

Stephen F. Mecham (Bar No. 4089)
Stephen F. Mecham Law, PLLC
10 West 100 South, Suite 323
Salt Lake City, Utah 84101
Telephone: (385) 222-1618
Email: sfmecham@gmail.com

-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

REBUTTAL TESTIMONY OF DAN BLACK FOR VIVINT SOLAR, INC.

July 25, 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. Did you previously file testimony in this proceeding?**

7 A. Yes. I testified in the earlier phase of this proceeding in September 2015 and I filed direct
8 testimony in this phase on June 8, 2017.

9 **Q. What is the purpose of your rebuttal testimony?**

10 A. The purpose of my testimony is to respond to the direct testimony presented by the Office
11 of Consumer Services (“*OCS*”), the Division of Public Utilities (“*DPU*”), and Utah Clean
12 Energy (“*UCE*”), to provide additional context, and to reiterate why grandfathering is
13 important to the solar industry.

14 **Q. Where did OCS propose to grandfather a customer’s rate regime?**

15 A. On lines 571 to 573, 628 to 633, and other lines of Michelle Beck’s direct testimony.
16 Specifically, Ms. Beck said, “...the Office believes it is important to set a grandfathering
17 period sufficiently far in the future such that existing net metering customers are not hit
18 with significant rate shock. Most of these customers made investment decisions without
19 access to information that could inform them of the magnitude of potential rate design
20 changes that are now under consideration”. With this statement, Vivint Solar strongly
21 agrees and supports OCS.

22 **Q. Did Ms. Beck recommend the length of time solar customers’ rates regime should be**
23 **grandfathered?**

24 A. Yes. On lines 571 to 637 she states “The Office recommends a transition plan that
25 incorporates the following components:

- 26 • Establish a transition period of approximately twelve years. Use that benchmark
27 of time to grandfather net metering customer and also to phase in the new
28 compensation rate for excess energy.”

29 Vivint Solar strongly disagrees with this statement.

30 **Q. Please explain why Vivint Solar disagrees with this statement.**

31 A. First, to be effective, grandfathering must apply to the meter at the home where a solar
32 energy system is installed and *not* to the individual net metering customer. If a customer
33 sells their home, grandfathering must apply to the new buyer's meter to protect the value
34 of the rooftop solar energy system. In fact, Rocky Mountain Power (“**RMP**”) clearly
35 states in its Interconnection and Net Metering Service Agreement for Net Metering
36 Facility Level 1 Interconnection 25 KW Nameplate Capacity or Smaller
37 (“**Interconnection Agreement**”) application in Section 6.1 (Assignment) Subsection
38 6.1.1.3 (Exceptions to Consent Requirement) that “For small generator systems that are
39 integrated into a building facility, the sale of the building or property will result in the
40 automatic assignment of this Agreement to the new owner who will be responsible for
41 complying with the terms and conditions of this Agreement.” RMP clearly meant for the
42 Interconnection Agreement and the underlying rate regime to apply to a new buyer of the
43 building or property.

44 Second, almost universally, solar panels carry a 25-year warranty and performance
45 guaranty. The useful life of a rooftop solar system exceeds 30 years. Customers will
46 often enter into 20-year lease agreements, 20-year power purchase agreements, or 20 plus

47 year loan agreements to finance the purchase of a solar energy system for their home or
48 business. Ms. Beck’s proposal to grandfather customers for a twelve-year transition
49 period is not sufficient to protect those customers from rate shock and ensure they realize
50 the benefit of their individual bargain.

51 Third, the Commission should protect customers, existing and future, who purchased
52 solar energy systems under the then current rate regime, by fixing their rate structure for
53 at least 20 to 25 years. Anything less would be the equivalent of a bait and switch and is
54 not in the public interest and will result in significant customer backlash, political unrest,
55 and future litigation. It would eliminate the rate regime stability required for customers to
56 recover and benefit from their 20-year investment and not allow the solar industry to
57 survive in Utah.

