

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL TRADE COMMISSION**

Solar Electricity Project

:

No. P161200

**THE OFFICE OF THE PEOPLE’S COUNSEL FOR THE DISTRICT OF COLUMBIA’S
COMMENTS ON CONSUMER PROTECTION ISSUES IN SOLAR POWER**

Pursuant to the Federal Trade Commission’s (“FTC” or “the Commission”) Public Notice regarding its one-day workshop, “Something New Under the Sun: Competition and Consumer Protection Issues in Solar Power”, the Office of the People’s Counsel for the District of Columbia (“OPC” or “the Office”) respectfully submits these comments on consumer education and protection issues related to solar energy generation in the District of Columbia (“DC” or “the District”). OPC appreciates the opportunity to provide input and enhance the FTC’s awareness of consumer education and protection issues relevant to DC consumers participating in solar distributed generation.

OPC representatives attended the FTC’s workshop on June 21, 2016 and found it to be a thorough and engaging exchange of information and ideas regarding solar energy deployment in the U.S. The Office applauds the FTC’s efforts to facilitate a robust public discussion on the current state of the solar power industry, competition, solar energy deployment, technological advancements and consumer empowerment.

I. SUMMARY OF COMMENTS

OPC firmly believes that consumer education and protections are crucial for consumer confidence in distributed solar. If consumers are not fully informed about: (1) the most effective process for going solar; (2) how their solar PV (or solar thermal) systems work; (3) their contractual obligations under third-party solar provider agreements; (4) the real financial

costs and benefits of their solar energy systems; and (5) where and how to seek recourse for violation(s) of their consumer rights, the District of Columbia and other jurisdictions across the country will experience limited growth in distributed solar deployment and will fall short of their objectives for increased renewable energy integration. Consumer demand will be the primary driver of expanded adoption of distributed energy resources, such as solar. Therefore, it is imperative that regulators and advocates ensure that the solar energy marketplace is fair and transparent for all involved. With these policy priorities in mind, OPC's comments herein will focus on two key topics: (1) consumer education about the process of installing solar; and (2) the importance of laws and regulations that provide effective consumer protections.

II. COMMENTS

a. Background on the Office of the People's Counsel for the District of Columbia

OPC is an independent agency of the District of Columbia government and is the statutory representative for District consumers of electric, natural gas and telecommunications services before the Public Service Commission of the District of Columbia ("DC PSC") and federal agencies such as the Federal Energy Regulatory Commission ("FERC"), the Federal Communications Commission ("FCC"), the U.S. Environmental Protection Agency ("EPA") and the PJM Interconnection stakeholder process.¹ OPC is statutorily mandated to advocate on behalf of DC utility consumers for just and reasonable rates and quality service. Attendant responsibilities include consideration of the public safety, the economy, the conservation of natural resources and the preservation of environmental quality when taking positions on matters pertaining to the operation of energy companies in the District and consumer education.²

¹ D.C. Code § 34-804 (d) (2010).

² D.C. Code § 34-804 (d, e) (2010).

OPC has a long and consistent history in promoting energy efficiency, and renewable energy and sustainability policies in the District of Columbia. OPC has been entrenched in the discourse about sustainable energy for many years, as reflected by our decades-old involvement and support of energy conservation, integrated resource planning, and more recently, renewable energy and sustainability policies. OPC has been a longstanding supporter of expanding access to renewable energy – particularly solar energy – to more District consumers.

As a staunch supporter of clean energy for the District, the People’s Counsel established the Energy Efficiency and Sustainability Section (“EES”) in OPC. EES recommends legislative, policy and outreach strategies for the Office to achieve, among other things, increased awareness among the broad base of DC consumers in all wards of the city and at all income levels about: (1) energy efficiency, renewable and sustainable energy opportunities; and (2) cost-effective measures that will enable consumers to capitalize on and participate in the development of clean energy technology.

