

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

FILED 8/15/2018
DOCUMENT NO. 05303-2018
FPSC - COMMISSION CLERK

In the Matter of:

DOCKET NO. 20180124-EQ

PETITION FOR DECLARATORY
STATEMENT CONCERNING
LEASING OF SOLAR
EQUIPMENT, BY VIVINT SOLAR
DEVELOPER, LLC.

_____ /

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 6

COMMISSIONERS
PARTICIPATING: CHAIRMAN ART GRAHAM
COMMISSIONER JULIE I. BROWN
COMMISSIONER DONALD J. POLMANN
COMMISSIONER GARY F. CLARK
COMMISSIONER ANDREW G. FAY

DATE: Tuesday, August 7, 2018

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: ANDREA KOMARIDIS
Court Reporter and
Notary Public in and for
the State of Florida at Large

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1 P R O C E E D I N G S

2 CHAIRMAN GRAHAM: Next item is Item No. 6.

3 MS. HARPER: Good morning, Commissioners. I'm
4 Adria Harper with the Office of General Counsel.

5 Item No. 6 is Vivint's petition for
6 declaratory statement. Vivint is asking the
7 Commission if its proposed solar leasing program
8 triggers the Commission's jurisdiction.

9 Staff is recommending that the Commission
10 grant Vivint's petition for declaratory statement.
11 Vivint's petition is consistent with the
12 Commission's recent decision granting Sunrun's
13 petition for declaratory statement.

14 Staff is available for any questions.

15 CHAIRMAN GRAHAM: Thank you, staff.

16 Commissioners, any questions of staff or the
17 applicant?

18 Commissioner Clark?

19 COMMISSIONER CLARK: I would just like to
20 make, I guess, an observation. I'm afraid that
21 we've opened Pandora's Box when it comes to giving
22 these declaratory statements.

23 I understand kind of some of the legal issues
24 and proceedings, but how many of these do we
25 anticipate receiving now that we've started with

1 the first one? Can we not basically establish some
2 boilerplate guidelines that just say, hey, if you
3 meet these requirements, it's ob- -- I think we're
4 just giving the same consistent answer: Hey, we
5 don't regulate this.

6 Where do -- how far does this go?

7 MS. HARPER: I think that you make a very good
8 point, Commissioner. I think that we have stated,
9 if this petition is granted, it will be, now, twice
10 that basically, if anybody has the same identical
11 facts -- although, they certainly have a right to
12 ask for a declaratory statement -- it's not
13 necessary.

14 And so, hopefully the language in -- in the
15 order will help clarify that, if anybody needs it.
16 We tried to do that with Sunrun, and we will try to
17 do that again.

18 COMMISSIONER CLARK: And my concern is that we
19 are, some sort of way, giving some sort of implied
20 consent that this is approved by the Commission. I
21 want to make certain that we're on record, we're
22 not approving any type of lease; we're basically
23 saying that we don't regulate this type of a lease.

24 MS. HARPER: That's correct. We do not have
25 the jurisdiction to regulate this type of leasing

1 program. And our order will reiterate that again.

2 COMMISSIONER CLARK: Thank you.

3 CHAIRMAN GRAHAM: Not that you did anything
4 wrong. We would rather you ask permission than be
5 forgiven.

6 MS. RULE: Marsha Rule, with the law firm of
7 Rutledge and Ecenia. And I understand your
8 concern, Commissioner. We share that, but I'd like
9 Mr. Andrew Walton of Vivint to address that, the
10 question of why we brought this before you.

11 MR. WALTON: Yes, that's a wonderful question.
12 And the reason that Vivint Solar needed to bring
13 this petition before this Commission -- and I want
14 to thank you for considering and evaluating our
15 petition -- is that our large financial
16 institutions that we work with -- they require that
17 we receive this order from the Commission prior to
18 them financing these types of systems in the State
19 of Florida.

20 As you can imagine, large financial
21 institutions are very risk-adverse, and they want
22 to ensure that, not only are we operating within
23 the bounds and guidelines within the state, but
24 that they're investing in systems that are also
25 compliant with all the rules and regulations in

1 each state that we operate.

2 And so, for us to be able to do that, we need
3 to come before the Commission and receive that
4 order before we can actually participate.

