

**COMMENTS OF THE LARGE PUBLIC POWER COUNCIL
IN RESPONSE TO INVITATION OF THE FEDERAL TRADE COMMISSION
IN CONNECTION WITH SOLAR DISTRIBUTED GENERATION WORKSHOP**

June 7, 2016

INTRODUCTION AND SUMMARY OF COMMENTS

The Large Public Power Council (LPPC) hereby responds to the invitation to file comments issued by the Federal Trade Commission (FTC or Commission) in connection with a workshop to be held on June 21, 2016 addressing competition and consumer protection issues regarding solar distributed generation (DG). LPPC is an association of the 26 largest state-owned and municipal utilities in the nation.¹ LPPC's members are located throughout the nation and comprise the larger, asset owning members of the public power community. Together, LPPC's members serve more than 30 million customers nationwide.

To varying degrees, nearly all LPPC members are involved with the interconnection of customer-owned or controlled distributed generation, and the associated commercial and regulatory issues. As the FTC's notice suggests, these issues are challenging and have become highly politicized. With a substantial increase in the level of DG, utility rate structures establishing compensation for DG that may once have been viewed as providing an appropriate subsidy for a nascent business model now pose a substantial challenge to financial support for the utility grid. This challenge, if not reasonably addressed, may produce a regressive shift in cost responsibility for the utility grid to less affluent customers and to businesses, and the erosion of financial support for infrastructure needed to assure reliable service and to achieve state-based and national renewable energy goals.

LPPC members are also concerned that certain DG solar developers may be making misleading claims to potential customers about energy cost savings associated with solar installations. Concern about these practices goes to the core of the FTC's consumer protection mandate.²

¹ LPPC's members are generally exempt from oversight of the Federal Energy Regulatory Commission under 16 U.S.C. § 824(f) and are referred to as "nonregulated electric utilities" under 16 U.S.C. § 2621. Their rates are generally set by politically accountable local bodies. LPPC's members are: Austin Energy, Chelan County Public Utility District No. 1, Clark Public Utilities, Colorado Springs Utilities, CPS Energy (San Antonio), Electricities of North Carolina, Grand River Dam Authority, Grant County Public Utility District, IID Energy (Imperial Irrigation District), JEA (Jacksonville, FL), Long Island Power Authority, Los Angeles Department of Water and Power, Lower Colorado River Authority, MEAG Power, Nebraska Public Power District, New York Power Authority, Omaha Public Power District, Orlando Utilities Commission, Platte River Power Authority, Puerto Rico Electric Power Authority, Sacramento Municipal Utility District, Salt River Project, Santee Cooper, Seattle City Light, Snohomish County Public Utility District No. 1, and Tacoma Public Utilities.

² 15 U.S.C. § 45(a)(1) (prohibiting unfair or deceptive trade practices); *See* <https://www.ftc.gov/enforcement/statutes/federal-trade-commission-act>; <https://www.ftc.gov/news-events/media-resources/truth-advertising/protecting-consumers>.

In the comments below, LPPC focuses on two categories of questions raised by the Commission, including: (1) Net Metering: Pricing for Solar DG at Retail and (2) Consumer Protection Issues. LPPC’s position is as follows:

1. The FTC should defer to state and local ratemaking proceedings in which existing net metering policies are being reconsidered. The issues in these proceedings involve important questions regarding remuneration for the cost of the grid, as well as fair pricing for DG, that are best handled in an integrated manner through state-based regulatory processes.
2. There is reason for the FTC to investigate claims that certain solar DG sales practices may be misleading.

COMMENTS

1. **The FTC should defer to state and local ratemaking proceedings in which existing net metering policies are being reconsidered.**

FTC Questions (Notice, pp. 4 – 5)

- *Is net metering good policy? At the retail rate? At a different rate?*
- *Does retail net metering result in cross-subsidization? For example, if the fixed costs associated with building and maintaining the electricity grid are incorporated into the price per kilowatt hour (volumetric pricing), do non-solar customers end up cross subsidizing solar DG customers because the latter do not pay a full share of fixed costs when they choose to rely on self-generation?*
- *Does cross-subsidization of one form or another always occur when retail rates are based only on volumetric charges and are time-invariant? Does cross-subsidization caused by net metering differ in any way from other forms of cross-subsidization inherent in regulated retail rates?*
- *Does it make sense for PUCs to target net metering for reform, or should they focus on reforming retail rates more generally to better reflect the varying costs of supplying electric power?*

The FTC’s notice correctly recognizes that “[d]etermining the correct rate for net metering is a complex issue.”³ The issue has been considered by state public service commissions (for purposes of the utilities they regulate) and nonregulated utilities around the nation and is the subject of a great deal of current attention in those settings. Under section 1251 of the Energy Policy Act of 2005,⁴ state public service commissions and nonregulated utilities have been required to consider implementing net metering standards in public processes after notice and public hearing.

