

C A M P A I G N F O R

ACCOUNTABILITY

July 19, 2017

Thomas B. Pahl
Acting Director
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Violations of the Federal Trade Commission Act

Dear Acting Director Pahl,

Campaign for Accountability (CfA), respectfully requests the Federal Trade Commission (FTC) open an investigation into companies that lease and sell rooftop solar panels to consumers across the United States. A review of the extensive consumer complaints filed with the Federal Trade Commission (FTC) as well as those filed with multiple state attorneys general reveals that many of these companies have engaged in false and deceptive marketing in potential violation of the Federal Trade Commission Act.

FTC Oversight

Last summer, the FTC hosted a one-day public workshop entitled *Something New Under the Sun: Competition & Consumer Protection Issues in Solar Energy*, which explored consumer protection issues stemming from the installation of rooftop solar panels on residential properties.¹ Then-FTC Chairwoman Edith Ramirez stated in her opening remarks that she hoped the public workshop would “help policymakers assess how best to protect consumers in connection with their purchase, installation, and use of rooftop solar.”²

Consumer protection is all the more urgent in light of the astounding growth of the residential solar panels industry. Thomas Kimbis, the interim president of the Solar Energy Industries Association (SEIA) told the conference, “it took 40 years to celebrate the one millionth solar panel in the United States, which we proudly did [in 2016], and yet, it's only going to take 24 months to hit that second million.”³

¹ *Something New Under the Sun: Competition & Consumer Protection Issues in Solar Energy*, *Federal Trade Commission*, June 21, 2016, available at <https://www.ftc.gov/news-events/events-calendar/2016/06/something-new-under-sun-competition-consumer-protection-issues>.

² Workshop Transcript, *Something New Under the Sun: Competition & Consumer Protection Issues in Solar Energy*, *Federal Trade Commission*, at 4, June 21, 2016, available at https://www.ftc.gov/system/files/documents/public_events/943943/solar_workshop_transcript.pdf.

³ *Id.* at 161.

During a panel entitled “Shining the Light on Consumer Protection Issues and Rooftop Solar,” consumer and industry groups identified several consumer protection issues in the solar industry. Specifically, panelists discussed problems stemming from confusing contracts that require binding arbitration, false and misleading advertisements, and the financial manipulation of long-term lease agreements.⁴ Shennan Kavanagh, the deputy chief of the Massachusetts Attorney General Office’s Consumer Protection Division raised concerns about whether consumers understand the possible consequences of selling a home that has rooftop solar panels installed. She also noted that solar companies offer contracts where tax credits are assigned to the company itself, not the consumer, but the consumer is often unaware of the arrangement.⁵

Following up on the FTC workshop, watchdog groups submitted comments. Public Citizen questioned the arbitration clauses included in rooftop solar contracts and noted solar leasing arrangements pose “significant financial risks for families.”⁶ The National Consumer Law Center (NCLC) also weighed in, urging the Consumer Financial Protection Bureau (CFPB) 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.”⁷

Following up on these actions, CfA launched an investigation into the issues raised by Public Citizen and NCLC, submitting open records requests in a number of states, as well as to the FTC, seeking complaints pertaining to the sale or leasing of residential rooftop solar panels and their installation from 2012 to the present.⁸ CfA’s review reveals that American consumers have identified numerous companies that have 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.

SEC Investigation

Following CfA’s investigation, the Securities and Exchange Commission (SEC) launched its own inquiry into whether solar companies are masking the number of customers who have cancelled contracts after signing up for rooftop solar systems.⁹ Investors use this cancellation metric as one way to gauge the quality of a company’s products and services. While the SEC’s action is a positive development, the agency is charged with protecting shareholders, not

⁴ *Id.* at 154.

⁵ *Id.* at 165.

⁶ 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/sites/default/files/federal-trade-commission-comments-solar-consumer-protections-august-2016.pdf>.

⁷ 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>.

⁸ <https://campaignforaccountability.org/cfas-investigation-into-the-solar-industry/>.

⁹ Kirsten Grind, SEC Probes Solar Companies Over Disclosure of Customer Cancellations, *The Wall Street Journal*, May 3, 2017, available at <https://www.wsj.com/articles/sec-probes-solar-companies-over-disclosure-of-customer-cancellations-1493803801>.

consumers. As it is the FTC's mission to protect consumers, the commission should open an inquiry into the widespread abusive tactics of the rooftop solar industry.

Background

In response to CfA's Freedom of Information Act request for complaints pertaining to the sale or leasing of solar panels and their installation on the roofs of customers' homes from 2012 to the present, the FTC released a total of 1,219 complaints.¹⁰ Consumers 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 majority of these FTC complaints are separate and apart from the complaints consumers have filed in states, often with their attorneys general.

FTC complaints – like state complaints – reveal that many consumers allege solar companies have pledged installation of rooftop solar panels would result in significantly lower monthly utility bills, but those savings never materialize. For example, one customer (57039798) wrote that he signed an agreement with GCI Solar for a lease with Clean Power Finance, acting as an agent for MySolar Management, to provide solar power to his home. The customer was told to expect a reduction of between \$15-to-\$35-a-month on his electric bill. In fact, however, the consumer reported paying \$325 *more* in electric costs during the first year with the new system, leaving him “disappointed and disturbed with the dishonesty” of the solar company. He told the FTC that, “going green was that worst choice he could have made for his family.”¹¹

In another complaint (57181428), a consumer stated that he purchased a solar system from GCI Solar System after the company convinced him the system would save him money, but again, the pledged savings never materialized and, instead, his monthly electricity bills had increased. When he contacted the company, he was told he was required to pay \$97 every month for 20 years regardless of how the system performed.¹²

Many customers claimed that companies deceived them into signing misleading contracts and required them to adhere to the contracts' terms without delivering the promised services. In a complaint about Sunrun, one customer (46446599) reported that she had been deceived into signing up for services that the company failed to provide. Then, when attempting to cancel the service, she was informed that she could not because she had signed a 25-year contract with the company that could not be terminated absent a fee.¹³

One SolarCity customer (75036329) reported that the company lied about several aspects of its contract. Among other things, an agent told the customer that the contract could be easily

¹⁰ The allegations in a number of the complaints released were unrelated to solar panels.

