

R. Jeff Richards (7294)
Yvonne R. Hogle (7550)
1407 West North Temple, Suite 320
Salt Lake City, Utah 84116
Telephone No. (801) 220-4050
jeff.richards@pacificorp.com
yvonne.hogle@pacificorp.com

D. Matthew Moscon (6947)
Chaunceton B. Bird (16402)
STOEL RIVES LLP
201 S Main Street, Suite 1100
Salt Lake City, UT 84111
Telephone No. (801) 328-3131
matt.moscon@stoel.com
chaunceton.bird@stoel.com

Attorneys for Rocky Mountain Power

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Rocky
Mountain Power to Establish Export
Credits for Customer Generated Electricity

Docket No. 17-035-61 Phase 2

**ROCKY MOUNTAIN POWER'S OBJECTION TO VOTE SOLAR'S MOTION FOR
FORMAL DISCOVERY AND STATEMENT OF DISCOVERY ISSUES**

Pursuant to Utah Administrative Code R746-1-301, Rocky Mountain Power ("RMP") hereby responds and objects to Vote Solar's Motion for Formal Discovery and Statement of Discovery Issues (the "Motion"), as follows.

INTRODUCTION

Vote Solar filed a Motion for Formal Discovery and Statement of Discovery Issues seeking an order from the Utah Public Service Commission ("Commission") compelling RMP to produce confidential, commercially sensitive customer identifiers and street addresses for

approximately 35,000 of its customers in response to one of Vote Solar’s data requests. RMP objects on the grounds that the information sought is private and RMP’s customers have not consented to the release of their information to Vote Solar. Moreover, the information Vote Solar seeks is a trade secret, and could be used for commercial advantage in advertising, solicitation, political advocacy, and other purposes, even with a protective order in place. For these reasons, and as further detailed below, the Commission should deny Vote Solar’s Motion.

ARGUMENT

I. RMP’S CUSTOMERS HAVE NOT CONSENTED TO THE RELEASE OF THEIR PRIVATE INFORMATION.

RMP has a long-standing policy of protecting all of its customers’ private data. This policy honors the trust of RMP’s customers, while also serving the public interest of preventing utilities from profiting from, or otherwise misappropriating, the information provided by their customers. This comports with one of the core purposes of the Commission’s supervisory role, namely, to regulate every public utility in this state to “protect the public interest.” *Jesse H. Dansie Family Tr. v. Pub. Serv. Comm’n*, 2016 UT App 116, ¶ 17, 374 P.3d 1057, 1062. RMP stands by this policy regardless of whether a third-party requests the information of 35,000 customers, or just one. Further, in this case, the participants in the subject Load Research Study also received a letter from RMP expressly promising the solar customers that their “name, address and personal information will be kept confidential.” Complying with Vote Solar’s request would breach that promise. RMP will not allow its customers’ data to be disclosed in instances where the customers have not consented to the disclosure, and where, as in this case, there is no need for the disclosure.

RMP recognizes the desire to balance its consumer-focused policy with open communication and disclosure in litigation. To that end, RMP provided Vote Solar with *all* the available data responsive to the subject requests, while at the same time protecting identifying customer data and addresses. The single portion of Vote Solar's data requests that RMP refused to disclose was street addresses and other customer identifiers for the approximately 35,000 customers participating on Schedule 135 and 136. By way of example only, the Company has or will be providing approximately 35,000 rows of excel data with information ranging from inverter type, tilt/azimuth, zip code, nameplate capacity, install date, and so forth, all as requested by Vote Solar. As contemplated by the Commission in its Phase I Order of May 21, 2018, Vote Solar also can obtain data from solar companies or trade groups if it feels constrained by RMP's data. (Order at p.19). It has not exhausted that resource or at least it fails to explain how it attempted to do so. Further, the very request is contradictory to the Commission's Phase I Order that noted any additional request for information beyond that required by the Commission must occur while "maintaining customer privacy." (Order p. 19).

