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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of PacifiCorp’s Revisions to Schedule 135, Net Metering Service and Proposal for New Schedule 135A, Net Metering – Transition Service	DOCKET NO. 16-035-T14 Comments of Vivint Solar, Inc. Requesting that the Commission Reject or Suspend Advice No. 16-13
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Vivint Solar, Inc. submits these comments in response to PacifiCorp dba Rocky Mountain Power's (“RMP”) Advice No. 16-13 revising Schedule 135, Net Metering Service, and proposing a new schedule, Schedule 135A, Net Metering Service - Transition Service (the requested revision to Schedule 135 and Schedule 135A are referred to collectively as the “tariff”). In addition to filing the tariff in this docket, RMP concurrently filed what it called a compliance filing in Docket No. 14-035-114 proposing that the Public Service Commission of Utah (“Commission”) impose an onerous three-part rate on net metering customers who take service from RMP. RMP filed the tariff and the compliance filing in response to the Commission’s November 10, 2015 order issued in Docket No. 14-035-114 which completed the first phase of the Commission’s net metering proceeding under Utah Code Ann. § 54-15-105.1(1). In the first phase the Commission established the analytical framework through which the it would implement the net metering statute.¹

¹ The net metering statute is Utah Code Ann. § 54-15-105.1.

The tariff and the compliance filing are now before the Commission and commence the second phase of the net metering proceeding under Utah Code Ann. § 54-15-105.1(2). In the second phase the Commission will determine the costs and benefits of net metering by applying the cost and benefit data that will be produced in Docket No. 14-035-114 to the analytical framework established in the first phase. The Commission invited interested parties to comment on the tariff in this docket by notice issued November 9, 2016.

Vivint Solar strongly urges the Commission to reject RMP's tariff in accordance with Utah Admin. Code R746-405-4. Alternatively, if the Commission does not reject the tariff, Vivint Solar requests that the Commission suspend it pursuant to the same rule and Utah Code Ann. § 54-7-12(6) to ensure that the tariff does not take effect at least until the Commission makes a final determination on RMP's compliance filing in Docket No. 14-035-114.

I. THE TARIFF PROPOSES CHANGES THAT RESULT IN LESSER SERVICE AND SHOULD BE REJECTED OR SUSPENDED UNTIL THE COMMISSION RULES ON THE COMPLIANCE FILING IN DOCKET 14-035-114

RMP submitted the tariff in Advice Letter 16-13 to become effective December 10, 2016. While tariffs that do not increase rates presumptively go into effect 30 days after the date of filing, that provision is “subject to the authority of the commission, after a hearing, to suspend, alter, or modify the schedule, classification, practice or rule.” Utah Code Ann. § 54-7-12(6).

Utah Admin. Code R746-405-2 E.1. provides:

Utility tariffs may not increase rates, charges or conditions, change classifications which result in increases in rates and charges or make changes which result in lesser service or more restrictive conditions at the same rate or charge, unless a showing has been made before and a finding has been made by the Commission that the increases or changes are justified.

Moreover, the Commission's rules provide that the Commission “may reject, suspend, alter, or modify the effectiveness of tariff sheets that do not conform to these rules . . . or for other reasons as the Commission determines.” Utah Admin. Code R746-405-2 E.4.a. The tariff would

“result in lesser service or more restrictive conditions” and at least potentially “change classifications which result in increases in rates and charges” without providing the Commission with a meaningful opportunity to conduct a hearing and make findings unless the Commission rejects it or suspends it. Under the tariff, RMP proposes to close Schedule 135 to new net metering customers and to force all new customers who begin taking net metering service after December 9, 2016 to take service under Schedule 135A. There is language² in Schedule 135A giving customers notice that their rates could change depending on the outcome of RMP’s compliance filing in Docket No. 14-035-114. Existing customers would remain on Schedule 135 and their rates would be grandfathered under RMP’s proposal.

While RMP characterizes this tariff as innocuously giving “notice” to new net-metering customers regarding the possibility of changes to net metering rates, the effect is much more significant. By RMP’s own admission, the tariff is intended to facilitate a “transition to a future program that includes an updated rate design for residential customer generators” (Advice Ltr. at 3), in direct reference to RMP’s recommended rate structure in its recent compliance filing in Docket No. 14-035-114. However, RMP’s requested rate structure in the compliance filing is not a foregone conclusion; in fact, the compliance filing has only recently been scheduled for hearing in August 2017.

