the time necessary to recover their investment and we
101 strongly recommend that be no less than 25 years.

102 **Q. Has the Utah Supreme Court ever ruled on grandfathering rates?**

103 A. No, but the Court did address the related issue of preference and reasonable differences
104 between classes of customers in *Mountain States Legal Foundation v. Utah Public*
105 *Service Commission*, 636 P.2d 1047, (Utah 1981). In *Mountain States* the Court
106 invalidated a senior citizen rate the Commission established because the Commission's
107 findings were inadequate to support the rate, not because it was prohibited by law.
108 Section 54-3-8 empowers the Commission to determine all questions of fact that arise,
109 but the findings must be supported by the evidence. The circumstances of this net
110 metering case support grandfathering existing net metering customers on their current
111 rate regime and to allow them to recover and benefit from their investment.

112 **Q. Have other states addressed this issue?**

113 A. Yes. I have not done an exhaustive search, but most if not all states have statutes against
114 preferential rates and just and reasonable rate requirements, similar to those in Utah. It is
115 within this same context that they made a determination about grandfathering net
116 metering customers' rate regime.

117 **Q. What actions have other states taken?**

118 A. While I am not familiar with the actions taken in every state, I know that California
119 grandfathered existing net metering customers' rates for 20 years from the date they were
120 interconnected and given permission to begin operating their rooftop systems. Hawaii
121 grandfathered net metering customers' rates in perpetuity. Nevada refused to grandfather
122 net metering customers at first, but the public and political backlash was so severe the
123 Nevada Commission reversed themselves and grandfathered net metering customers'
124 rates through November 30, 2036

125 **Q. What has happened in Nevada?**

126 A. NV Energy, a sister company to Rocky Mountain Power, both owned by Berkshire
127 Energy, sought to change the rooftop solar net metering program in a way very similar to
128 the current proposal from Rocky Mountain Power in front of this Commission. NV
129 Energy did not seek to grandfather customers, and the Nevada Commission initially sided
130 with the utility. The Nevada Commission is still reeling from the repercussions of their
131 initial decision. Nevada lost thousands of jobs in the solar industry following the
132 Commission's initial decision. There was a 99% decrease in net metering applications
133 year-over-year, and the rooftop solar industry was decimated, leaving most companies
134 (including Vivint Solar) to pull out of the state and relocate employees. As a result, in
135 November 2016, Nevada residents voted in a ballot measure to deregulate the state; and

136 in June 2017, the Nevada legislature passed AB-405 which ensures residential net
137 metering customers will be grandfathered for 20 years on each rate regime and restores
138 net metering in Nevada.

139 **Q. Have other states ordered that net metering customers' rates be grandfathered?**

140 A. Yes. New York grandfathered net metering customers' rates for 25 years. They also have
141 an interim success net metering program that will be phased out in 2020 where the
142 customers' rates are grandfathered for 20 years. In New Hampshire, the Commission
143 ordered that net metering rates be grandfathered through 2040.

144 **Q. What is Vivint Solar's recommendation to the Commission on grandfathering
145 existing net metering customers' rates?**

146 A. As I stated before, Vivint Solar strongly encourages the Commission to grandfather net
147 metering customers' rate regime for at least 25 years.

148 **Q. Please state again Vivint Solar's recommendation for new customers who take
149 service after the Commission decides this case.**

150 A. Vivint Solar recommends that the rate structure for new customers remain the same as
151 when they make their investment in solar energy systems and interconnect to Rocky
152 Mountain Power's grid. Customers must have this stability and the assurance they will be
153 able to recover their capital investment for the residential solar industry to continue in the
154 state.

155 **Q. What is your recommendation for an effective date if the Commission changes the
156 net metering program in this proceeding?**

157 A. If the Commission changes the net metering program in this proceeding, we recommend
158 that the changes not take effect for at least 90 days after the Commission's order is final.

159 This would allow customers and providers the time necessary to adjust and react to the
160 changes.

161 **Q. How would you treat customers who submit an application to install or interconnect**
162 **a solar energy system during the 90 day period?**

163 A. I recommend that they be grandfathered under the existing net metering regime and not
164 the new one. The trigger date should be the application date, not the permitting date or
165 the date the system becomes operational. Any application that comes in after the 90 day
166 period would be treated under the new regime ordered by the Commission. This would
167 allow for a smooth and fair transition.

168 **Q. Does this conclude your direct testimony in this phase of the proceeding?**

169 A. Yes.

CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2017, I sent a true and correct copy of the pre-filed direct testimony of Dan Black of Vivint Solar, Inc. by email to the following:

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