

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**

---

**SURREBUTTAL TESTIMONY OF DAN BLACK FOR VIVINT SOLAR, INC.**

**August 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. 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 and rebuttal testimony on July 25, 2017.

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

10 A. The purpose of my testimony is to respond to the rebuttal testimony presented by Rocky  
11 Mountain Power, (*RMP*), the Office of Consumer Services (“*OCS*”), and the Division of  
12 Public Utilities (“*DPU*”).

13 **REBUTTAL OF GARY HOOGEVEEN FOR RMP**

14 **Q. Do you take issue with Mr. Hoogeveen’s testimony?**

15 A. It should come as no surprise that generally I disagree with most of Mr. Hoogeveen’s  
16 testimony, but my specific purpose is to respond to his response beginning on line 112 of  
17 his rebuttal testimony.

18 **Q. What in his response concerns you?**

19 A. Several things. First, his view of the Commission’s role is limited and narrow.

20 **Q. What do you mean?**

21 A. Mr. Hoogeveen says that the Commission’s role is to establish just and reasonable rates  
22 and while I agree with that, its role is much broader.

23 **Q. What else should the Commission consider?**

24 A. Commission action must be in the public interest and while that includes just and  
25 reasonable rates, it also includes the effect of those rates on all customers, which could  
26 actually change what rates are just and reasonable. That is how long-held regulatory  
27 principles like gradualism among others developed.

28 **Q. What other specific public interest considerations are there in this case?**

29 A. The state of Utah created the net metering program (“*NEM*”) and provided incentives to  
30 for customers to adopt it. That created a demand which the rooftop solar industry  
31 answered. To say now that NEM results in unjust and unreasonable rates is in and of  
32 itself, unjust and unreasonable and not in the public interest.

33 **Q. Do you agree with Mr. Hoogeveen that NEM rates are unjust and unreasonable.**

34 A. No. There is ample evidence in this docket already showing that when the costs and  
35 benefits of NEM and fairly and correctly calculated, current NEM rates are just and  
36 reasonable. If the Commission decides to change the rates or the NEM program then it  
37 must provide a reasonable way forward.

38 **Q. What makes NEM and NEM ratepayers different?**

39 A. NEM is a program created by the Utah Legislature, signed into law by the Governor, and  
40 expanded by the Commission. The government created and promoted the NEM program.  
41 If the government is going to change it, then it has to be fair to current NEM customers  
42 who were induced by it and provide an opportunity for the industry that developed  
43 around it to transition forward. The public interest requires that.

44 **Q. What would happen if the Commission imposed RMP’s three-part rate proposal?**

45 A. I stand by my testimony that it would wipe out the rooftop solar industry in Utah.  
46 Testimony from Mr. Hoogeveen to the contrary is self-serving and should be dismissed

47 by the Commission. The Commission should look to those solar industry parties'  
48 testimony that can more accurately speak to their own business models. There is no  
49 doubt in my mind that if the Commission adopts RMP's three-part rate proposal, the  
50 Commission will be signing the solar industry's death warrant in Utah. This is not in the  
51 public interest. Given the drastic economic effects of RMP's proposal, few if any Utah  
52 residents will choose to invest in rooftop solar if RMP gets its way.

53 **Q. What does that mean for Vivint Solar?**

54 A. If the Commission rules in favor of RMP, against the numerous other parties participating  
55 in this docket, it means that Vivint Solar would no longer do business in Utah. Vivint  
56 Solar was founded in Utah by Utahns, and we remain headquartered in Lehi, Utah. It's  
57 hard to imagine a situation where Vivint Solar remains headquartered in Utah if it cannot  
58 pursue its rooftop solar business here.

59 **Q. What does that mean in terms of jobs?**

60 A. It would mean that approximately 400 Vivint Solar field personnel (including  
61 electricians, technicians, warehouse managers, sales personnel, etc.) would be lost or  
62 relocated out of State as well as about 25 headquarter support staff. The Utah Solar  
63 Energy Association could approximate the effect on the rest of its members and the state.

64 **Q. Mr. Hoogeveen makes the argument that RMP's three-part rate proposal removes**  
65 **subsidies and is similar to the Legislature's recent amendment to the solar tax credit**  
66 **eliminating that incentive? Do you agree?**

67 A. No. Even though I think the Legislature's action was premature, the new statute steps  
68 down the tax incentive over several years. RMP's proposal is a cliff that will wipe out the  
69 rooftop solar industry the day it takes effect.

70 **Q. Is it accurate to equate the Utah solar tax credit and the NEM program?**

71 A. No. The Utah solar tax credit, like the Federal investment tax credit, are incentive  
72 programs adopted by the government to encourage the adoption of solar energy systems,  
73 similar to rebate or solar renewable energy credits in other states. The NEM program is  
74 not an incentive in the same sense. The NEM program certainly has encouraged the  
75 adoption of rooftop solar; however, the NEM program is about providing fair value to  
76 customers for the solar energy they supply to RMP. Adopting RMP's proposed three-  
77 part rate proposal would not only provide a strong discouragement for customers in Utah  
78 to invest in solar, but it would also provide a windfall to RMP.

79 **Q. What do you mean by windfall?**

80 A. Currently, under the NEM program, rooftop solar customers are provided a kWh credit  
81 for each kWh of solar energy they supply to RMP. Each kWh that is exported by a  
82 rooftop solar customer beyond their meter to the grid is consumed by such customer's  
83 neighbors. RMP is able to charge the full retail rates for each consumed kWh by such  
84 neighbor. If the Commission adopts a compensation model for rooftop solar energy  
85 exports that is less than the average retail residential rates, then RMP will receive a direct  
86 economic benefit equal to the difference between retail and the export credit  
87 compensation. If the Commission adopts RMP's three-part rate proposal, this means that  
88 RMP would see a windfall of 8 cents or more for each kWh exported by a rooftop solar  
89 customer.