Regardless of the Commission’s eventual disposition of the compliance filing, RMP intends to use the tariff to fix a date certain—December 9, 2016—as the cutoff for

² The proposed language in Schedule 135A giving customers this notice follows:

Customers will be subject to all changes to net metering service including changes to credits, charges or rate structures offered herein and in related tariffs resulting from the final determination under Utah Code Ann. § 54-15-105.1 which may include, without limitation, a transfer from this tariff to all new applicable service schedules approved by the Commission.

“grandfathering” of current net metering customers into their current rate structure. This is improper. To be clear, Vivint Solar does not take issue with the underlying principle of grandfathering net metering customers who have incurred substantial expense in reliance on the existing structure. In the event that the Commission approves modification of rates applicable to net metering customers following a hearing on the compliance filing (or in a future rate case), Vivint Solar submits that it will make sense to grandfather current net metering customers in under existing rates. But the submission of tariff sheets in the advice letter context should not be used to fix a date after which grandfathering will not apply. By its nature, setting this date results in a classification of net metering customers based on the date on which they applied for net metering service, and imposes “lesser service or more restrictive conditions” by casting new customers into a state of regulatory limbo. While such a classification may ultimately prove to be appropriate, under the Commission’s rules it cannot be imposed “unless a showing has been made before and a finding has been made by the Commission that the increases or changes are justified.” Utah Admin. Code R746-405-2 E.1. That has not happened.

Moreover, the designation of December 9 as the cutoff for grandfathering is arbitrary and not based on any reasoning other than RMP’s own haste to freeze customers out of net metering. While RMP states “[w]e acknowledge that current customers made investments based on the current structure and respect the customers’ need for reasonable certainty for recovery of their investments,” RMP has no problem creating uncertainty for all customers who may have already incurred substantial expense or debt but have not applied for net metering on or before December 9. RMP fails to define material terms for its proposed grandfathering, such as whether current customers will be able to recover their investments by conveying the benefits of their current rate structure to a purchaser of their home. Furthermore, even the promise of “certainty” for current

customers in the advice filing is illusory, as RMP “expects this issue to be considered in a future proceeding” and provides no guarantee of grandfathered rate structures.

In short, the question of grandfathering should be addressed concurrently with RMP’s proposed new rate structure in Docket No. 14-035-114, not in response to the advice letter and tariff. Given the significant impact the tariff has, the Commission should not allow it to become effective without a hearing or separately from the compliance filing which is the foundation for it.

II. THE COMMISSION SHOULD REJECT OR SUSPEND THE TARIFF UNDER UTAH ADMIN. CODE R746-405-2 E.4.a. BECAUSE IT IS PREMATURE, IT IS NOT IN THE PUBLIC INTEREST, IT DETERMINES THE OUTCOME IN DOCKET NO. 14-035-114, AND IS INEFFICIENT

There are several additional reasons Vivint Solar urges the Commission to reject or suspend the tariff under Utah Admin. Code R746-405-2 E.4.a. First, Utah Code Ann. § 54-15-105.1 (2) requires the Commission to “determine a just and reasonable charge, credit, or ratemaking structure, including new or existing tariffs, in light of costs and benefits” in the second phase of the net metering proceeding established by this section. RMP did not propose its tariff in light of the costs and benefits of the net metering program so the tariff is prematurely before the Commission. The Commission will not address these costs and benefits until August during RMP’s compliance filing hearings in Docket No. 14-035-114. The Commission should therefore reject or suspend the tariff until after it rules on the compliance filing.

Second, while RMP tries to claim that the tariff is simple and without effect, it is not hyperbole to say that allowing the tariff to take effect would devastate the future of the solar industry in Utah. The solar companies currently offering solar service in Utah that also do business in other states would be forced to go elsewhere where the conditions are more favorable for the industry. Vivint Solar, for example, would have to begin moving many of its employees

to other states if the tariff takes effect December 10th. The reason is simple. By drawing the line at December 9, 2016 for the termination of customer participation in Schedule 135, RMP casts all net metering customers after that date into a state of uncertainty as to the applicable rate structure. The tariff could cause confusion and mislead customer action. Customers therefore cannot make an informed economic assessment regarding the benefits and costs of residential solar energy generation. Furthermore, because the advice letter is set against the backdrop of RMP's compliance filing, new customers must assume that they may be bound by RMP's proposed onerous rate structure, even though that structure will not be considered by the Commission until August 2017 at the earliest. Vivint Solar and other solar companies in Utah cannot market rooftop solar energy systems to customers with a cloud of uncertainty over the future of net metering.

