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Comments of Ethical Electric Inc.

Federal Trade Commission Workshop

Something New Under the Sun: Competition and Consumer Protection Issues in Solar Power

Solar Electricity Project No. P161200

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Introduction

Ethical Electric, Inc. is a certified retail electric supplier based in the District of Columbia. Founded in 2011, Ethical Electric is proud to serve residential and small commercial customers in the District of Columbia, Pennsylvania, Delaware, Illinois, Maryland, New Jersey, New York, Ohio, and Massachusetts. Our mission is to switch as many homes and businesses as possible to clean energy, and we provide customers with 100% renewable energy from wind and solar sources. Ethical Electric is a founding member of the Coalition for Community Solar Access ("CCSA") which is a business-led trade organization that works to expand access to clean, local, and affordable energy nationwide through community ("shared") solar.[1] CCSA's mission is to empower energy consumers by increasing their access to affordable, clean energy by maximizing existing opportunities and supporting new markets for community solar. By creating opportunities for all Americans to access solar, CCSA works to make solar available to the vast majority of consumers who do not have that option today.

The Federal Trade Commission ("FTC") seeks to explore competition and consumer protection issues that may arise within the solar industry, and Ethical Electric appreciates the opportunity to provide comments on these issues. As an energy retailer that supplies 100% renewable energy, Ethical Electric is uniquely positioned to offer expertise as both a buyer and seller of renewable energy, including solar distributed generation ("DG"). Ethical Electric supplies our customers with 100% renewable energy by purchasing grid power plus renewable energy certificates ("RECs") on behalf of our customers.[2]

As a purchaser of RECs and solar RECs that also participates in retail energy markets by selling 100% renewable products to energy consumers, Ethical Electric supports policies that ensure customers can easily understand the environmental attributes of their energy. The existence of new business models, such as community solar, and the continual existence of a vibrant REC market are key to enabling all customers' access to renewable energy. Ethical Electric believes that reasonable consumer protections

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[1] For more information about the Coalition for Community Solar Access, please visit http://www.communitysolaraccess.org

[2] Ethical Electric purchases regional wind and solar RECs to match 100% of its customers' usage. The RECs that Ethical Electric purchases are received into regional tracking systems where their retirement is logged along with Ethical Electric's load volume. The tracking systems are fully exportable and provide an auditable trail of all RECs that have been matched to Ethical Electric's customers' usage and then retired.

can help advance the goal of increasing access to renewable energy by allowing customers to make informed decisions, without imposing overly burdensome or stringent rules on businesses in the renewable energy industry.

Our responses and feedback to several of the issues raised by the FTC are provided in the comments below. We appreciate the FTC's consideration of these comments.

Overview of RECs

Central to many of the questions on which the FTC has invited comments is the concept of RECs and their importance when making renewable energy claims. The FTC has previously explained that RECs are "'certificates' that represent the property rights to the environmental, social, and other nonpower qualities of renewable electricity generation."[3] One REC is produced for every one megawatt-hour ("MWh") of electricity that is generated from a renewable energy source like a wind or solar farm.

A REC can be sold together with the grid electricity that is generated from a renewable source ("bundled"), or it can be sold as a stand-alone product and matched by the buyer to its grid energy purchase ("unbundled"). Without the REC, the original source energy is no longer considered to be renewable. Instead, the grid energy that is matched to the REC is considered to have the renewable attributes of the REC. The REC, and not the energy that is produced, is the "renewable" in "renewable energy."

In the Green Guides, the FTC has provided clear guidance on the importance that RECs play when making renewable energy claims, and has advised that disclosure of the use of RECs to substantiate renewable energy claims is not necessary:

> **Example 3:** An automobile company uses 100% non-renewable energy to produce its cars. The company purchases renewable energy certificates to match the non-renewable energy that powers all of the significant manufacturing processes for the seats, but no other parts, of its cars. If the company states, ''The seats of our cars are made with renewable energy,'' the claim would not be deceptive, as long as the company clearly and prominently qualifies the claim such as by specifying the renewable energy source [*e.g.*, wind, solar, etc.].[4]

From this example, it is clear that ownership of the REC is critical for claims about renewable energy. No difference exists in the context of solar DG: renewable energy claims must be based on RECs to be truthful and non-deceptive.