¹¹ Complaint against GCI Solar/MySolar Management/Clean Power Finance, October 22, 2014, attached as Exhibit A.

¹² Complaint against CGI Solar, October 29, 2014, attached as Exhibit B.

¹³ Complaint against Sunrun, June 11, 2013, attached as Exhibit C.

cancelled for a \$500 fee; that SolarCity would replace the solar panels every five to seven years; and that the rate listed in the contract was the maximum amount the customer would be charged. After the panels were installed, the customer discovered all these statements were false: he was charged a higher rate than promised and had no way to rescind the contract without purchasing all the equipment at a cost of \$24,500.¹⁴

Another SolarCity customer (54901504) said the company tricked her into signing a 20-year lease for solar panels when she thought she had simply requested an onsite consultation. She alleged that the sales representative had misled her, failing to properly explain the terms of the agreement. Then, when she tried to cancel the contract, neither the sales representative nor the regional manager would process her request, leaving her without “peace of mind” that the contract had been cancelled.¹⁵

Several customers reported problems trying to either buy or sell a home on which solar panels were installed.¹⁶ One SolarCity customer in Arizona (64512932) reported the company’s sales agent had lied to persuade her family to install solar panels by telling them that if her husband’s job required them to relocate and sell their house, SolarCity would allow them to either transfer the panels to a new home for a \$1,000 fee, retrieve the panels at no charge, or transfer the panels to new owner.¹⁷ When her husband considered a transfer to Boise, Idaho, the family discovered that none of promised options were available. When contacted, SolarCity refused to respond even ignoring a complaint filed with the company’s consumer complaint division.

A Vivint Solar customer (69516444) reported that she had trouble refinancing her home mortgage because she had installed solar panels on her home.¹⁸ The customer said the solar panel contract she signed did not adhere to FHA guidelines, making it impossible for her to refinance her mortgage. When she tried to add an addendum to the contract to meet FHA guidelines, the company refused to sign the agreement. Another Vivint customer (45984955) customer reported that the company came to his house and opened an inquiry into his credit account without his permission.¹⁹

A Sunnova customer (70880500) alleged the company had prevented the family from settling their father’s estate. Because the solar panels on their father’s house had been leased, Sunnova placed a lien on the house, preventing the complainant from selling it.²⁰ When the complainant inquired how much it would cost to buy the panels out right, so that the company would lift the lien, Sunnova refused to respond to the complainant’s inquiries.

Finally, an elderly couple who bought panels from SolarCity (58545912) complained they had agreed to purchase solar panels in October 2013 but had not yet received them as of

¹⁴ Complaint against SolarCity, August 4, 2016, attached as Exhibit D.

¹⁵ Complaint against SolarCity, July 19, 2014, attached as Exhibit E.

¹⁶ Oregon customers reported similar problems to the Oregon Attorney General. *See* <http://www.documentcloud.org/documents/3527129-CfA-Oregon-Solar-Letter-W-Exhibits-3-29-17.html>.

¹⁷ Complaint against SolarCity, July 22, 2015, attached as Exhibit F.

¹⁸ Complaint against Vivint Solar, February 11, 2016, attached as Exhibit G.

¹⁹ Complaint against Vivint Solar, May 21, 2013, attached as Exhibit H.

²⁰ Complaint against Sunnova, January 22, 2016, attached as Exhibit I.

December 2014.²¹ After signing the contract, they didn't hear from SolarCity for several months, after which, the company notified them that they would have to pay \$1,500 to replace their roof where the solar panels would be installed. After challenging the company's assessment, SolarCity agreed to replace the roof for free. Several additional months later, the company told the couple that they would be charged \$7,000 for an upgrade they had not requested. More than a year after they signed the contract, the couple told the FTC, they still had not received their solar panels.

Potential Violations of Law

As you know, Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45, prohibits unfair or deceptive acts or practices in or affecting commerce. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the Act. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale or lease and the sale or lease of solar panels, solar companies have represented, directly or indirectly, expressly or by implication, that consumers will save money on their utility bills by installing solar panels.

Further, it appears that in numerous instances, solar companies have failed to disclose, or to disclose adequately to consumers, material terms and conditions of the offers made to them, such as what would happen when a consumer wanted to sell a house that included leased solar panels, consumers' rights to rescind the contracts, and the costs associated with rescission. Such failures may constitute a deceptive act or practice in violation of 15 U.S.C. 45(a).

The complaints reflect the harsh reality that solar companies operating across the country often take advantage of particularly vulnerable populations. Many of the complaints CfA reviewed were filed by the elderly, veterans, and people for whom English was not their native language. As a result, the impacts of these apparently fraudulent practices are all the more devastating, leaving low-income customers or those living on fixed incomes 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.

Conclusion

Solar companies operating across the United States 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 Federal Trade Commission 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.

²¹ Complaint against SolarCity, December 8, 2014, attached as Exhibit J.

CfA therefore requests that the FTC launch a national investigation into the consumer practices of solar energy companies, drawing on the many examples found in the complaints lodged with the commission. If these companies have violated federal law, they must be held accountable.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dan E Stevens", with a long horizontal flourish extending to the right.

Daniel E. Stevens
Executive Director

Encl.