The Office believes that the integration of distributed generation (“DG”) resources, such as solar photovoltaic systems (“solar PV”) and solar thermal systems, is an important part of advancing the District’s goal of a sustainable energy future for all of its residents. The People’s Counsel has consistently advocated for renewable energy policies that promote equity, affordability, environmental responsibility and reliability in support of the District’s sustainability goals. For example, OPC strongly supported several clean energy legislative initiatives at the Council for the District of Columbia over the past several years. These initiatives include but are not limited to: the Community Renewable Energy Amendment Act of 2013³, the Sustainable DC Omnibus Amendment Act of 2014⁴, the Renewable Portfolio

³ D.C. Law 20-47. The Community Renewable Energy Amendment Act established community net metering to enable the development of community-shared renewable energy facilities throughout the District.

Standard Amendment Act of 2014⁵ and the Renewable Portfolio Standard Expansion Amendment Act of 2016⁶.

Further, OPC is currently conducting the first ever Value of Solar study for the District of Columbia. The study will comprehensively assess the city’s solar capacity from a topographical, economic and population standpoint; rate design and incentives; as well as all of the costs and benefits of solar. Specifically, the study will evaluate the District of Columbia’s current net metering policies; assess the costs and benefits – including quantification of social, health, and environmental benefits of solar – of distributed solar energy generation in the District of Columbia and the regional transmission grid; and provide a framework for determining a rate design approach that can facilitate solar deployment with minimal negative impact on ratepayers not participating in solar energy generation.

OPC’s Value of Solar study will also include an empirical assessment of opportunities for increased participation in solar energy generation by low-income residents in DC. Equitable access to solar, irrespective of income, class or residency, is a top policy priority for the Office. In this report, OPC will provide a concrete, navigable pathway for DC to make solar energy

Community net metering removes the barrier of home ownership from solar energy generation. It allows renters, low-income residents and others to subscribe to a portion of a renewable energy facility and receive a monthly credit for the energy their portion generates.

⁴ D.C. Law 20-142. In furtherance of the city’s Sustainable DC Plan, the Sustainable DC Omnibus Act of 2014 contains a wide array of provisions that facilitate greater sustainable business practices, improved air quality and environmental stewardship such as the styrofoam ban, environmental literacy in DC Public Schools, beekeeping and radon screening. The law also included important energy benchmarking provisions which addressed transfer of data concerns.

⁵ D.C. Law 20-245. The Renewable Portfolio Standard Amendment Act of 2014 eliminated “black liquor” – a toxic by-product of the paper mill industry – from the list of Tier 1 resources under the District’s Renewable Energy Portfolio Standard.

⁶ D.C. Act 21-466. This summer, the DC Council passed and the Mayor signed legislation enlarging the targets in DC’s RPS. The legislation increases the renewable energy mandate for the District energy portfolio to 50% by 2032, with a 5% solar carve-out. The legislation also establishes the “Solar for All” program focused on increasing solar energy deployment in low-income households. The legislation is now awaiting Congressional approval.

generation a reality for all. Notwithstanding the fact that demand for solar has increased among all socio-economic groups over the past few years, there yet remains a significant disparity between solar deployment in low-income communities and solar generation in middle to higher-income neighborhoods in DC. OPC expects the Value of Solar study will assist policymakers, regulators and community leaders in designing programs that will more effectively deploy solar in low-income households.

b. Consumer Education is Vital for Consumer Confidence in Solar Energy

While the District has seen substantial growth in solar PV installations, in recent years, OPC believes that there must be a coordinated effort among solar companies, government agencies and community organizations to enhance consumer education about the process of going solar. There is a great deal of enthusiasm about solar energy in DC. However, the vast majority of everyday homeowners still do not know the steps to take to install solar and reap the most benefits from their investment in solar. OPC believes the lack of understanding about solar power is a significant barrier to consumer participation in solar energy generation. Further, any solar education campaign must be targeted to reach a broad range of potential customers, including low-income consumers and seniors. Appropriate venues where these consumers can be reached should be identified. The communications utilized in such education campaigns must be lay-friendly.

Before consumers make the decision to purchase or lease a solar power system, it is essential that they have a solid understanding of both the process for solar installation and their options for maximizing their energy savings through solar power generation. While the following is by no means an exhaustive catalog of solar consumer education issues, they represent a few categories of information that consumers need in the process of going solar.