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[3] FTC, *Green Guides: Statement and Basis of Purpose*, at 69 (Oct. 2012), https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguidesstatement.pdf

[4] 16 CFR § 260.15(c) (emphasis added); https://www.gpo.gov/fdsys/pkg/CFR-2015-title16-vol1/xml/CFR-2015-title16-vol1-sec260-15.xml.

Comments on Specific Questions

- **Is it standard practice for solar DG firms to retain renewable energy credits ("RECs") when selling or leasing solar PV panels to consumers?**

It is a standard practice for solar DG firms to maintain ownership of RECs when leasing solar PV panels to consumers. However, ownership does not mean that solar DG firms "retain" or "retire" RECs on behalf of their solar customers. Instead, solar DG firms may sell RECs to other entities, including utilities or energy retailers. Then, utilities and retailers can either retire RECs in compliance with state Renewable Portfolio Standard ("RPS") requirements or bundle RECs with grid power which can then be sold as voluntary renewable energy products.

When consumers purchase a solar PV system for their home or business, ownership of that system entitles them to claim ownership of the RECs produced by the system. However, customers frequently choose to monetize the value of their solar RECs by selling the RECs produced by their system – either directly through a secondary market (such as PJM's Generation Attribute Tracking System "GATS") or to an aggregator or broker.

As further discussed below, regardless of whether the solar DG firm or the consumer takes ownership of the RECs generated by a particular system, the key issue is whether such RECs are *retired* or sold into the REC market. If RECs are sold into the market and then subsequently resold to another end-use purchaser, only the entity ultimately purchasing the RECs can claim to be using renewable power.

- **Is information about RECs material to a consumer's decision to install rooftop solar?**

A technical description or information about RECs is likely not material to consumers' decisions to install rooftop solar and may only serve to confuse consumers. Rather, the environmental benefits of consumers' energy are material, and those benefits can be described in a meaningful, truthful way without discussing the use RECs. As explained by the FTC in its Statement of Basis and Purpose for the Green Guides:

> Most of these commenters also agreed that the disclosure of unbundled RECs likely would not be material to consumers. Rather, consumers likely care about whether their purchase supports renewable energy. There is no evidence that unbundled RECs accomplish this goal any less than direct purchases of renewable energy.[5]

Because the environmental attributes of electricity are material to consumers, claims about renewable energy should only be made by those who have the right to characterize electricity as "renewable."

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[5] FTC, *Statement and Basis of Purpose*, at p. 223 (emphasis added), http://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguidesstatement.pdf.

Here are two examples to illustrate how RECs affect renewable energy claims:

> **(1)** A rooftop solar firm advertises that customers can "power their homes with 100% renewable solar energy" by purchasing rooftop solar systems. The standard purchase contract includes a provision requiring customers to sell the solar RECs that are generated by their systems to the rooftop solar firm. The rooftop solar firm then sells the RECs on a secondary market. Even if customers use the electricity that is generated by their rooftop solar systems, the rooftop solar firm's advertising that customers can "power their homes with 100% renewable solar energy" is deceptive in the absence of RECs to match the customers' energy usage because the right to characterize the electricity as "renewable solar" has been transferred by selling the solar RECs.
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> **(2)** An energy supplier purchases the solar RECs that were sold by the rooftop supplier in Example (1). The energy supplier matches 100% of its customers' usage with the solar RECs that it purchases, and retires the solar RECs. The energy supplier advertises that customers who sign up with it can "power their homes with 100% renewable solar energy." The claim is not deceptive, even if the power supplied to customers' homes from the grid is from non-renewable sources, because the right to characterize electricity as "renewable solar" was transferred to the energy supplier by purchasing the solar RECs and the energy supplier matched 100% of its customers' usage with the solar RECs and retired the RECs.

- **What gaps are there in information for consumers and businesses that are considering rooftop solar?**

A significant gap in information for consumers and businesses that are considering rooftop solar is a lack of awareness about other options to support renewable energy beyond rooftop solar. While rooftop solar presents an opportunity for some consumers, an estimated 49% of households are unable to host a PV system.[6] Further, only an estimated 26% of total rooftop area on small buildings is suitable for PV deployment.[7] Although it can be difficult to determine an exact percentage of rooftops that are solar suitable, rooftop solar is not a viable option for many consumers.