The Commission should also recognize that Vote Solar's Motion neglects to account for the true owners of the data: the customers themselves. Their motion is silent as to the customers' rights to not have their addresses and other information provided to advocacy groups such as Vote Solar. RMP's customers have not agreed to participate in Vote Solar's research and Vote Solar should not be able to circumvent a requirement to obtain their consent through a data request to RMP. Vote Solar should be barred from creating a precedent of compelling utilities to provide customer data any time a party to litigation requests it in discovery. Once that practice has begun, any advocacy group that wants the addresses of customers on a particular energy

schedule can simply intervene and file a data request under the guise that “litigation warrants disclosure.” Without an explanation as to why addresses fundamentally alter the usefulness of the data provided, providing advocacy groups with addresses and specific schedule service for large swaths of customers should give the Commission great pause. Further, once this sensitive information is provided by RMP, there is no way it can control how a third-party will use, share, maintain or protect that data. Even if Vote Solar truly intends to keep this information confidential, it does not represent how it will do so. Meaning, by placing customers’ data in a third-party’s possession--- on yet another server--- RMP will be involuntarily increasing the likelihood of a data breach. This all assumes Vote Solar will not itself use the information for other purposes.. For these reasons, the Commission should deny Vote Solar’s Motion.

II. RMP’S CUSTOMER LIST IS A PROTECTED TRADE SECRET.

Even if individual street addresses may be public information, the same is not the case for lists of thousands of verified customer addresses tied to solar usage that have been developed over time. The Utah Uniform Trade Secrets Act defines “trade secret” as meaning:

information . . . that: (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”

UTAH CODE ANN. § 13-24-2(4). Without question, RMP’s list of Schedule 135 and 136 customers—containing identifiers and street address for roughly 35,000 people—derives independent economic value from not being generally known or readily ascertainable (particularly to competitors), and RMP should not be compelled to disclose the data to an entity that has incentive to use the information for commercial gain over RMP. To be clear, the request

not only seeks their addresses but identification of which service schedule the customers are subscribed to. This information is not public and is proprietary to RMP.

Vote Solar contradicts itself in a telling and meaningful way. First, it argues that the street addresses of tens of thousands of RMP's paying customers *are* readily accessible and hence can't be confidential (citing *Microbiological Research Corp. v. Muna*, 625 P.2d 690, 700 (Utah 1981)). Then it reverses itself, admitting that if Vote Solar can't get the information from RMP, the information cannot otherwise be obtained without significant effort and expense. Motion pp. 2–4.

As the court in *Muna* held, and contrary to Vote Solar's argument, "courts have not hesitated to protect customer lists and files as trade secrets" when the customers are only "discoverable only by extraordinary efforts." 625 P.2d at 700 (emphasis added). Vote Solar's second position (that the information is not otherwise obtainable) is correct, and under *Muna*, the information is a trade secret.

III. VOTE SOLAR'S MOTION FAILS ITS OWN STANDARD.

Vote Solar frames its Motion for Formal Discovery as a Statement of Discovery Issues under Utah Rules of Civil Procedure 37(a)(2). While RMP does not concede that is the applicable Rule, it notes that under that framework, Vote Solar carries the burden of demonstrating the proportionality of its request under rule 26. *See* UTAH R. CIV. P. 37(a)(2)(c). Vote Solar fails to carry its burden because it fails to demonstrate that its request is reasonable, that the proposed benefits outweigh the expense of compliance, or that it is not unreasonably cumulative.

First, Vote Solar's request is not reasonable considering the needs of the case. While Vote Solar claims that RMP's customer data is necessary for it to conduct its research, Vote Solar does not state why the data it has been provided will not accomplish its objectives.¹

Second, the benefits of complying with Vote Solar's request do not outweigh the impact. The cost of complying with Vote Solar's discovery request is not just the monetary impact sustained by RMP in editing and transferring the data to Vote Solar. The cost includes the risk of Vote Solar misappropriating the customer information or having the data taken from Vote Solar involuntarily. It also includes the cost of lost customer confidence in RMP's ability to protect their data. The privacy costs and impacts to RMP and its customers in complying with Vote Solar's request would be disproportionately high compared to the marginal benefits, if any, Vote Solar would receive if given access to RMP's customer addresses and related information.

