

C A M P A I G N F O R ACCOUNTABILITY

March 29, 2017

The Honorable Ellen F. Rosenblum
Attorney General
State of Oregon
1162 Court Street NE
Salem, OR 97301-4096

By Email: help@oregonconsumer.gov

Re: Violations of Oregon's Unfair Trade Practices Act

Dear Madame Attorney General:

Campaign for Accountability (CfA) requests that you open an investigation into companies that provide solar panels to individual homes in Oregon. A review of the extensive consumer complaints filed with the Office of the Attorney General ("OAG") reveals many of these companies have engaged in false and misleading acts in the marketing and sale or lease of solar panels, in apparent violation of Oregon law.

Background

In response to a public information request submitted by CfA asking for complaints pertaining to the sale or leasing of solar panels and their installation on the roofs of customers' homes from 2012 through the present, OAG released 58 complaint files¹. Oregon residents identified numerous companies that had provided poor or inadequate service, falsely represented the savings the customers would realize from solar power, lured them in with low price quotes that later proved to be false, required them to sign confusing contracts, and/or performed shoddy installation of the solar panels. The largest number of complaints was lodged against SolarCity.

It appears from many of the complaints that these companies promised significant savings in customers' monthly utility bills with the installation of rooftop solar panels, but those savings never materialized. Some complainants reported possible hardships faced when trying to sell their homes. Finally, one complainant reported that the company SolarTek appears to prey on senior citizens.

Several customers of SolarCity reported that the company promised significant savings in customers' monthly utility bills with the installation of rooftop solar panels, but those savings never materialized. For example, one SolarCity customer (FF7882-15) stated that the company repeatedly told him the maximum amount he would ever be charged per month was \$76.63.² In

¹ Some of the complaints released pre-date the contours of our request.

² Complaint against SolarCity, December 15, 2015, attached as Exhibit A.

fact, he was, charged an additional \$75/month to prepay the cost of an Oregon tax credit. The customer complained, "This system costs me more than I would have paid PGE. I would have never agreed to any of this if they had been up front about what the monthly bill would really be. I don't believe they were dealing in good faith when selling the system."³

Another SolarCity customer (FF4608-14) reported that his monthly bill was nearly double what the company had promised.⁴ He reported that he maintained his current energy usage, but SolarCity wanted to charge him for what it claimed was his additional energy use. SolarCity set up the customer's solar system utilizing the state's Feed-in Tariffs (FIT) program. The customer later wrote, "I believe Solar City should be investigated to see if similar problems exist with other consumers using the FIT option for power with PGE. It is my contention that Solar City is benefiting financially and using the ignorance of consumers to its advantage."⁵

Yet another SolarCity customer (FF5824-15) reported the company had failed to fill out the proper paperwork to allow the customer to receive \$1,500 in tax rebates.⁶ The customer contacted the company numerous time over several months, but the company refused to cover the cost of the tax incentives. Only after OAG intervened did the company agree to reimburse the loss.⁷

A woman purchasing a house with solar panels installed by SolarCity repeatedly tried to contact the company to ask questions before sale was completed, but the company refused to provide any information.⁸ (FF1347-15) Once the sale was completed, she alleged the company forced her to lease the panels herself. Later, when she sought to sell the property, SolarCity informed her she would have to pay out the remaining amount on the lease, \$9,000, if the new owner did not assume it. The complainant ultimately transferred the lease to the new owner of the house.⁹

Another SolarCity customer (FF7290-15) reported the company failed to submit an accurate invoice to her for 18 months.¹⁰ Despite numerous efforts to clear the matter up, SolarCity repeatedly refused to honor the terms of the agreement. This matter, too, finally was resolved with the assistance of the OAG.¹¹

One complainant (FF1588-12) specifically alerted OAG about the disturbing business practices of National Solar.¹² The company promised the homeowners they would receive tax

³ *Id.*

⁴ Complaint against SolarCity, July 19, 2014, attached as Exhibit B.

⁵ Follow-up Email from SolarCity Customer, August 12, 2014, attached as Exhibit C.

⁶ Complaint against SolarCity, September 14, 2014, attached as Exhibit D.

⁷ Letter from SolarCity to Customer, October 16, 2014, attached as Exhibit E.

⁸ Complaint against SolarCity, February 23, 2015, attached as Exhibit F.

⁹ Letter from SolarCity to Customer, March 26, 2015, attached as Exhibit G.

¹⁰ Complaint against SolarCity, November 19, 2015, attached as Exhibit H.

¹¹ Letter from SolarCity to Customer, January 27, 2016, attached as Exhibit I.

¹² Complaint against National Solar, February 13, 2012, attached as Exhibit J.

rebates totaling \$14,593. Based on that representation, the customers agreed to finance the remaining \$13,368. Nearly a year later, when paying their taxes, the consumers discovered they were not, in fact, eligible for the tax rebate. Despite admitting during settlement negotiations with the complainants that such rebates did not exist, National Solar continued to advertise the costs savings available through the tax rebates.¹³ The company eventually agreed to cover the cost of the tax credits for the complainant after the OAG became involved, allegedly to avoid “any bad publicity.”¹⁴

Another National Solar customer, (FF3716-10) stated the company’s salesperson had misrepresented the terms of the agreement.¹⁵ He and his wife had not expected to be locked into the contract until they had obtained financing (from a company referred by National Solar), but when they tried to rescind after receiving the loan documents and being surprised by the terms, the company refused to cancel the contract. Unable to afford the \$7,000 cancellation fee, they reluctantly signed the loan agreement.¹⁶ The customers complained, “It is our belief that National Solar still refuses to accept that their salesmen mis- represented (sic) the program and is simply putting their spin on the situation.”¹⁷