58 **Q. Where did DPU propose to grandfather a customer’s rate regime?**

59 A. On lines 508 to 513 and other lines of Dr. Artie Powell’s direct testimony. Specifically,
60 Dr. Powell said, “If the Commission adopts the Division’s recommendation to petition
61 the Legislature to eliminate the net metering program statute after approximately seven
62 years, the transition period would be approximately to January 1, 2025”. With this
63 statement, Vivint Solar strongly disagrees.

64 **Q. Did DPU provide any support for the January 1, 2015 date certain?**

65 A. Yes. Dr. Powell states “... customers make rational investments assuming reasonable
66 stability of utility rates. As of January 1, 2025, current and potential NEM customers will
67 have been on notice of changes in the NEM program for ten years”. Vivint Solar strongly
68 agrees that net metering customers who made a significant 20-year investment in a solar
69 energy system did so assuming that their rate regime would remain stable for the life of

70 their system. However, Vivint Solar strongly disagrees that providing customers blanket,
71 non-transparent, 10 years of notice that their rates may change is sufficient for these
72 customers. Vivint Solar strongly disagrees that providing customers general notice that
73 “some change” may occur, with the opening of this docket or SB 208, is sufficient notice
74 of “specific changes” yet to be determined by the Commission.

75 **Q. Please explain why Vivint Solar disagrees with DPU’s grandfathering proposal.**

76 A. As discussed above and in Mr. Thomas Plagemann’s testimony, customers who make a
77 20-year investment in a solar energy system must be given the opportunity to recover and
78 benefit from their investment. This is fundamental to basic investment principles and
79 rational investment decisions. All customers, current and future, who invest in a solar
80 energy system must have a stable and predictable regulatory environment over the life of
81 their investment. Alternatively, instability and uncertainty will kill consumer choice and
82 the solar industry in Utah, similar to what happened in Nevada in 2015, which I described
83 in my direct testimony. Nothing kills the solar industry and consumer choice faster than
84 instability and uncertainty.

85 **Q. Did DPU address a trigger date for when grandfathering should begin.**

86 A. Yes, Dr. Powell stated on lines 95 to 97, “Current NEM customers, including those who
87 interconnect before January 1, 2018, would remain on their relevant schedule until the
88 end of the transition period, December 31, 2024.” Vivint Solar strongly disagrees with
89 this statement.

90 **Q. Please explain why Vivint Solar disagrees with DPU’s trigger date.**

91 A. The trigger date, for both current and future customers, should be the date the
92 Interconnection Agreement is submitted, not the approved date or the date the system

93 becomes operational. This would provide a smooth and fair transition for current and
94 future solar customers.

95 **Q. Why?**

96 A. Once the customer submits the Interconnection Agreement, it is out of their control and
97 in the hands of RMP to process and approve. Any delays or backlogs created by RMP
98 should not punish the customer's ability to be grandfathered under the then current rate
99 regime. If the Commission approves DPU's trigger date, it might create a perverse
100 incentive to RMP to delay processing Interconnection Agreements until after the trigger
101 date has lapsed. It is important to recognize that there are other delays that are outside the
102 customers' control such as (i) permitting requirements, (ii) installation backlog, and (iii)
103 weather delays, which supports Vivint Solar's recommendation that the trigger date must
104 be when the customer submits the Interconnection Agreement.

105 **Q. What is Vivint Solar's recommendation to the Commission for a trigger date?**

106 A. As stated in my direct testimony on June 8, 2017, if the Commission changes the net
107 metering program in this proceeding, we recommend that the changes not take effect for
108 at least 90 days after the Commission's order is final and the grandfathering trigger date,
109 for both current and future customers, should be the date the Interconnection Agreement
110 is submitted, not the approved date, or the date the system becomes operational. Any
111 Interconnection Application submitted after the 90-day period would be treated under the
112 new regime ordered by the Commission and would be grandfathered under such new
113 regime for at least 20-25 years.

114 **Q. Where did UCE propose to grandfather a customer's rate regime?**

115 A. On lines 37 to 45 and other lines of, Justin Barnes’ direct testimony. Specifically, Mr.
116 Barnes states, “Grandfather existing DG customers on the currently applicable rate
117 structure for 20 to 25 years, where existing DG customers are defined as those that
118 submitted an interconnection application before the latter of the date of a final
119 Commission order in Docket No. 14-035-114 or the effective date of any tariff changes”.
120 Vivint Solar strongly agrees with this statement.