The result of RMP's proposed rate structure, the effects of which RMP seeks to accelerate through its advice letter filing, would be catastrophic to the residential solar industry and result in the loss of hundreds, if not thousands, of jobs. This is not just alarmist speculation, but has been empirically proven in other states. The impact would be similar to the impact in Nevada recently when the Nevada Public Utilities Commission actually imposed the net metering rates RMP's affiliate advocated, and where the market for residential solar is now virtually extinct. At best, employees in the solar industry would have to look to other states for employment, but there is no guarantee that the market in other states would be able to accommodate them. The effect on families and Utah's economy would be significant and immediate. Companies whose sole market is Utah would likely not expand and may be forced to close their operations. To the extent any residential solar market continues in Utah, customer choice would be severely limited. All of this would negatively affect the public interest, and the Commission could avert it by rejecting or suspending the tariff.

Effectively, RMP is using the tariff to obtain the market-chilling effect of the rate structure proposed in its compliance filing long before the compliance filing receives a fair hearing. The Commission should not permit the advice letter process to upset the market and quash residential solar in Utah.

Third, by allowing the tariff to take effect, the Commission would be signaling a decision to adopt RMP's proposed onerous three-part rate in its compliance filing in Docket No. 14-035-114. Even RMP acknowledges that the tariff is intended to facilitate a transition to the structure proposed in the compliance filing. It makes little sense to set in motion a "transition" to an outcome that is still wildly uncertain. Anything even remotely close to the proposal in the compliance filing would shut down the solar industry; but the way this Docket No. 16-035-T14 is structured, with only two sets of comments and a December 10, 2016 effective date, the shutdown would occur without any cross-examined evidence or hearing on December 10th. That is an assault on due process and cannot possibly result in a just and reasonable outcome that is in the public interest.

Even if the Commission has no intention of adopting the three-part rate or hearing the matter as a single-item case, the uncertainty the tariff creates would be enough to stop the industry in its tracks. Moving forward with RMP's compliance filing in Docket No. 14-035-114 after allowing the tariff to become effective would be mostly an academic exercise because the solar industry would be dead.

Fourth, RMP's compliance filing, which serves as the foundation for RMP's tariff in this docket, does not comply with the Commission's order issued November 10, 2015 in Docket No. 14-035-114. There the Commission ordered: "4. The period of time covered by each of the cost

of service studies shall be commensurate with the test period in Pacificorp's next general rate case.”³ Section 2.3 of the November 10th order makes that point clear as well.

RMP filed its case based on actual data from the 12 months of 2015, not the test period of its next general rate case. The assumption of the Commission's order appears to have been that the next phase of the net metering case would be heard in a full-blown RMP rate case, not in a single-item case. Vivint Solar will further pursue this issue in Docket No. 14-035-114.

Fifth, if the Commission pursues these matters the way RMP has filed them it will be duplicative and a tremendous waste of resources. Vivint Solar will address this issue as well in Docket No. 14-035-114, but litigating RMP's proposal outside of a rate case only means that it will be re-litigated in the next Pacificorp rate case. Even if the Commission simply held a separate hearing in this docket to determine the legality and viability of the tariff, the issue would be litigated again in Docket No. 14-035-114. There is no reason for the Commission or the parties to have to address the proposal and then address it again.

III. CONCLUSION

Based on the foregoing, Vivint Solar, in accordance with Utah Code Admin. R746-405 E.4.a., respectfully requests the Commission to reject the tariff and not allow it to go into effect at least until the Commission makes a final determination on RMP's compliance filing in Docket No. 14-035-114. In the alternative, if the Commission does not reject the tariff, Vivint Solar requests that the Commission suspend it for the same period of time pursuant to the same rule and Utah Code Ann. § 54-7-12(6)

Respectfully submitted this 22nd day of November, 2016.

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³ Docket No. 14-035-114 November 10, 2015 order p.16.

/s/ _____
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Comments filed by Vivint Solar, Inc. in Docket No. 16-035-T14 were served by email this 22nd day of November 2016 on the following:

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