5 MS. RULE: But, if I may add to that, if the
6 Commission could send a clear signal that it's not
7 necessary, I think the lenders would pay attention.

8 CHAIRMAN GRAHAM: Commissioner Brown.

9 COMMISSIONER BROWN: Thank you.

10 It is not necessary. I hope that's a clear
11 signal.

12 MS. RULE: Please put it in the order.

13 COMMISSIONER BROWN: We will absolutely strive
14 to do that --

15 MS. RULE: Thank you.

16 COMMISSIONER BROWN: -- as -- as staff noted,
17 that they tried to do it with Sunrun.

18 But I'm curious, in the other -- you operate
19 in a lot of states around the country. In the
20 other states that you operate in, are you seeing an
21 uptick in the solar arrays when you offer the
22 leasing options?

23 MR. WALTON: Yes. So, we -- we operate in 22
24 states and the District of Columbia. There is a
25 customer base that cannot actually utilize the

1 federal income tax credit, which makes it
2 economical for them to purchase the system outright
3 via a system purchase agreement.

4 For those customers who can't utilize that tax
5 benefit, the lease agreement is very valuable to
6 them because we can essentially monetize those tax
7 credits, pass through that benefit to the
8 homeowner, who couldn't otherwise monetize those or
9 utilize those, and they can still receive the
10 benefit of inexpensive solar power on their roof.

11 COMMISSIONER BROWN: I mean, all the
12 options -- the more options that are available, the
13 better, obviously.

14 MR. WALTON: Absolutely.

15 COMMISSIONER BROWN: I'm just curious if you
16 actually can quantify an increase when you offer
17 leasing options, too.

18 MR. WALTON: I can quantify it in the fact
19 that, right now, between the mix of our business,
20 about 20 percent of our customer base purchases
21 systems. The other 80 percent enter into either a
22 lease agreement or a power purchase agreement.

23 And that's really the mix between --

24 COMMISSIONER BROWN: No, that's good.

25 MR. WALTON: -- our customer base.

1 COMMISSIONER BROWN: Thank you.

2 CHAIRMAN GRAHAM: Commissioner Polmann.

3 COMMISSIONER POLMANN: Thank you,
4 Mr. Chairman.

5 I would encourage the Commission to stop
6 talking about this. And I'm talking to the
7 Commissioners at this point. This came up with
8 Sunrun. And I made the point directly to the
9 petitioner that the only reason that they came to
10 this Commission was for business purposes.

11 And I made the motion immediately, at that
12 point, to approve the staff recommendation because
13 it was clear to me, having talked to staff, having
14 talked to legal counsel, that our action and, in
15 fact, having the -- the company come here to seek
16 approval was not necessary.

17 And here we are, again, talking about this.
18 And what happened was for business purposes only.
19 And it was celebrated in the media. And the fact
20 that we're here talking about this, again, is going
21 to be the message that's in the media. And we
22 cannot stop another company from coming in here and
23 doing exactly the same thing.

24 Now, this is a good thing for the community.
25 There is no doubt about that. I am not saying it

1 is not. Anybody can come in here and seek a
2 declaratory statement, as Ms. Harper just
3 indicated, but if we don't want any more companies
4 coming in here seeking declaratory statement, then
5 we should stop talking about it.

6 Having said that, I would move the staff
7 recommendation.

8 CHAIRMAN GRAHAM: It's been moved and second.
9 Any further discussion?

10 Seeing none, all in favor, say aye.

11 (Chorus of ayes.)

12 CHAIRMAN GRAHAM: Any opposed?

13 By your action, you have approved staff
14 recommendation on Item No. 6. Thank you.

15 Thank you, staff.

16 (Agenda item concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, ANDREA KOMARIDIS, Court Reporter, do hereby
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time and place herein stated.

IT IS FURTHER CERTIFIED that I
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I FURTHER CERTIFY that I am not a relative,
employee, attorney or counsel of any of the parties, nor
am I a relative or employee of any of the parties'
attorney or counsel connected with the action, nor am I
financially interested in the action.

DATED THIS 15th day of August, 2018.



ANDREA KOMARIDIS
NOTARY PUBLIC
COMMISSION #GG060963
EXPIRES February 9, 2021