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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 MOTION FOR FORMAL DISCOVERY AND STATEMENT OF DISCOVERY ISSUES OR MOTION TO STRIKE (VIVINT SOLAR, INC.) (Expedited Consideration Requested)
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Pursuant to Utah Admin. Code R746-1-501, Rocky Mountain Power, a division of PacifiCorp ("Company" or "Rocky Mountain Power"), hereby moves the Commission for formal discovery and submits this Statement of Discovery Issues pursuant to Rule 37 of the Utah Rules of Civil Procedure.

I. RELIEF REQUESTED

Rocky Mountain Power respectfully requests an order compelling intervenor Vivint Solar, Inc. (“Vivint”) to respond and produce documents to Data Requests 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 2.7, 2.8, 2.9, 2.10, 2.11, and 2.13 (“Requests”). In the alternative, if Vivint refuses to comply with the Requests, Rocky Mountain Power asks the Commission to strike the statements and arguments made by Vivint relating to the alleged economic impact to the solar industry and Utah’s economy that could be caused by the proposed NEM Program revisions.

II. BASIS FOR RELIEF REQUESTED

Vivint Makes Unsubstantiated Claims

Vivint has filed direct and rebuttal testimony in this matter with broad claims that PacifiCorp’s Net Metering Program (“Program”) will cause wide-spread job loss and have a significant and harmful effect on the Utah economy. A few examples of Vivint’s statements are:

- “The adoption of RMP proposed study and rate design will cripple the solar industry in Utah to the detriment of Utah citizens and RMP ratepayers.” Vivint Solar witness Richard Collins, Direct Testimony at 44-46.
- “If the Commission changes its net metering policy in this proceeding...will kill the industry in Utah, stifling competition, and eliminating consumer choice.” Vivint Solar witness Dan Black, Direct Testimony at 47-50.
- “It is estimated that between 3,000 – 4,000 jobs will be lost in Utah as well as the associated downstream economic impact to the state.” Vivint Solar witness Thomas Plagemann, Direct Testimony at 249-250.
- “The end result would be that Utah consumers have no choice to go solar and would again become captive consumers of Rocky Mountain Power’s monopoly over energy generation in Utah.” Vivint Solar witness Thomas Plagemann, Direct Testimony at 246-7.
- “Nevada lost thousands of jobs in the solar industry following the Commission’s initial decision. There was a 99% decrease in net metering applications year-over-year, and the rooftop solar industry was decimated, leaving most companies (including Vivint Solar) to pull out of the state and relocate employees.” Vivint Solar witness Dan Black, Direct Testimony at 131-134.

- “The Company’s proposed three-part tariff would effectively destroy the solar industry in Utah, kill thousands of jobs, and impact economic growth with the state.” Vivint Solar witness Richard Collins, Direct Testimony at 187-189.

Because of the focus on the economic impact of NEM change in the intervenors’ case, RMP reasonably sought production of documents and information that would verify or undermine their claims. Vivint, as well as at least one other intervenor, have refused to produce the requested information.

Rocky Mountain Power Has Limited its Requests to Topics within Vivint’s Claims

The Requests (attached hereto) seek supporting documents and information related to Vivint’s claims that the Program will kill jobs and harm Utah’s economy. Further, and because Vivint has claimed that “3,000 – 4,000 jobs will be lost,” Vivint was forced to “pull out of the state [of Nevada] and relocate employees,” and the Proposal will “cripple the solar industry in Utah,” the Requests seek information from Vivint about the number of employees and/or independent contractors it employs, the employees’ status as full-time or part-time, and profit margins on solar installations.

Rocky Mountain Power needs the information regarding Vivint’s employees, sales, and profitability in order to provide the Commission with complete and accurate information.

Vivint Has Failed to Adequately Respond to the Requests

In its responses, Vivint points the reader to SEC filings, testimony filed in this proceeding that prompted the requests, and to third-party websites. But it fails to directly respond to the Requests. Additionally, Vivint has not produced *any* supporting documents as sought by the Requests.

For example:

RMP Data Request 2.2

Please provide all documentation or other information relating to Vivint’s claim that Rocky Mountain Power’s “proposed three-part tariff would effectively

destroy the solar industry in Utah, kill thousands of jobs, and impact economic growth with the state” as stated in Mr. Collin’s Direct Testimony at lines 187-189.

Response to RMP’s Data Request 2.2

Please see Thomas Plagemann’s direct testimony on lines 145 to 167.

The cited testimony is not a response to the requested information, but instead, is opinion of Mr. Plagemann that a \$20 monthly fee will add to the lifetime cost of a solar system. No other information is provided, presumably because of Vivint’s objections to the Data Requests.

In another example:

RMP Data Request 2.8

Please provide all documentation or other information necessary to show the amount of compensation paid to Vivint sales force employees, including the hourly rates, monthly and yearly salaries, and any commissions paid from January 1, 2012 to the present.

Response to RMP’s Data Request 2.8

Vivint Solar objects to this data request on grounds that it is overly broad, unduly burdensome, irrelevant, and competitively sensitive. Notwithstanding these objections, Vivint Solar is providing a link to its SEC Form 8-K and 8-K exhibits filed on May 09, 2016.

Vivint’s objection is improper. It objects to producing documents that are “competitively sensitive” without referencing how the Commission’s R746-100-16 Protective Order is insufficient or proposing alternative protective orders. Further, the information found in the Form 8-K and supporting exhibits does not have *any* information relating to *sales force employees* as requested.

Vivint Should Be Compelled to Fully Respond Or Its Testimony and Argument Should Be Stricken

Rocky Mountain Power seeks an order from the Commission compelling Vivint’s production of documents and information responsive to the Requests in an expedited fashion, in time for use in surrebuttal testimony. In the alternative, if Vivint refuses to comply with the Requests, Rocky Mountain Power asks the Commission to strike all statements made by Vivint relating to the alleged economic impact the NEM Program revisions will have on Utah’s

economy. If Vivint simply responded that there is no supporting evidence, then the Company could note as much in its case. By simply refusing to answer, however, Vivint is depriving the Company of a fair opportunity to respond to their arguments in the case.

III. STATEMENT REGARDING PROPORTIONALITY

The relief Rocky Mountain Power seeks is reasonable considering Vivint's claims of job loss and economic impact. Further, Rocky Mountain Power does not seek requests in excess of the limits set forth in the Administrative Code or the Rules of Civil Procedure ("Rules"). Rather, Rocky Mountain Power seeks only that Vivint comply with the Rules in responding to the proportional requests.

IV. CERTIFICATION OF GOOD FAITH ATTEMPT TO CONFER

The undersigned certifies that his firm has attempted to confer with counsel for Vivint via telephone and/or email in an attempt to resolve this issue (emails attached). Because of the short time frame until the filing of surrebuttal testimony, the Company files this motion though it has yet to receive a response to its requested meet and confer.

DATED August 3, 2017.

RESPECTFULLY SUBMITTED,

ROCKY MOUNTAIN POWER

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing **MOTION FOR FORMAL DISCOVERY AND STATEMENT OF DISCOVERY ISSUES OR MOTION TO STRIKE (VIVINT SOLAR, INC.)** was served by email this 3rd of August, 2017, on the following:

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