

WASHINGTON OFFICE
2351 RAYBURN HOUSE OFFICE BUILDING
(202) 225-6231

DISTRICT OFFICE
222 LENOX ROAD, SUITE 1 & 2
BROOKLYN, NY 11226
(718) 267-1142

WEBSITE:
WWW.CLARKE.HOUSE.GOV



Hette A. Clarke
Congress of the United States
9th District of New York

ENERGY & COMMERCE COMMITTEE
SUBCOMMITTEE ON
COMMERCE, MANUFACTURING AND TRADE
SUBCOMMITTEE ON
COMMUNICATION & TECHNOLOGY
SUBCOMMITTEE ON
OVERSIGHT & INVESTIGATIONS
COMMITTEE ON ETHICS
COMMITTEE ON SMALL BUSINESS
SUBCOMMITTEE ON
ECONOMIC GROWTH, TAX AND CAPITOL ACCESS
SUBCOMMITTEE ON
CONTRACTING AND WORKFORCE

June 6, 2016

The Honorable Edith Ramirez
Chairwoman
U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

The Honorable Maureen K. Ohlhausen
Commissioner
U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

The Honorable Terrell McSweeney
Commissioner
U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chairwoman and Commissioners:

I want to thank the Federal Trade Commission (FTC) for convening this workshop entitled "*Something New Under the Sun: Competition and Consumer Protection Issues in Solar Power*" and highlighting the important issues surrounding the discussion on private rooftop solar. I would like to provide comments on our growing concerns about consumer protection as it relates to third-party installers and financiers of rooftop solar systems.

Consumers today are adopting private residential rooftop solar at a record pace. For many homeowners, installing solar panels on their roofs used to be out of reach due to the high upfront costs, which can be in the tens of thousands of dollars. This has changed due to the sharp decline in the costs of solar panels, the rise of federal and state subsidies, and the multiple financing options available to homeowners. These financing options include leasing arrangements and power purchase agreements (PPAs). In leasing arrangements, consumers enter into a contract with a developer/installer and agree to pay for the cost of the panels, generally over a 20-30 year period. With PPAs the developer/installer attaches the solar panels to the homeowner's property and the consumer purchases all of the power produced, at a fixed rate. The consumer takes all of the financial risks inherent in these long-term deals, risks that electricity prices and rate structures may change, that subsidies may go away and the like. The imposition of risks on the customer enables the developer to package and resell these leases to large financial interests, just as mortgage sellers packaged high risk mortgages a decade ago.

With the sharp increase in leasing arrangements, there has been a surge in aggressive sales tactics being used by third party developers/installers. No-money-down solar leases are being aggressively marketed to homeowners through door-to-door sales forces, direct mailers, and on-line advertisements. Too many times the marketing misleads customers by suggesting that solar is “free,” and failing to explain the need to continue to rely on the utility system. This type of marketing does not fully explain to homeowners the risks associated with a 20-30 year solar lease, often overstating expected savings and understating the risks associated with the lease. This has led to a dramatic increase in consumer complaints about abusive or deceptive acts and practices in solar sales, marketing, and financing. This increase in complaints has resulted in class action lawsuits in states such as Louisiana, California, and Nevada; state legislation on consumer protection; and also a number of state attorneys general consumer advisories in Arizona, Louisiana, Connecticut, Mississippi and Vermont. In addition, various state legislators, state agencies, consumer affairs reports, and the Better Business Bureau have received individual written complaints.

For consumers, the contractual commitments that are associated with these solar leasing arrangements closely mirror home mortgages and can potentially expose consumers to many of the same risks that are evident in the credit and home lending markets. Because solar leases vary state by state, and often provider by provider, I believe the FTC should commit resources towards establishing a regulatory framework that will ensure consumers are afforded minimum standards of protections and full contract disclosures. I believe this framework should focus on some of the areas listed below where I feel consumers could truly benefit in knowing all of the information associated with these leasing arrangements.