First, energy efficiency should always be the prerequisite for optimizing the value of solar for consumers. OPC has always maintained that making energy efficiency improvements is the first and most important step to going solar. When considering installing a solar PV system, consumers should first be advised to conduct an energy audit of their homes. Making any necessary energy efficiency improvements such as installing new windows, insulating the attic or replacing a deteriorating roof are useful measures consumers can take to ensure that they get the most value for the energy that any solar panels they install will generate. Many jurisdictions across the U.S. have energy efficiency rebate programs and other funding opportunities to help finance residential energy efficiency improvements. For example, in the District, the DC Sustainable Energy Utility⁷ offers rebates for home improvement upgrades through their DC Home Performance Program. Providing homeowners with information about energy efficiency will empower consumers to make informed decisions about their homes' energy consumption, reduce the carbon footprint of their properties, reduce energy expenses and reduce the size and cost of their solar PV installations.

OPC believes that if solar companies and government energy agencies skip the step of informing consumers about the need for an energy audit and related improvements, consumers could be misled to purchase solar energy systems that are larger and more costly than necessary to meet their energy needs. Neglecting to inform the public of the necessity of a home energy audit could open the door for solar companies to take advantage of unsuspecting consumers by oversizing their solar PV systems for a greater profit. OPC supports policies that encourage coordination between energy efficiency programs and funding and solar programs. Additionally,

⁷ Established by the Clean and Affordable Energy Act of 2008, the DC Sustainable Energy Utility is an entity operated by a private company under contract to the District Department of Energy & Environment (DOEE). The Sustainable Energy Utility is responsible for administering renewable energy and energy efficiency programs in the District. See <https://www.dcseu.com/about-dcseu>.

OPC generally supports policies that require solar installers to disclose to consumers the importance of conducting an energy audit before purchasing or leasing a solar power system.

Second, with disclosures about energy efficiency, OPC believes that consumers should be fully informed about the true financial costs and benefits of installing solar PV. In order for consumers to realize the full value of solar, they should be educated about all of the financial incentives and electricity consumption factors relevant to their property. For example, they should be made aware of any tax credits, federal or local rebates, as well as solar renewable energy credits (“SRECs”). Consumers should have a full portrait of their average monthly and annual electricity consumption and the monthly credits they would receive from their utility for solar energy generation. Further, consumers should receive basic education about how potential changes in electricity rates could impact the net metering credits they receive.

Third, and most importantly, OPC believes that solar companies should be required to explain to consumers in plain language, the financial benefits and costs they would incur depending on the type of contractual relationship they enter into with a solar provider. OPC is aware that there is significant confusion among residential consumers about solar leasing and power purchase agreements, as opposed to full ownership of solar energy systems. For example, many are not informed that with solar leasing, solar companies get to reap the annual monetary value of solar renewable energy credits generated from consumers’ systems. In jurisdictions such as DC, where the value of solar renewable energy credits is very high, consumers who opt to lease their solar energy systems cannot enjoy the full value of the solar energy their systems provide to the grid. Certainly, OPC does not dispute the fact that leasing allows for more consumers to participate in solar energy generation without having to make front-end capital investments. However, OPC generally encourages greater transparency by

solar companies – including candid discussions about payback periods for purchased solar panels system –in their communications and arms-length dealings with consumers so that consumers can make informed choices for their households.

c. Consumer Protections are Essential to Growth of the Solar Marketplace

OPC strongly believes that any discussion about expanded solar energy deployment by third-party solar companies must include a meaningful review of the regulatory authority of local public utility commissions and state consumer protection agencies to enforce the rights of solar customers, moving forward. Increased integration of distributed solar energy into the grid and expanded use of various complementary distributed energy resource technologies, such as battery storage, microgrids and electric vehicles will, by definition, mean that there will be many more options and players involved in energy-delivery service. The anticipated growth in the number of energy-market participants will certainly broaden customer choice but, at the same time, could lead to consumer confusion and misinformation regarding the financial and contractual arrangements available to them. Further, consumers could be exposed to predatory sales and marketing practices by less scrupulous solar companies without effective means for recourse. Such predatory practices are certainly not limited to solar companies but have been a consistent problem with third-party energy suppliers of gas and electricity. Many states have enacted consumer protections to address abusive and unscrupulous behavior by these companies.