Third, as stated above, RMP has already provided Vote Solar with all reasonably available data for Vote Solar to complete any research it needs to justify its rate request. In addition to the substantial data RMP has already provided, Vote Solar can also rely on its own independent research. Vote Solar fails to explain why this data cannot be used by it or its experts to do any research or studies needed for this docket.

Thus, Vote Solar fails to carry its burden in demonstrating the proportionality of its request to access RMP's customer data.

¹ Vote Solar states only that it has previously indicated to the Commission its belief the data is flawed. No other information is provided in the moving papers. Assuming the reference pertains to concerns addressed in the Commission's Phase I Order, those concerns have been addressed and it cannot use a data request to try and create a different Order than the Commission published. More importantly, no information before the Commission attempts to explain the importance of specific customer addresses and hence Vote Solar has failed to meet its burden of proof.

CONCLUSION

For the foregoing reasons, the Commission should deny Vote Solar's request for an order compelling RMP to divulge the customer identifiers and addresses for approximately 35,000 of its Schedule 135 and 136 customers.

DATED: May 7, 2019.

STOEL RIVES LLP

/s/ D. Matthew Moscon _____

D. Matthew Moscon
Chaunceton B. Bird

Rocky Mountain Power
R. Jeff Richards
Yvonne R. Hogle

Attorneys for Rocky Mountain Power

CERTIFICATE OF SERVICE

I hereby certify that on May 7, 2019, a true and correct copy of **ROCKY MOUNTAIN POWER'S OBJECTION TO VOTE SOLAR'S MOTION FOR FORMAL DISCOVERY AND STATEMENT OF DISCOVERY ISSUES** in Docket No. 17-035-61 was served by email on the following Parties:

Division of Public Utilities	
Chris Parker William Powell	ChrisParker@utah.gov wpowell@utah.gov
Utah Office of Consumer Services	
Michele Beck Cheryl Murray Bela Vastag	mbeck@utah.gov cmurray@utah.gov bvastag@utah.gov
Assistant Utah Attorney General	
Patricia Schmid Justin Jetter Robert Moore Steven Snarr	pschmid@agutah.gov jjetter@agutah.gov rmoore@agutah.gov stevensnarr@agutah.gov
Vivint Solar	
Stephen F. Mecham	sfmecham@gmail.com
Vote Solar	
Rick Gilliam Briana Kobar Jennifer M. Selendy Joshua S. Margolin	rick@votesolar.org briana@votesolar.org jselendy@selendygay.com jmargolin@slendygay.com
Utah Clean Energy	
Sarah Wright Kate Bowman Hunter Holman	sarah@utahcleanenergy.org kate@utahcleanenergy.org hunter@utahcleanenergy.org

Utah Solar Energy Association	
Engels J. Tejada Chelsea J. Davis	ejtejeda@hollandhart.com cjdavis@hollandhart.com
Salt Lake City Corporation	
Megan J. DePaulis Tyler Poulson	megan.depaulis@slcgov.com tyler.poulson@slcgov.com
Auric Solar, LLC	
Elias Bishop	elias.bishop@auricsolar.com
Western Resource Advocates	
Sophie Hayes (C) Nancy Kelly (C) Callie Hood	sophie.hayes@westernresources.org nkelly@westernresources.org callie.hood@westernresources.org
Rocky Mountain Power	
Data Request Response Center Yvonne Hogle Jana Saba	datarequest@pacificorp.com yvonne.hogle@pacificorp.com jana.saba@pacificorp.com ; utahdockets@pacificorp.com

/s/ Rachel LH DiFrancesco _____