Overall Cost of the Lease: As was mentioned, sales and marketing materials have been offering potential consumers the option of “no upfront payment” or “zero money down” leasing options when the homeowner is considering the installation of a private rooftop solar system. In many of these cases, the consumer is not fully aware of the true overall cost of the system, not only on a per month basis but also over the entire life of the 20-30 year lease. I believe solar leasing firms should be required to disclose the overall costs of the systems and the effective interest rate similar to what lenders have to do in compliance with the Truth in Lending Act. These disclosures should include information such as total number of payments, frequency, amount, due date, and any interest, including the interest rate (annual percentage rate), associated fees, or other costs.

Escalation Clauses: Consumers should receive full disclosure regarding escalation fees, and should be fully aware of the 20-30 year (or lease period) cost of the lease, including escalation clauses. Solar leasing arrangements generally contain an escalation clause that allows for annual increases in the range of 1-3 percent in the consumer’s monthly payment. Moreover, escalation fees tend to be compounded annually, meaning that if a consumer has a 3 percent escalation rate, the lease rate in year three is not calculated by the original lease amount, but by the lease amount including the previous years’ escalation amounts.

Loss of Tax Benefits: In solar leasing arrangements, because the company is the owner of the solar panels, all federal and state tax credits and benefits go to the leasing company. The amount of tax credits received is based on the company’s valuation of the solar system. Moreover, some states provide direct rebates to consumers who own solar systems, which are not available to the homeowner under a leasing arrangement.

I believe companies should disclose to consumers the value of all of the tax credits, incentives, and rebates. Such disclosures would provide consumers the full value of the benefits they are foregoing by leasing, versus a cash purchase or a loan. Specifically, leasing disclosures should provide estimates of costs and savings based on each financing scenario (lease, loan, cash purchase). Under a loan scenario, the estimate should include the payback period, assumptions under a home equity loan (which could be tax deductible), and consideration of the consumer's tax bracket.

There are also reports that consumers have been advised of their inability to qualify for federal or state tax credits. Analysis of this type, if permitted at all, should come with full disclosures and be provided pursuant to standardized metrics.

The value of tax credits, incentives, and rebates received by solar leasing developers per installation can be as high as \$11,000 to \$17,000 by some estimates, which is close to the actual consumer cost of installing the system. Developers/installers should disclose this loss to consumers under a leasing structure, and consumers should be made aware if there are less costly financing or purchase methods available.

Net Energy Metering: Many consumers are incentivized to lease (or own) solar panels based on state rate setting incentives, known as net energy metering or net metering, that allow consumers to sell their excess solar generation to the local electric power company at the retail price for power and use of the grid infrastructure. Consumers are often unaware that net metering is not a permanent incentive and that independent state regulatory commissions could eliminate or reduce these incentives when updating net metering programs. Nevada regulators were very critical of the fact that even after the state legislature approved the phasing out of net metering, solar companies did not advise their customers of this fact. Companies should fully disclose that current utility rates and rate structures can change that the consumer bears all the risks if the utility price structure is eliminated, changed, or altered prior to lease expiration changes whether there are pending or approved updates that would change or alter the price paid; and identify other jurisdictions where the price paid has changed or been altered or where such changes are under consideration.

Renewable Energy Credits: Many states allow the renewable energy attributes of power supply to be transferred to third parties for a price through the use of renewable energy credits (RECs). When a lessor retains these credits and sells them, the host of a private solar facility is not technically using clean solar power – that attribute is transferred with the REC. While the FTC permits such transactions to take place, many consumers do not even know to ask about this and may be obtaining solar systems under the mistaken belief that they are using “solar power”. Solar companies must be required to disclose information about RECs and identify whether the lessor or customer will retain the credits and thus use “solar power.” They must also explain how the allocation of credits affects the pricing of the system and assure that marketing for solar panels where the seller/lessor retain the RECs fully complies with the requirements of the FTC green guides.

