

STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

October 8, 2015 - 10:07 a.m.
Concord, New Hampshire

RE: DE 15-303

NHPUC OCT21 '15 PM 3:31

VIVINT SOLAR, INC.:
Petition for Declaratory Ruling
Regarding RSA 362:2, 362-A:2-a,
and Rule Puc 2002.05.
(Prehearing conference)

PRESENT: Chairman Martin P. Honigberg, Presiding
Commissioner Robert R. Scott
Commissioner Kathryn M. Bailey

Sandy Deno, Clerk

APPEARANCES: Reptg. Vivint Solar, Inc.:
Todd G. Glass, Esq. (Wilson, Sonsini...)
Garner Meads, Esq. (Vivint Senior Counsel)
Shawn Lindquist (Exec. Vice President/Vivint)
Sheridan Pauker, Esq. (Wilson, Sonsini...)

Reptg. Alliance for Solar Choice:
Jason B. Keyes, Esq. (Keyes, Fox & Wiedman)

Reptg. Freedom Energy Logistics (FEL):
James T. Rodier, Esq.

Reptg. PUC Staff:
David K. Wiesner, Esq.
Amanda O. Noonan, Dir./Consumer Affairs Div.
Thomas C. Frantz, Director/Electric Division
Liz Nixon, Sustainable Energy Division

Court Reporter: Steven E. Patnaude, LCR No. 52

ORIGINAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

I N D E X

PAGE NO.

STATEMENTS OF PRELIMINARY POSITION BY:

Mr. Glass	5
Mr. Keyes	7
Mr. Rodier	8
Mr. Wiesner	9

P R O C E E D I N G

1
2 CHAIRMAN HONIGBERG: Good morning,
3 everyone. We're here this morning in Docket DE 15-303,
4 which is a Petition for Declaratory Rulemaking by Vivint
5 Solar, Inc., essentially coming here to ask us to confirm
6 that they are none of our business.

7 After the prehearing conference this
8 morning, which we're really just going to be taking the
9 Parties' initial positions, you guys are going to have a
10 technical session where you're going to work out all your
11 problems and scheduling and go from there.

12 So, before we do anything else, let's
13 take appearances.

14 MR. GLASS: Good morning, Chairman
15 Honigberg, Commissioners. My name is Todd Glass, with the
16 law firm of Wilson, Sonsini, Goodrich & Rosati. And, with
17 me today from the Company is Garner Meads, the Senior
18 General -- Senior Counsel with Vivint Solar; to my right
19 and behind me is Shawn Lindquist, an Executive Vice
20 President from Vivint Solar; and my co-counsel, Sheridan
21 Pauker, also with Wilson, Sonsini, Goodrich & Rosati.

22 CHAIRMAN HONIGBERG: Welcome.

23 MR. RODIER: Good morning, Mr. Chairman
24 and Commissioners. Jim Rodier, I don't have to spell it,

1 I don't think. And, I'm here on behalf of Freedom Energy
2 Logistics, FEL.

3 MR. KEYES: Jason Keyes, with Keyes, Fox
4 & Wiedman. I'm here on behalf of the Alliance for Solar
5 Choice.

6 CHAIRMAN HONIGBERG: I thought you were
7 with Vivint. You were sitting at the Vivint table. I
8 expected you to be introduced. But, welcome.

9 MR. KEYES: Thank you.

10 MR. WIESNER: And, Dave Wiesner,
11 representing Commission Staff. With me at the table are
12 Amanda Noonan, Director of the Consumer Affairs Division;
13 Tom Frantz, Director of the Electric Division; and Liz
14 Nixon of the Sustainable Energy Division.

15 CHAIRMAN HONIGBERG: We have the
16 petitions to intervene from Freedom Energy Logistics and
17 from the Alliance for Solar Choice. I have not seen any
18 objections to either of those petitions. Is there any
19 objection?

20 MR. GLASS: None.

21 MR. WIESNER: I'm not aware of any
22 objections, Mr. Chairman. And, Staff does not object.

23 CHAIRMAN HONIGBERG: All right. Those
24 petitions for intervention are both being granted.

1 I think the only thing for us to do now
2 is to hear from you about your petition -- or, your
3 positions generally in this matter. So, we're going to
4 start with you Mr. Glass.

5 MR. GLASS: Thank you. As stated in our
6 Petition for Declaratory Ruling, we're here because we
7 need clarity on the question of "whether we would be
8 regulated under three particular provisions?" Our
9 position is is that we should not be regulated as a public
10 utility under the New Hampshire Revised Statutes Section
11 362.2, as we are not providing service to the public.
12 And, we can explain more either now or later.

13 Similarly, our position is that we
14 should not be regulated as a competitive energy power
15 supplier under the Administrative Code 2002.05, because we
16 are, really, in reality, those regulations and the laws
17 that were behind those regulations were never intended to
18 regulate our type of service, behind the meter, on private
19 property, in -- as a competitive energy supplier. And, as
20 the regulations are currently written, there's no way for
21 us to do so. Whether becoming a member of NEPOOL or
22 buying our power from NEPOOL and any variety of other
23 regulations. And, importantly, once again, we cannot
24 provide -- we cannot provide our services to the public

1 broadly. We need to be able to discern and provide
2 service only to customers that qualify, that have enough
3 sun insulation hitting their roof, that the roof is angled
4 the right way, that there's not too much foliage and
5 other types of things, the roof is safe, and that the
6 client is -- or, the customer has credit and owns their
7 home. All of these things are things that we need to, as
8 a matter of our business model, to be able to
9 discriminate. We cannot offer service to the broad
10 public.