Reasonable oversight by appropriate government and regulatory agencies over solar energy providers will be critical to ensuring consumers' rights are adequately protected. Although the solar industry has recently begun to establish solar business codes of conduct and guidelines for educating consumers,⁸ OPC believes that relying on solar companies' efforts to

⁸ See e.g., Interstate Renewable Energy Council, *IREC's Clean Energy Consumer Bill of Rights*, available at: <http://www.irecusa.org/consumer/bill-of-rights.pdf>; Solar Energy Industries Association, *SEIA Solar Business Code*,

self-regulate would not be prudent nor sufficient to protect consumers, particularly during the nascent deployment period.

Two years ago, OPC, along with members of the DER Committee of the National Association of State Utility Consumer Advocates (“NASUCA”), authored a resolution recommending consumer protections for DER customers—that is, NASUCA Resolution 2014-05: “Urging Broad Consumer Protections for Distributed Generation Customers” (“Resolution 2014-05”).⁹ Specifically, Resolution 2014-05 identified the following sampling of issues that have been raised in consumer complaints nationally:

1. Fraudulent and deceptive business practices by DG providers, such as misrepresentation of the potential energy output of the DG system, exaggeration of the value of the DG system, and withholding information or misleading customers regarding information related to property repairs or upgrades necessary for installation of the DG system;
2. Improperly installed DG systems, including poor workmanship or systems failing to meet interconnection requirements which can result in safety hazards;
3. Unfulfilled contract obligations, such as third-party DG providers’ failure to maintain or repair the system pursuant to contract terms;
4. Limits on consumer legal remedies, such as mandatory arbitration clauses and unfair limits on damages that DG customers could be awarded in a legal dispute with third-party DG providers; and
5. Inadequate disclosure of contract terms, such as failure of third-party DG providers to engage the DG consumer in a true “arm’s length” transaction where the consumer is fully aware of their obligations under the contract.

Resolution 2014-05 at 2.

The issues identified in NASUCA’s Resolution 2014-05 underscore the need for broad District- and nation-wide consumer protections for DER customers.

September 2015, available at: <http://www.seia.org/policy/consumer-protection/seia-solar-business-code>; Solar Energy Industries Association, *Residential Consumer Guide to Solar Power*, June 2015, available at: <http://www.seia.org/research-resources/residential-consumer-guide-solar-power>.

⁹ National Association of State Utility Consumer Advocates, *Resolution 2014-05: Urging Broad Consumer Protection for Distributed Generation Customers*, Approved Nov. 18, 2014, available at: <http://nasuca.org/protectations-for-distributed-generation-customers-2014-05/>.

Further, Resolution 2014-05 calls for state legislatures to delineate the jurisdiction of state public utility commissions over DER providers and the ability of public utility commissions to investigate and authorize remedies for consumer complaints. OPC believes there should be greater protections for solar customers in several areas—including, but not limited to, standardized contract terms and disclosures, sales and marketing conduct, and investigations and enforcement with respect to consumer complaints.¹⁰ Without hesitation, the Office firmly believes that consumer protections are an integral component of the solar energy deployment process. Unless there are adequate consumer protections for solar participants and meaningful avenues for consumers to seek redress when their rights are violated, bad actors in the marketplace could cause significant harm and undermine the progress and good will of the solar industry.

III. CONCLUSION

OPC appreciates the opportunity to provide comments to the Federal Trade Commission, and requests that the FTC give full consideration to the issues raised herein in its efforts to determine the role of the FTC in setting standards for consumer education and protection in the solar energy marketplace.

Respectfully submitted,

s/ signed electronically
Sandra Mattavous-Frye, Esq.
People's Counsel

¹⁰ See generally, Barbara Alexander and Janee Briesemeister, Solar Power on the Roof and in the Neighborhood: Recommendations for Consumer Protection Policies, March 2016.

Nicole W. Sitaraman, Esq.
Assistant People's Counsel
Office of the People's Counsel for the District of
Columbia
1133 15th Street, NW, Suite 500
Washington, DC 20005
Tel.: [202-727-3071](tel:202-727-3071)
Fax: [202-727-1014](tel:202-727-1014)
Email: nsitaraman@opc-dc.gov

Date: August 22, 2016