³ FTC Notice at p. 2.

⁴ 16 U.S.C. § 2621 (enacted as part of the Public Utility Regulatory Policies Act, “PURPA”).

The standards initially developed in response to PURPA’s net metering standard are now under review throughout the nation. The North Carolina Clean Energy Technology Center recently reported that in 2015 alone, the nation has seen legislative or regulatory action in 27 states on net metering policies.⁵ The reason for this recent activity lies largely in the rapidly expanding use of net metering tariffs and the unanticipated impact on utility revenue and rates that these programs have had and are expected to have, as a function of the declining cost of solar installations.

PURPA does not establish the actual rate or mechanism by which net metering works, leaving that determination to state and local regulatory bodies. 16 U.S.C. § 2621(d)(11) defines net metering to mean:

...service to an electric consumer under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period.

Most states that have implemented this standard have done so through what the National Conference of State Legislatures calls “conventional net metering,” by which customers who generate excess energy are credited for the excess at their supplying utility’s full retail rate.⁶ At the relatively low levels of DG penetration seen in most of the years following the passage of section 2621, the potential rate impact of payment to DG at the full retail rate was not readily apparent and went unquestioned in many jurisdictions. Indeed, the associated subsidy for solar DG was thought by many to be good policy. But at much higher levels of usage, the retail rate impact of these programs calls for their reconsideration, in light of the associated effect on utility customers and businesses that do not have DG resources, and the potential erosion of financial support for utility infrastructure.

In a nutshell, the problem with full retail rate compensation for DG is this: Because state and locally-regulated utility rates are generally structured on a “pay-as-you-go” per-kwh basis, conventional net metering holds the potential for enabling DG customers to be free riders on the utility grid, paying far less than they should for their reliance on utility service when they need it. The math is simple: If, for argument’s sake, a DG customer uses 500 kwh of utility service in a given month, and sells the same to its local utility, its bill for utility service would be ‘0’, notwithstanding the household’s reliance on the utility grid for the distribution service it purchases, and the grid over which its sales to the utility are undertaken.

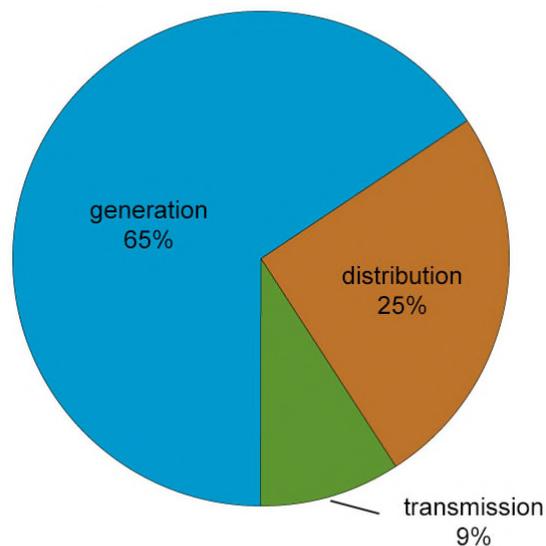
⁵ North Carolina Clean Energy Technology Center & Meister Consultants Group (“NCCETC”), *The 50 States of Solar: 2015 Policy Review and Q4 2015 Quarterly Report*, at 13-14 (Feb. 2016), available at https://nccleantech.ncsu.edu/wp-content/uploads/50-SoS-Q1-2016_Final.pdf p., 15. In the period immediately following enactment of the PURPA standard, “regulators, lawmakers, or utilities in at least 46 states studied, proposed, or enacted policy changes pertaining to net metering, valuation of distributed solar, fixed or solar charges, third-party or utility-led rooftop solar ownership, or community solar.” *Id* at 11.