121 **Q. Does UCE’s testimony discuss grandfathering future customers?**

122 A. Yes, on lines 44 to 45 of Mr. Barnes’ direct testimony where he states “Apply
123 grandfathering to future DG customers for at *least* 20 to 25 years to support long-term
124 investments under any new rate design adopted in this proceeding” (*italics added*). Vivint
125 Solar strongly supports this statement and would like to add that stability for both current
126 and future solar customers is essential to a rational 20-year investment decision. To not
127 provide at least 20 to 25 years of grandfathering to current and future solar customers
128 would eliminate consumer choice and the solar industry and would not be in the public
129 interest in Utah. We must learn for the mistakes of Nevada and ensure Utah creates a
130 solar regulatory regime that leads the nation.

131 **Q. Does UCE provide examples of grandfathering policies that other states have**
132 **implemented?**

133 A. Yes, in Exhibit JBR-2 to Mr. Barnes’ direct testimony, which support the examples I
134 provided on lines 139 to 143 of my direct testimony.

135 **Q. Does Vivint Solar have any additional context it would like to provide the**
136 **Commission regarding Exhibit JBR-2?**

137 A. Yes. Vivint Solar strongly supports the information Mr. Barnes provided in Exhibit JBR-
138 2 and the overarching principle that the vast majority of states have elected to grandfather
139 current and future customers for at least 20-25 years, with at least three (3) states
140 grandfathering customers indefinitely. I would like to provide additional context with
141 regard to South Carolina’s grandfathering date certain of 2025 and Vermont’s
142 grandfathering period of 10 years.

143 **Q. What additional information do you have for South Carolina’s date certain of 2025.**

144 A. On March 20, 2015, the South Carolina Commission, prior to the net metering regime
145 being approved, prior to a single customer or solar company investing in a solar energy
146 system or the market, and as a part of the settlement agreement to implement the net
147 metering program in the state, approved a settlement that provided that all customers
148 would be grandfathered until 2025. The key differences between Utah and South
149 Carolina are: (i) in South Carolina there were zero (0) solar customers operating under a
150 net metering regime prior to settlement being approved; and, (ii) every net metering
151 customer that agreed to a 20-year investment in South Carolina was on notice that they
152 would only be grandfathered until 2025. In Utah, there was no indication that the net
153 metering program might change when customers purchased or leased their solar energy
154 systems. That was true in New York, Louisiana, Hawaii, Iowa, Arkansas, California, and
155 Nevada, where each of these states ultimately elected to grandfather customers for at least
156 20 years.

157 **Q. Please provide additional context for Vermont’s grandfathering period of 10 years.**

158 A. In 2014, Vermont passed Act 99, which was the inception of the blended retail
159 compensation rate and the renewable energy certificates (“*REC*”) incentive and requires

160 no less than 10 years of grandfathering for any compensation rate or REC incentive. The
161 Vermont Public Service Board (“*PSB*”) maintained the Act 99 language in the most
162 recent update to Vermont’s net metering rules, which went into effect on July 1, 2017.
163 The 10-year period begins on the date the solar energy system receives permission to
164 operate from the utility company and after the period tolls, the solar energy system will
165 not be eligible for the REC incentive but will continue to receive the net metering credit
166 in effect at the time. It is important to note that Vermont currently does not have a
167 successor program (the export rate for excess generation is the blended retail rate plus the
168 REC incentive adder) as a result, the 10-year grandfathering period primarily only
169 impacts the REC incentive. This is substantially different from Utah, where RMP’s
170 proposal will significantly alter the entire net metering landscape, not simply remove the
171 REC incentive adder that increases the export credit above the blended retail rate. To
172 justify only grandfathering customers for 10 years in Utah because of Vermont’s policy
173 would be an injustice to all current and future net metering customers.