Financing Options Disclosure: Prior to entering a lease, companies should disclose that there may be ways by which the consumer could obtain solar panels, other than through a leasing contract, some of which could be less costly, including through a home equity loan or an FHA Title I home improvement loan.

Power Production Estimates: Estimates of how much power will be generated through private rooftop solar are extremely problematic for consumers, particularly in a leasing scenario. If a solar system underperforms, the consumer remains responsible for the set lease cost, including escalation fees. As such, solar leases should be required to provide minimum power production guarantees, and companies should be required to provide consumers compensation when guarantees are not met. Moreover, contract terms should clearly disclose whether consumers are compensated at the wholesale or retail price for power. Many leases on the market provide production guarantees, but leases vary.

System Maintenance: Solar leases should fully disclose all maintenance costs covered by the company under the leasing agreement. Solar equipment includes a number of different operating parts, some of which have different warranty periods that expire long before the end of the leasing period. Leases may not clearly disclose projected lifetime maintenance and operation costs that are the responsibility of the consumer. Companies should also clearly disclose whether consumers are required to provide additional insurance of any kind; if such insurance is recommended by the solar company, the company should be required to fully disclose affiliations.

Companies should further disclose to consumers whether and when system upgrades will be provided during the 20-30 year lease as technology advances, as well as the cost assigned to the consumer pursuant to the upgrade schedule.

Late Fees: Companies should fully disclose any and all late penalties, associated costs, and what occurs in the event of default. Because different companies provide different provisions and penalties, consumers should be assured that late and default provisions are reasonable.

Estimates of Savings: Solar leasing sales often include projections of electricity price increases as an incentive for consumers to lease solar panels. A number of consumers have complained of inaccurate projections. Companies should fully disclose rate increase calculations and should be required to base such calculations on standardized metrics.

Transfer of Real Estate: Consumers are often unaware of contractual hurdles involving leased solar systems when they buy or sell real estate. As a general rule, owning solar panels is considered a property asset, whereas leasing is a liability. While solar leases are generally transferable to a property buyer, the buyer must be able to qualify with the solar leasing company and be willing to acquire the lease. With many of the current solar leasing firms requiring credit scores generally in the 680-700 range, many sellers run the risk that potential home buyers who qualify for a mortgage do not qualify for the solar lease. Recent home sellers who find qualified buyers have reported that these buyers are reluctant to assume the existing solar lease arrangements. This has caused some consumers to sell their homes for less, buy panels on behalf of the homebuyer, or forego the sale completely.

Rescission: Because of the 20-30 year commitment and cost associated with solar lease contracts, consumers should be provided a reasonable time period – 3 to 5 business days – to affect contract rescission without incurring penalty.

Disclosure of UCC Filing: Consumers are often unaware of Uniform Commercial Code (UCC) filings by their solar leasing company on the leased solar panels on their roofs. Similar to a lien, UCC filings

allow creditors (in this case the solar leasing firm) to notify other creditors (banks or financial firms) about a debtor's assets used as collateral for a secured transaction. UCC filings can be considered an encumbrance on the real estate and has impacted the ability of consumers to effectively refinance their homes. Companies should fully disclose whether they will register a UCC filing on the property in question, and further disclose to the consumer the effect of such a filing.

Again, thank you for holding this workshop and giving me the opportunity to provide comments on what I see as a growing problem. As I noted, I believe the Commission needs to go to greater lengths to ensure that consumers are equipped with all of the relevant information when making the decision of whether or not to install a private rooftop solar system. A regulatory construct focusing on many of the above issues can go a long way towards achieving that goal. Moreover, providing greater information about these issues on the FTC's own website would help in advising consumers to ask the right questions to avoid being misled or misinformed. Thank you for your attention to these issues. Should you have any questions or need any additional information, please feel free to contact Adam Abramson in my office at Adam.Abramson@mail.house.gov or 202-225-6231.

Sincerely,



Yvette D. Clarke
Member of Congress