90 **Q. What do you recommend the Commission do with RMP's three-part rate proposal?**

91 A. Reject it in its entirety. It is narrowly in RMP's interest in that it will hurt their nascent  
92 competition, but it does not address all aspects of the public interest.

93 **REBUTTAL OF DPU**

94 **Q. What are your concerns with DPU's rebuttal testimony?**

95 A. Both Dr. Artie Powell (lines 241-258) and Stan Faryniarz (lines 908 - 915) address the  
96 issue of grandfathering existing NEM customers. Both of them support grandfathering.

97 **Q. What's the problem then?**

98 A. It looks like both of them would apply grandfathering in too limited of a way.

99 **Q. What do you mean?**

100 A. Dr. Powell doesn't suggest a period of time but says grandfathering should be limited in  
101 scale and time. In Vivint Solar's view, all existing customers should be grandfathered for  
102 at least 20 years and preferably for 25 years. Rate structure stability for new rooftop solar  
103 customers during the transition period is a matter I address below in the context of DPU's  
104 and OCS's joint proposal.

105 **Q. But Mr. Faryniarz said that 25 years is too long and that there was no guarantee  
106 NEM customers would get a benefit from their investment.**

107 A. I disagree. NEM customers purchased outright, financed or leased solar panels based on a  
108 government-sponsored, government-promoted program. Other customers moved into  
109 their homes and took power exclusively from RMP without any upfront cost or  
110 transaction. NEM customers made their decision believing the NEM program would  
111 remain in place long enough for them to recover their investment. That doesn't mean  
112 NEM customers were guaranteed their underlying residential rates would never change,  
113 but it does mean the rate structure would remain in place. This is simply unique from  
114 normal ratemaking.

115 **REBUTTAL OF OCS**

116 **Q. Do you have concerns about OCS’s rebuttal testimony?**

117 A. Beginning on line 113 of Michele Beck’s testimony she recommends that the  
118 Commission grandfather existing NEM customers for 20 years from the date this docket  
119 opened. Though Vivint Solar would prefer a 25-year grandfathering period, we could  
120 support a 20-year period, but we do not support Ms. Beck’s starting date. The 20-year  
121 grandfathering period should end no sooner than September 1, 2037 in order to treat  
122 fairly all customers that invest in rooftop solar, or entered into 20-year lease agreements,  
123 prior to the Commission’s final ruling in this proceeding.

124 **DPU/OCS JOINT PROPOSAL**

125 **Q. DPU AND OCS filed a joint proposal (“*Joint Proposal*”) in an effort to resolve this**  
126 **case. What is Vivint Solar’s position on the Joint Proposal?**

127 A. Vivint Solar is very appreciative of DPU’s and OSC’s work on the Joint Proposal. It is a  
128 significant step forward in finding a fair solution in the public interest that could enable  
129 Vivint Solar to continue operations in Utah.

130 **Q. Does Vivint Solar support the Joint Proposal?**

131 A. It’s very close, but not in its current form. With a few minor conditions and changes,  
132 Vivint Solar would support it.

133 **Q. What minor changes do you propose?**

134 A. The Joint Proposal has a range for grandfathering between January 1, 2030 and January  
135 1, 2035. While Vivint Solar would highly prefer a 20-year grandfathering period  
136 commencing upon the date of the Commission’s final order in this proceeding, Vivint  
137 Solar could agree to a date in the year 2036.

138 **Q. Why?**

139 A. Vivint Solar has hundreds of customers who entered into 20 year leases in early 2016 and  
140 in order to accommodate them, they need to be grandfathered through 2036.

141 **Q. Are you suggesting that the grandfathered existing NEM customer rates cannot**  
142 **change?**

143 A. No. They can change with the rates of the other Schedule 1 residential customers (e.g.,  
144 change to the fixed customer charges and volumetric rates). It's the rate structure that  
145 cannot change. Grandfathered NEM residential customers and transitional residential  
146 customers must remain in the same Schedule 1 rate class, with no discriminatory or  
147 disparate treatment when compared to the class as a whole.

148 **Q. What conditions would you need the Commission to impose?**

149 A. The transitional customers, those who begin taking service after January 1, 2018, would  
150 have to have their export credit fixed at no less than 95% of the retail rate (~9.70 cents)  
151 until January 1, 2033, the top end of the range in the Joint Proposal.

152 **Q. Why?**

153 A. It does not work economically for a rooftop solar customer. Any period under 15 years  
154 pushes out a customer's crossover date (the date upon which a customer's total utility and  
155 solar loan payments become less than they otherwise would have been) beyond 22 years -  
156 - making no economic sense. Even worse, if the Commission set the transition period at  
157 12 years and set the export rate at 90% of the retail rate, an average rooftop solar  
158 customer would likely not see any savings in 30 years.

159 **Q. Do you have other examples?**

160 A. Yes. I have attached an exhibit to this testimony to illustrate the problem.



161 **Q. Are there other conditions Vivint Solar needs to be able to accept the Joint**  
162 **Proposal?**

163 A. Yes. If the Commission changes the residential Schedule 1 rate during the transitional  
164 period (January 1, 2018 - January 1, 2033), we need to be able to seek a proportionate  
165 change in the export rate. With those changes and conditions Vivint Solar can accept and  
166 support the Joint Proposal.

167 **Q. Does this conclude your surrebuttal testimony in this phase of the proceeding?**

168 A. Yes.

## **CERTIFICATE OF SERVICE**

I hereby certify that on August 8, 2017, I sent a true and correct copy of foregoing Surrebuttal Testimony of Dan Black 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](#)