

United States Senate

WASHINGTON, DC 20510-7020

June 16, 2016

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Ave. N.W.
Suite CC-5610 (Annex B)
Washington, DC 20580

RE: Solar Electricity Project No. P161200

Dear Chairwoman Ramirez and Commissioners Ohlhausen, and McSweeney:

I applaud the Federal Trade Commission (FTC) for exploring competition and consumer protection issues raised by the growing use of rooftop solar photovoltaic systems. The FTC's workshop is timely in light of the rapid growth of residential solar distributed generation (DG) in many states, including my home state of Nevada.

The continued growth and credibility of the rooftop solar industry requires that companies are held to high standards that treat consumers fairly and honestly, while delivering reliable clean energy. I encourage the Commission to review the marketing practices and various offerings and finance mechanisms that rooftop solar businesses provide their customers so consumers are protected from unfair or deceptive practices. At the same time, it is important to ensure that the market for residential DG is not choked by anti-competitive practices designed to insulate many utilities that traditionally have operated as a monopoly from competition at the expense of consumer choice, savings, and innovation.

The confluence of nearly year-around sunshine, falling solar panel prices, consumer demand for installing DG systems at home, and the availability of solar leases and residential power purchase agreements made Nevada the nation's fastest growing solar states – with a new solar customer signing up every 40 minutes last year. However, the market was artificially capped by a state policy ending net metering for new rooftop solar systems once DG made up three-percent of the state's electricity generation. Instead of working to update the net metering law, Nevada's largest electric utility monopoly worked to eliminate a viable net metering policy by lobbying the legislature and arguing before the Public Utilities Commission of Nevada (PUCN) that rooftop solar shifts costs to non-solar customers. The utility's erroneous claims were based on cherry-picked data and conclusions that ignore the vast majority of benefits DG provides customers, the grid and public health.

Unfortunately, in December 2015, the utility's efforts prevailed at the significant expense of Nevada consumers. Net metering was not only devalued to one-quarter of the original value for new DG systems, but it was also cut for the 17,000 *existing* solar customers who already had interconnection agreements. Despite having contracts with the solar developers and an agreement with the utility, these customers' investments were suddenly and drastically devalued to a fraction of their original value with no practical warning. As a result of this decision, the major rooftop solar companies laid off hundreds of employees and discontinued new installations.

This decision stands in stark contrast to the traditional regulatory protection that utility monopolies enjoy across the country and in Nevada. Utilities' are guaranteed by state energy regulators

to recover prudent investments with a guaranteed rate of return. I believe it is appropriate for the Federal Trade Commission to consider whether consumers who install rooftop solar systems and have signed contracts and existing interconnection agreements with a utility should be provided with some degree of protection for their investments.

The resulting decision in Nevada can and should have been avoided. Just last month, the Natural Resources Defense Council (NRDC) and SolarCity released an economic analysis showing that rooftop solar delivers \$7 - \$14 million in net benefits to Nevadans per year.¹ That analysis built on another study requested by the PUCN and conducted by Energy + Environmental Economics (E3) in 2014, using the same cost and benefits the PUCN itself requested to be analyzed in their 2015 order. The 2014 E3 analysis also estimated that net metering delivers a \$36 million lifetime net benefit for Nevadans.² Moreover, the Brookings Institute also published a paper last month concluding that “substantial evidence that net metering is more often than not a net benefit to the grid.”³

Unfortunately, the effort to eliminate competition from DG that has taken place in Nevada is not an anomaly or an accident. It is the result of a nationally organized campaign against DG. In a strategy document, the Edison Electric Institute (EEI), the primary trade association for investor-owned utilities, stated that “disruptive changes”, such as those posed by DG, “are a new type of threat to the electric utility industry.”⁴ Furthermore, the document states that: “Disruptive changes lead to declining customer and usage per customer levels that cannot be easily quantified as to the potential threat posed to corporate profitability... However, the risks in the business have never been higher, due to increasing customer rate pressures from capital expenditures required to upgrade the grid and address environmental mandates, inflation, low/negative demand growth from active customers, and *the threat of load lost due to the rapid development of (distributed energy resources) and disruptive forces.*”⁵

EEI’s document is a glimpse into the industry’s fear of competition from DG and preference for designing rates that favor old generation technologies and the stagnant monopoly utility business model. While a few utilities have worked with regulators and industry stakeholders to try to properly determine the value of DG based on net costs and benefits, others have implemented a strategy to eliminate competition from residential DG systems altogether. Utilities in Nevada and other states have made deceptive statements that exaggerate the costs and disregard the benefits of DG in order to convince state energy regulators to impose new fees and reduce how much consumers are credited for power generated from rooftop solar. Utilities and groups they fund have also taken these deceptive messages directly to consumers through television advertisements, declaring that solar customers are shifting costs to other utility customers.⁶ Unfortunately, these ads rely on data based on the utilities’ losses in revenue from competition while ignoring the measurable benefits of DG.

In the course of the workshop and in follow-up considerations of consumer protection and competition in the rooftop solar business, I encourage the Commission to closely consider the market barriers to DG that utilities are erecting and lobbying state regulators to impose. The Commission should

¹ http://www.solarcity.com/sites/default/files/SolarCity-Distributed_Energy_Resources_in_Nevada.pdf

² http://puc.nv.gov/uploadedFiles/pucnv.gov/Content/About/Media_Outreach/Announcements/Announcements/E3%20PUCN%20NEM%20Report%202014.pdf

³ <http://www.brookings.edu/research/papers/2016/05/23-rooftop-solar-net-metering-muro-saha>

⁴ “Disruptive Challenges: Financial Implications and Strategic Responses to a Changing Retail Electric Business,” p. 13, Edison Electric Institute & Energy Infrastructure Advocates (2013).

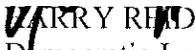
⁵ *Ibid.*

⁶ See <http://www.greentechmedia.com/articles/read/arizona-utility-admits-funding-anti-solar-ad-campaign>, and <http://www.utilitydive.com/news/video-nv-energy-backed-group-launches-media-campaign-to-keep-solar-net-met-1/417503/>

analyze how these activities impact consumer choices and innovation (technological and business model) in state energy markets, and whether existing safeguards for competition are adequately protecting consumers' ability to choose viable clean energy technologies not offered by their utility.

Thank you for considering my comments and taking the time to hold a workshop on this important matter.

Sincerely, 


Democratic Leader