174 **Q. Please restate Vivint Solar’s recommendation for grandfathering in Utah.**

175 A. As I stated before, Vivint Solar strongly encourages the Commission to grandfather net
176 metering customers’ rate regime for at least 20 to 25 years. Similarly, Vivint Solar
177 recommends that the rate regime for new customers remain the same, for at least 20 to 25
178 years, as when they make their 20-year investment in a solar energy systems and
179 submitted their Interconnection Application to RMP. Grandfathering for at least 20 to 25
180 years is a basic building block to a stable investment environment for solar customers and
181 a stable solar industry, which is clearly in the public interest of the State of Utah. It is
182 clear from direct testimony that RMP, OCS, and DPU each support the concept of

183 grandfathering. However, to grandfather a current or future customer for less than 20 to
184 25 years would create instability to the solar customer and eliminate consumer choice in
185 the State of Utah. We strongly support and recommend to the Commission that both
186 current and future solar customers be grandfathered for at least 20 to 25 years on the rate
187 regime in place at the time the customer submits their Interconnection Application.

188 **Q. Does this conclude your rebuttal testimony in this phase of the proceeding?**

189 A. Yes.

CERTIFICATE OF SERVICE

I hereby certify that on July 25, 2017, I sent a true and correct copy of the pre-filed rebuttal testimony of Dan Black of Vivint Solar, Inc. in Docket No. 14-035-114 by email to the following:

DIVISION OF PUBLIC UTILITIES:

Chris Parker
William Powell
Patricia Schmid
Justin Jetter

chrisparker@utah.gov
wpowell@utah.gov
pschmid@agutah.gov
jjetter@agutah.gov

OFFICE OF CONSUMER SERVICES:

Michele Beck
Cheryl Murray
Robert Moore
Steve Snarr

mbeck@utah.gov
cmurray@utah.gov
rmoore@agutah.gov
stevensnarr@agutah.gov

SALT LAKE CITY CORPORATION

Tyler Poulson

Tyler.poulson@slcgov.com

UAE

Gary A. Dodge
Phillip J. Russell

gdodge@hjdllaw.com
prussell@hjdllaw.com

SUNRUN AND EFCA

Thad Culley
Bruce Plenk

tculley@kfwlaw.com
solarlawyeraz@gmail.com

UCARE

Michael D. Rossetti
Stanley T. Holmes
Dr. Robert G. Nohaver

Mike_rossetti@ucare.us.org
Stholmes3@xmission.com
nohavec@xmission.com

UTAH SOLAR ENERGY ASSOCIATION

Amanda Smith
Ryan Evans

ASmith@hollandhart.com
revans@utsolar.org

WESTERN RESOURCE ADVOCATES

Jennifer Gardner

jennifer.gardner@westernresources.org

SIERRA CLUB

Casey Roberts
Travis Ritchie

casey.roberts@sierraclub.org
travis.ritchie@sierraclub.org

UTAH CLEAN ENERGY

Sophie Hayes
Sarah Wright

sophie@utahcleanenergy.org
sarah@utahcleanenergy.org

SUMMIT COUNTY ATTORNEY

David L. Thomas

dthomas@summitcounty.org

SALT LAKE COUNTY

Donald Hansen
Jennifer Bailey

dhansen@slco.org
jenbailey@slco.org

AURIC SOLAR

Elias Bishop

elias.bishop@auricsolar.com

HEAL Utah

Michael Shea

michael@healutah.org

ROCKY MOUNTAIN POWER

Jeff Richards
Yvonne Hogle
Matt Moscon
Bob Lively

Robert.richards@pacificorp.com
yvonne.hogle@pacificorp.com
dmmoscon@stoel.com
bob.lively@pacificorp.com

VOTE SOLAR

Rick Gilliam

rick@votesolar.org

PARK CITY

Luke Cartin
Thomas Daley

Luke.Cartin@parkcity.org
tdaley@parkcity.org

INTERMOUNTAIN WIND AND SOLAR

Brian Burnett

bburnett@kmclaw.com

LEGEND SOLAR

Nathan K. Fisher

nathanf@fisherhunterlaw.com

[/s/Stephen F. Mecham](#)