Other options exist for consumers and businesses that want to receive the benefits of renewable energy or support solar development. For example, Ethical Electric supplies 100% renewable wind and solar energy to residential and small business by matching their usage with wind and solar RECs that are retired. By simply signing up with a renewable energy supplier like Ethical Electric, consumers and businesses can achieve the same environmental benefits as if they installed wind and solar generators on their property.

Consumers and businesses can also support the development of new solar facilities through community solar projects. As described by the U.S. Department of Energy:

> Shared solar, also called community solar or solar gardens, is an increasingly popular option for deploying solar technology. Shared solar

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[6] National Renewable Energy Laboratory Report, Shared Solar: Current Landscape, Market Potential, and the Impact of Federal Securities Regulation, April 2016, p. v, available at: http://www.nrel.gov/docs/fy15osti/63892.pdf.

[7] National Renewable Energy Laboratory, Rooftop Solar Photovoltaic Technical Potential in the United States: A Detailed Assessment, January 2016, p. vii, available at: http://www.nrel.gov/docs/fy16osti/65298.pdf.

> projects allow customers that do not have sufficient solar resource, that rent their homes, or that are otherwise unable or unwilling to install solar on their residences or commercial buildings, to buy or lease a portion of a shared solar system. The subscriber's share of the electricity generated by the project is credited to their electricity bill, as if the solar system were located at the home or business.[8]

Ethical Electric believes that information about other options to receive the benefits of renewable energy and support solar development (like renewable energy supply and community solar) would be beneficial to consumers and businesses that are considering rooftop solar.

- **How does regulation affect entry decisions by solar DG firms? What regulatory policies support or discourage entry? Are there barriers to entry not related to regulatory policies? If so, is antitrust enforcement an appropriate tool to address them?**

Aside from state-level policies and regulations that govern net metering, RPS, and REC values, state regulation (or lack thereof) over other variables can have a significant impact on market entry and the overall lifecycle of solar projects. Perhaps the most striking example of this is the interconnection process, which is managed by utilities. The first step to interconnection is to file an interconnection application with the utility. Then, the utility may require an additional study of the particular site selected for the project. For example, in New York, this is called the Coordinated Electric System Interconnection Review ("CESIR"). In one instance, a NY utility initially refused to complete a CESIR study on the basis that the project site and size exceeded a specified percentage of the feeder's capacity. Because of this, a new solar development was delayed months before the utility ultimately agreed that the interconnection could be safely completed.

In another incident, a utility refused to process a set of interconnection applications for a community solar project, asserting that it was unable to do so without a utility account number. Because many consumers will ultimately subscribe to a project, there is not a single account number associated with a community solar project. Getting the utility to resolve this minor issue took months of effort and significant expense.

Although the interconnection applications in the two examples above were ultimately approved, the delay involved in both created significant uncertainty and costs for the developer. This type of difficulty in establishing interconnection has negative impacts on both businesses and consumers seeking to participate in community solar. In many cases, developers may simply choose not to pursue projects that would otherwise be viable because of the uncertainties and costs associated with interconnection.

Often, there are not rules or regulations that require utilities to complete the interconnection process in a specified period of time. Or, where such rules do exist, there is little to no enforcement. This benefits the utility by allowing it to delay interconnection without penalty, to the detriment of developers who are at the mercy of the utility process. The lack of regulation in the interconnection process allows

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[8] U.S. Department of Energy, *Community Renewable Energy*, http://apps3.eere.energy.gov/greenpower/community_development/community_solar_faq.html.

utilities to exert excessive market power and can significantly discourage market entry and harm the development of solar projects.

Conclusion

Renewable energy claims should be based on RECs. If a solar DG firm sells the RECs that are produced by its customers' solar PV systems and does not purchase and retire other RECs to match grid power usage, it is deceptive for the solar DG firm to advertise that its purchasers will receive the benefits of renewable power. Consumers and businesses interested in rooftop solar would benefit from information about other options to receive the benefits of renewable energy and support solar development, including renewable energy supply and community solar.

Respectfully submitted,

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