

AG-Vivint Solar settlement could curb deceptive marketing

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Vivint Solar Inc. installed 51 solar panels on Lynn Griffin's Northeast Heights home, left. That's about twice as many as needed to meet the Griffin family's electricity consumption, and more than double the number of panels Vivint placed on a neighbor's roof on the right. (Roberto E. Rosales/Albuquerque Journal)

ALBUQUERQUE, N.M. — Vivint Solar Inc., a national installation company recently acquired by publicly traded firm SunRun, has agreed to consumer-friendly modifications to its marketing practices in a legal agreement with the New Mexico Attorney General's Office.

But lawyers representing Vivint customers who may have been victims of deceptive marketing said individual homeowners received no relief in the settlement, which the 2nd Judicial District Court in Bernalillo County approved in late December to resolve a lawsuit that Attorney General Hector Balderas filed in 2018.

The original lawsuit accused Vivint of "high pressure" and "illegal" door-to-door sales tactics that allegedly "ensnare" uninformed consumers into binding 20-year power-purchase agreements that end up costing homeowners more for the electricity they consume over time than what they previously paid Public Service Company of New Mexico.

The company installs and operates its own rooftop solar systems on customers' homes and then charges for all the electricity produced, basically replacing PNM as the utility provider.



Attorney General Hector Balderas

The attorney general said Vivint sales representatives used aggressive marketing practices involving nearly 3,600 homeowners in Central New Mexico. The company offered “free” solar systems, according to the lawsuit, that salespeople said would immediately lower customers’ monthly electric bills by up to 30% or more, when, in fact, the contracts generally locked those homeowners into prices that are higher than PNM’s. The company also “clouded” homeowners’ titles with filings that make it appear like there is a lien on the home, complicating future sale or refinancing, the attorney general said.

In the December settlement, Vivint denied the attorney general’s allegations. But it agreed to modify its marketing practices to provide all prospective customers in the future with clear and understandable explanations about proposed contracts. It also pledged to update its code of ethics to eliminate misleading statements or promises, and to provide ethics training for Vivint sales teams. And it agreed to a \$1.95 million settlement payment, including about \$709,000 in legal expenses and attorney fees for the law firm that represented the attorney general.

Executives from SunRun, which acquired Vivint in October, did not respond to repeated email and phone inquiries from the Journal. But the attorney general said the settlement is “firmly binding” on SunRun.

Local private attorneys following the case said the settlement could reduce deceptive marketing in the future, but it does nothing to compensate homeowners who were already victims of past abuse.

“The agreement reached has some reforms that will provide at least limited benefit going forward, but my big concern is the people subject to abusive practices over the last four or five years who complained to the attorney general with the expectation that something would be done for them,” said Nicholas Mattison, a consumer protection attorney with Feferman, Warren & Mattison in Albuquerque. “They received literally no relief under the settlement.”

Balderas said his office can’t represent individual consumers, so his staff pursued “state violations” by Vivint, leading to settlement funds that will now be “reinvested” in more consumer protection investigations.

“The outcome also strengthens individual claims,” Balderas said. “It can be used as a blueprint to seek private damages.”

The original lawsuit did ask the court to declare all of Vivint’s previous agreements with homeowners as “voidable” if effected consumers choose to cancel them, because those contracts were allegedly based on false advertising and unfair trade practices. But that wasn’t included in the settlement agreement.

Mattison and another Albuquerque attorney, Marrs Griebel Law Ltd. partner Patrick Griebel, are now representing some homeowners in individual cases against Vivint.

Griebel reached a settlement for one client, and he's now pursuing relief for another homeowner, Lynn Griffin, who has a power purchase contract with Vivint for her single-story, 1,960-square-foot home in the Northeast Heights. Vivint installed 51 solar panels on Griffin's home, far more than needed to meet electric consumption by Griffin and her family, Griebel said.

"Our expert analysis shows that the system should have been designed at about 9 kilowatts, versus this 13.52 kilowatt system," Griebel told the Journal.

But Vivint has refused to downsize the system or to cancel Griffin's contract, which mandates that she pay for all electricity produced, whether she needs it or not.

"They put 51 panels on my home, but all other homes in my neighborhood that have solar systems only have between 18 and 27 panels," Griffin told the Journal. "I spoke with a different solar company last summer who said my home only needs maybe 20-plus panels."

Her summer bills are now generally over \$300 per month, and the winter bills up to \$200, Griffin said.

"I started manually turning some panels off for a few months to balance production with consumption, but the company told me I can't do that," Griffin said. "I've been overpaying for electricity I can't use all this time, but Vivint just keeps digging in, telling me the system is right-sized."