Finally, one complainant (FF2860-10) alerted OAG to Solar Tech Energy International’s efforts to fraudulently target senior citizens.¹⁸ The company invited the complainant to a free dinner attended largely by people in their 80s and promised savings of 20 to 30 percent on the customers’ utility bills. The consumer signed up for the service, but rescinded two days later after learning about the company’s negative reputation, reporting:

Our concern is that a select group of people, senior citizens, who may be on a limited income, is being targeted with what appears to be a scam. It seems the product does not provide savings but instead causes mold problems. In addition, because of their age, senior citizens may not benefit from any cost savings from the product.¹⁹

Potential Violations of Law

Oregon’s Unlawful Trade Practices Act (“UTPA”), ORS § 646.607, provides that a person engages in an unlawful trade practice by employing an “unconscionable tactic in connection with selling, renting or disposing of real estate, good or services, or collecting or enforcing and obligation;” or by failing “to deliver all or any portion of real estate, goods or services as promised.” Specifically, pursuant to ORS § 646.608, prohibited actions include, *inter alia*:

¹³ Follow-up Letter from Complainant, March 30 2012, attached as Exhibit K.

¹⁴ *Id.*

¹⁵ Complaint against National Solar, April 13, 2010, attached as Exhibit L.

¹⁶ Follow-up Email from Customer, May 17, 2010, attached as Exhibit M.

¹⁷ *Id.*

¹⁸ Complaint against Solar Tech Energy International, March 22 2010, attached as Exhibit N.

¹⁹ *Id.*

- (e) representing that real estate, goods, or services have characteristics or benefits they do not have;
- (k) making false or misleading representations concerning credit availability or nature of the transaction or obligation incurred; and
- (s) making false or misleading representations of fact concerning the offering price of, or person's cost for real estate, goods, or services.

The practices of numerous solar companies outlined in the complaints filed with your office appear to violate these statutory provisions. By falsely representing the savings and rebates customers would receive from solar energy roof panels and the overall impact of solar energy as a more cost-effective energy alternative, companies like SolarCity appear to have violated the UTPA.

Further, the complaints reflect the harsh reality that solar companies operating in Oregon often take advantage of vulnerable populations: the elderly and those living on fixed incomes. As a result, the impacts of these apparently fraudulent practices are all the more devastating, leaving customers with even higher monthly utility costs and loans that often exceed what they can afford to pay, and plunging them into a cycle of debt.

These problems are exacerbated by the one-sided contracts of adhesion those who purchase or lease solar roof panels are required to sign. When considering whether a contract is unconscionable, Oregon courts consider both procedural and substantive factors. *Bagley v. Mt. Bachelor, Inc.*, 356 Ore. 543, 340 P.3d 27, 35 (2104); *Vasquez-Lopez v. Beneficial Oregon, Inc.*, 210 Ore. App. 553, 152 P.3d 940, 948 (2007). Procedurally, Oregon courts look for oppression and surprise: was there inequality in the bargaining power of the parties to the contract, resulting in no real opportunity to negotiate the terms and an absence of meaningful choice; and to what extent were the supposedly agreed upon terms hidden from the party seeking to void the contract. *Id.* "Gross inequality of bargaining power, a take-it-or-leave it bargaining stance, and the fact that a contract involves a consumer transaction can be evidence of oppression." *Bagley* at 35. Substantive unconscionability focuses on "whether the substantive terms contravene the public interest or public policy." *Id.*

The solar company contracts that complainants submitted to the OAG have the earmarks of contracts of adhesion: the bargaining power of the parties is unequal, there is no opportunity to negotiate the terms, and the contracts involve consumer transactions. Based on the apparent fraud solar companies use to induce customers to sign these unequal contracts, an investigation is warranted not only into whether specific contracts should be voided, but whether the terms of these contracts are against the public interest overall.

Conclusion

Solar companies operating in Oregon are employing a variety of strategies and practices that may enhance their bottom line, but are leaving customers frustrated, unhappy, and facing even bigger utility bills. Laws like the Oregon Unlawful Trade Practices Act protect against the kinds of fraudulent practices that seem so prevalent in the solar energy industry, but their utility depends on more aggressive enforcement. In many cases the OAG has intervened, assisting consumers to negotiate some sort of settlement. There likely, however, are many other instances where consumers have been victimized, but may not have been aware they could seek assistance from the OAG. In any event, this appears to be a systemic problem, requiring a broader inquiry and solution.

Other watchdog organizations share our concerns. Last August, Public Citizen, submitted comments to the Federal Trade Commission criticizing the arbitration clauses included in rooftop solar contracts and noting that solar leasing arrangements pose “significant financial risks for families.”²⁰ Around the same time, the National Consumer Law Center submitted comments to the Consumer Financial Protection Bureau, urging the agency to take action to protect low-income consumers citing, among other things, a dramatic increase in leases for solar panels “and extensive complaints of false claims as to the savings with such panels and the terms of the leases.”²¹

CfA therefore requests that your office launch a statewide investigation into the consumer practices of solar energy companies, drawing on the many examples found in the complaints lodged with your office. If these companies are violating Oregon law, they must be held accountable.

Sincerely,



Daniel E. Stevens
Executive Director

²⁰ Letter from Tyson Slocum, Energy Program Director, Public Citizen, to Edith Ramirez, Chairwoman, Federal Trade Commission, August 22, 2016, *available at* <https://www.citizen.org/documents/federal-trade-commission-comments-solar-consumer-protections-august-2016.pdf>.

²¹ National Consumer Law Center, Comments to the Consumer Financial Protection Bureau regarding Arbitration Agreements, at 29, August 22, 2016, *available at* <https://www.nclc.org/images/pdf/arbitration/comments-arbitration-agreements-2016.pdf>.