⁶ See National Conference of State Legislatures, *Net Metering: Policy Overview and State Legislative Updates* (Dec. 2014), available at <http://www.ncsl.org/research/energy/net-metering-policy-overview-and-state-legislative-updates.aspx#term>

To be sure, most DG households will not produce and consume electricity in fully off-setting amounts. But even in less dramatic circumstances, under a conventional net metering approach, there is the substantial potential for undermining the recovery of fixed costs, with resulting subsidization for DG, and cost shifts to remaining customers.

On an average national basis, the U.S. Energy Information Agency graphically depicts the major cost components of the price of electricity in the chart below.

Major components of the U.S. average price of electricity, 2014



Source: U.S. Energy Information Administration, *Annual Energy Outlook 2015*, Reference Case, Table 8: Electrical supply, disposition, prices, and emissions

Of course, the cost of electric transmission and distribution (depicted here to amount to 34% of a customer's bill) is fixed. So too is much of the cost of electric generation, a highly capital intensive process. Reflecting in some measure its understanding of this problem in analysis accompanying the Notice ("Supplemental Information"), the Commission says this:

Some view regulated retail rates as designed primarily to allow the utility to recover both fixed and variable costs, which helps to ensure the continuing viability of the utility. In this view, compensating solar DG customers at the retail rate allows these customers to avoid paying an appropriate share of the fixed costs of a system that was built to serve them, shifting these costs to customers who have not installed solar PV panels.⁷

⁷ FTC Notice at p. 2.

LPPC's difficulty with this passage is that the Commission frames as an arguable point ("[s]ome view regulated retail rates...") something that is simply a fact. It is a fact that most regulated utility rates are designed to recover both fixed and variable costs and that, at certain levels of service, conventional net metering will undermine fixed cost recovery. It would be a wholly different question if those with DG placed no reliance on the utility's grid. But net-metered customers, no less than other retail customers rely on the grid, often during peak periods. Without reform of conventional net metering compensation mechanisms, the result will either be the loss of financial support for reliable utility service and the investment needed to attach utility scale renewable generation, or the subsidization of DG by the utilities' remaining customers.

LPPC is not blind to the possibility that DG may provide some off-setting value to the grid, potentially by enabling utilities to avoid the need for additional generation, and, possibly, new investment in distribution facilities.⁸ But this is by no means a given, and certainly calls for highly fact-intensive analysis. What value DG offers in enabling a utility to avoid new, utility scale generation depends very much on the nature of DG, its reliability, the time of day and year upon which it can be relied, and its location. Much the same is true of any value in connection support for distribution level facilities, though there the situation is further complicated by the varied capabilities of distribution systems and the potential that DG will call for an increase in distribution-level investment in order to accommodate utility purchase and further redistribution.⁹ These critical nuances are glossed over through conventional net metering, which simply assumes that compensation for a utility's fixed costs can be avoided.

As noted, issues such as these are under consideration in proceedings around the country. NCCETC reports state public utility commission activity in the third quarter of 2015 alone as follows:

Nineteen states enacted or are formally considering changes or clarifications to existing net metering policies in Q3 2015 (see Table 2). Massachusetts, New Hampshire, New Jersey, New York, and Nevada are among states policies to accommodate new systems. California, Hawaii, Arizona, Nevada, and Maine examined successor tariffs to net metering. State regulators in Illinois, Minnesota, and Virginia considered changes to align administrative rules with recently passed legislation. Finally, new net metering tariffs were approved for IOUs in South Carolina, and final comments were accepted on proposed net metering rules in Mississippi; both states had not previously enacted a statewide net metering policy.¹⁰

For these reasons, LPPC urges the FTC to defer to state and local ratemaking proceedings in which existing net metering policies are being reconsidered. The issues arise in a highly

⁸ The Commission suggests this potential in its Notice at p. 3.

⁹ The value of DG will also depend on the emergence of new technologies, such as smart inverters, which are still under development.

¹⁰ NCCETC, *The 50 States of Solar: A Quarterly Look At America's Fast-Evolving Distributed Solar Policy Conversation, Third Quarter 2015 Report* at 10, available at: <http://www.mc-group.com/the-50-states-of-solar-net-metering-quarterly-update-q4-2015/>.

regulated industry in which every aspect of a regulated entity's behavior and rates are subject to scrutiny. There is good reason to believe that important questions regarding remuneration for the cost of the grid, as well as fair pricing for DG, will be best handled in an integrated manner through state-based regulatory processes.