11 And, finally, we do not think that we
12 should be regulated as a limited producer of electric
13 energy. Under the PURPA concept of the statute, we cannot
14 be limited or our business model cannot be limited to
15 three end-users and the regulatory regime that's been
16 constructed around limited producers of electric energy.
17 And, we don't think that the intent of the regulation or
18 of the statutes there require us to be regulated.

19 So, in summary, we seek clarity so that
20 we can enter the state to provide our service to customers
21 in the State of New Hampshire.

22 And, I would say that, to the extent
23 that you want further information about Vivint, my client,
24 Garner Meads, will be happy to describe what Vivint Solar

1 does and how, in particular, its business operates.

2 CHAIRMAN HONIGBERG: Thank you. To
3 avoid giving whiplash, I'll stay on the left side, on my
4 left. Mr. Keyes.

5 MR. KEYES: Thank you. Members of the
6 Alliance for Solar Choice, SolarCity and Sunrun, --

7 *[Court reporter interruption.]*

8 CHAIRMAN HONIGBERG: Off the record.

9 MR. KEYES: Two members of the Alliance
10 for Solar Choice, Sunrun and SolarCity, have customers in
11 New Hampshire on the basis that they thought the rules
12 were clear that they would not be regulated as a public
13 utility and would not be regulated as a competitive energy
14 power supplier, and not be regulated as a limited producer
15 of electric energy.

16 So, we are supportive of Vivint's
17 Petition. We hope that this can be quick.

18 CHAIRMAN HONIGBERG: You're essentially
19 here -- you want to make sure that Mr. Glass doesn't do
20 anything wacky and get you covered, right?

21 MR. KEYES: I know Mr. Glass well. I
22 have complete confidence in him.

23 CHAIRMAN HONIGBERG: All right.
24 Mr. Rodier, I'm actually not sure if you need a

1 microphone, but --

2 MR. RODIER: Mr. Chairman, FEL is fully
3 supportive of the relief that Vivint has requested. And,
4 frankly, the reason is that, you know, FEL has actual
5 business interests and prospective business interests in
6 the emerging facts and law that are involved here, and
7 other cases that we've been involved in, like the LEEPA
8 three customer law.

9 Very briefly, two other things. I put
10 in some comments very recently on the grid modernization
11 proceeding, asked for comments. And, my comments were
12 pretty much restricted to distributed generation. I think
13 I said, in some fashion, that we have to, in order to have
14 distributed generation, we have to start working our way
15 through issues like we have here today. You can't really
16 have a microgrid if you, you know, you can't interconnect,
17 and if you -- somebody is going to say you need a CEPS
18 license to sell to somebody down the street. So, that was
19 an important issue.

20 And, then, finally, just as an example
21 of my view of what's emerging, I got a call the other day
22 from somebody inquiring about what the law is with regard
23 to electric vehicle charging stations. They're in New
24 Hampshire. Their utility had said "hey, our tariff

1 prohibits resale of electricity." They didn't say "you
2 need to be a public utility". They didn't say "you need a
3 CEPS license." They just said "you are unlawfully
4 reselling electricity."

5 So, that is really what our interest
6 here is, to be supportive of things that allow the
7 Commission to move ahead with grid modernization. Thank
8 you.

9 CHAIRMAN HONIGBERG: Thank you,
10 Mr. Rodier. Mr. Wiesner.

11 MR. WIESNER: Staff believes this is an
12 important case to clarify the regulatory status of
13 behind-the-meter generation in particular residential
14 rooftop solar installations. That's a very significant
15 and growing market in this state, probably as a result of
16 state policies that are encouraging renewable energy, such
17 as group net metering, plain old net metering, and the
18 rebate programs that are funded by the Renewable Energy
19 Fund.

20 We're sympathetic with Vivint's interest
21 in clarifying that status in particular, so that there
22 are -- there's an opportunity for new competitors to come
23 in and do business here. And, particularly, in the
24 current environment, where there's an investment tax

1 credit at the federal level, which may not survive beyond
2 next year, depending on what happens in Congress.

3 We don't have a fully developed position
4 on the merits of this case. One of the things we're going
5 to discuss with the Parties in technical session is the
6 extent to which there may be discovery and document
7 production necessary so that the Commission can be
8 presented with a full record to inform its decision on
9 these important issues, of what are essentially legal and
10 regulatory interpretation. What do the statutes require?
11 What do our rules mean? And, do they apply to this type
12 of situation, the business model that Vivint and its
13 competitors are following or proposing to follow in the
14 state?

15 CHAIRMAN HONIGBERG: Thank you. I don't
16 think we have any questions for you at this time. I think
17 we'll leave you to your technical session. I think
18 there's some interesting issues you have to discuss. I
19 know that Mr. Rodier's active mind will keep you all fully
20 engaged, I'm sure.

21 And, we'll look forward to seeing what
22 you guys come up with for a schedule and a plan for moving
23 this docket along as quickly as reasonably possible.

24 So, with that, we'll leave you. Thank

1 you. We're adjourned.

2 **(Whereupon the prehearing conference was**
3 **adjourned at 10:18 a.m., and a technical**
4 **session was held thereafter.)**

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24