2. The FTC should investigate claims that certain solar DG sales practices may be misleading.

FTC Questions (Notice, p. 6)

- *How do consumers obtain information about installing solar PV panels?*
- *What information is most important to consumers' decisions to install rooftop solar?*
- *What information is available about regulated retail electricity rates? What are solar DG firms telling consumers about expected future retail rates?*
- *Who typically assumes the risk that regulators in a given jurisdiction will change net metering and/or reform compensation rates paid for solar DG – consumers or solar DG firms?*
- *Do consumers understand the payments they will make for solar PV panels and electricity, based on whether and how they finance or lease a system, or obtain a power purchase agreement? Do consumers understand whether their payments may escalate under some agreements?*

The questions the Commission raises regarding DG sales practices are important, and well within the FTC's broad historical mandate to protect consumers from fraud and deception in the marketplace.¹¹ While LPPC members would not generally make it their business to police their customers' vendors, the potential for misleading business practices in this area uniquely affects utilities because inaccurate expectations regarding the economics of solar installations will invariably become a source of friction between utilities and the customers they will continue to serve.

LPPC members are most concerned about reports that certain solar developers are supporting their sales pitches for solar installations and leases with unrealistic projections of increased utility rates. This is a particular concern as to solar companies offering lease agreements premised on zero down payments, and initial low payments that escalate over time. It has been reported that savings for consumers have been based on assumptions regarding anticipated increases in the cost of electricity that appear to be most unrealistic.¹² These leases represent a long-term commitment that may make home sales difficult, a problem potentially compounded by liens placed on the property by solar developers.¹³

¹¹ See *supra*, n. 2.

¹² The Motley Fool reported that estimated energy savings projected by one solar vendor were premised on anticipated increases in utility rates over the next twenty years at over twice the historical level since 1980. See: <http://www.fool.com/investing/general/2014/04/30/will-the-solar-lease-live-forever-or-flameout.aspx>.

¹³ See, e.g.: <http://www.bloomberg.com/news/articles/2014-06-23/rooftop-solar-leases-scaring-buyers-when-homeowners-sell>; <http://www.latimes.com/business/realestate/la-fi-harney-20150322-story.html>; .

These concerns gave rise to letters sent in late-2014 by a bipartisan group of lawmakers to the FTC and the U.S. Consumer Financial Protection Bureau requesting investigation. The December 12, 2014 letter by Republican lawmakers to FTC Chair Ramirez put the concern this way:

Of particular concern is the possibility that these third party leasing companies may be utilizing deceptive market strategies that overstate the savings the homeowner will receive, while understating the risks associated with agreeing to a decades-long lease that is often secured by a second deed of trust to the house – a financial commitment that will likely exceed both the life of the roof and duration of the lessor’s home ownership.¹⁴

Similar questions were raised by House Democrats in a November 19, 2014 letter asking the Consumer Financial Protection Bureau to look into solar company leasing practices.¹⁵

These concerns are serious and warrant the Commission’s attention. And rather than being inimical to the solar industry, LPPC believes that the improvement in business practices that may follow investigation and remediation will increase reliance on these important resources.

CONCLUSION

For the reasons stated above, LPPC asks the Commission to defer to state-regulatory processes now underway to examine net metering policies. Further, LPPC supports an inquiry into potentially misleading solar sales practices.

Respectfully submitted,

/s/

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<http://whdh.com/news/hank-investigates-leased-solar-panels/http://www.forbes.com/sites/jamesconca/2015/01/17/rooftop-solar-shines-light-on-bad-business-practices/#b2f7d3b476b8>; <http://www.scientificamerican.com/article/booming-rooftop-solar-power-suffers-growing-pains/>.

¹⁴ Letter of Congressional Representatives to FTC Chairwoman Ramirez, at 1 (Dec. 12, 2014), available at: <http://gosar.house.gov/sites/gosar.house.gov/files/Final%20Signed%2012%2012%2014%20letter%20to%20the%20FTC%20regarding%20third-party%20rooftop%20solar%20leases.pdf>.

¹⁵ See <http://www.publicpower.org/media/daily/ArticleDetail.cfm?ItemNumber=42770>.