



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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Order Instituting Rulemaking to Develop a
Successor to Existing Net Energy Metering
Tariffs Pursuant to Public Utilities Code
Section 2827.1, and to Address Other
Issues Related to Net Energy Metering

Rulemaking 14-07-002
(Filed July 10, 2014)

**COMMENTS OF
THE SOLAR ENERGY INDUSTRIES ASSOCIATION ON THE ADMINISTRATIVE
LAW JUDGE'S RULING SEEKING COMMENT ON CONSUMER PROTECTION AND
RELATED ISSUES**

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In accordance with the *Administrative Law Judge's Ruling Seeking Comment on Consumer Protection and Related Issues* issued on December 8, 2016, the Solar Energy Industries Association (“SEIA”)¹ respectfully submits its opening comments

I. INTRODUCTION

In D.16-01-044, “the Commission directed Energy Division staff, in collaboration with parties to this proceeding, to undertake further consideration of consumer protection measures, including the development of an information packet for customers interested in taking service under the NEM successor tariff.” SEIA believes that educating solar consumers so that they fully understand the residential solar transaction is imperative to both allowing consumers to have a successful experience with this growing energy option, and to encouraging solar companies to thrive. Achieving such a state of consumer awareness can be accomplished through many means, none of which are exclusive, including education by public and private entities, industry-led actions to spur understanding and compliance, and greater enforcement of existing legislation and regulation.²

On October 20, 2016, SEIA Interim President Tom Kimbis presented at a Commission workshop held to identify consumer protection issues and “existing regulations and jurisdiction over consumer protection issues.”³ The fact is that state, federal, and local laws and regulations that govern all aspects of the residential solar industry from advertising to contract terms to installations are already in place. These laws and regulations are designed to ensure consumers are informed and protected in transactions and that installations are performed properly. These applicable laws and regulations may be part of the body of consumer protection law or from a

¹ The comments contained in this filing represent the position of the SEIA as an organization, but not necessarily the views of any particular member with respect to any issue.

² SEIA does not believe that the creation of new regulations or legislation is of benefit to achieving the intended end state of informed consumers and compliant solar providers.

³ See ALJ, page 1

related field (e.g., torts, criminal, contract). Government regulators, consumers, and, in some cases, affected business competitors have jurisdiction to enforce these laws and seek a variety of remedies.

In addition, the solar industry's own consumer protection efforts have yielded a robust set of education materials to improve consumer understanding about solar transactions and solar companies' recognition of regulations and laws, and have developed and implemented a national business code based on well-established norms and a complaint resolution process to act upon such code. The educational materials developed by the solar industry are continually being augmented as the industry grows; the core of this widely-adopted work can serve as the foundation for the consumer information packet ordered in Decision 16-91-044. Through multi-stakeholder collaboration, including both the solar industry and the State of California, the necessary information can get to consumers before they enter into solar transactions.

Below are SEIA's detailed comments regarding each of the questions presented in the ALJ's ruling, which we address sequentially.

II. RESPONSE TO QUESTION 1

Broadly speaking, solar consumer protection considerations can be placed in the following categories: 1) customer acquisition; 2) real estate; 3) installations; and 4) contracts. Each category consists of sub-activities, such as advertising, that are regulated by state, local, and federal laws.

While SEIA does not possess complete statistics on consumer protection issues for each category, the following will address the key areas in a residential solar transaction, issues brought up during the Commission's October 2016 workshop in San Francisco, and applicable laws, regulations, guidelines, and enforcement agencies. To gain better understanding of the

scope and importance of each consumer protection consideration, SEIA recommends that government regulators aggregate complaints received and provide yearly reports that list the number of complaints by category, subject of complaint (*e.g.*, utility or contractor), and local jurisdiction in which the complaint occurred.

A. Customer Acquisition

Customer acquisition is the management of customer prospects, from connecting with a consumer through the sale of a product or service. One key component of customer acquisition is lead generation, where a company identifies potential customers through telemarketing, online advertisements, and other approaches. Over the years, a robust set of regulations have emerged that apply to all aspects of customer acquisition. This section will focus on telemarketing, advertising, and in-person marketing laws and which regulators have jurisdiction under each law.

1. Telemarketing/Robocalls

Consumers are now unfortunately all-too familiar with unwanted telemarketing and pre-recorded calls (“robocalls”) for all types of products and services. According to the Federal Trade Commission, the number of complaints submitted to the FTC averages around 300,000 per month,⁴ while the Federal Communications Commission (FCC) receives over 200,000 complaints per year.⁵ The numbers include both live-caller and robocall complaints.

The vast majority of complaints received by the FTC and FCC have nothing to do with solar energy or the solar industry. In the case of solar telemarketing, some calls come from companies selling actual goods and services, but many others stem from fraudulent actors looking to capitalize on consumer interest in solar. The number of complaints has increased in

⁴ Robocalls, Bikram Bandy, NARUC Winter Committee Meetings presentation, see slide 41, <http://pubs.naruc.org/pub/998F08E0-BECA-FC63-CBE3-8BDC47168A5F>

⁵ Robocalls and Spoofing, Antonio Sweet, NARUC Winter Committee Meetings presentation, see slide 61, <http://pubs.naruc.org/pub/998F08E0-BECA-FC63-CBE3-8BDC47168A5F>

part due to technology that allows for many calls to be made and sophisticated technology used to effectively hide the identification of a caller. These aspects of telemarketing have made it extremely difficult for the FTC and FCC to combat unwanted calls.⁶ Government agencies can gain more insight into the breakdown of complaints by signing up for the FTC's Consumer Sentinel Network⁷ and accessing the FCC's Consumer Complaint Data Center.⁸

However, the telemarketing and robocalling issues are not a result of insufficient laws and regulations. Indeed, there are many statutes in place including the Truth in Caller ID Act and Telephone Consumer Protection Act (TCPA). Under the federal Truth in Caller ID Act, telemarketers cannot falsify, alter, or obscure the number or name that appears on Caller ID (a.k.a. "spoofing") in order to deceive a consumer.⁹ The TCPA prohibits virtually all robocalls and calls made through an automatic dialing device unless the consumer has provided prior written consent.¹⁰ The TCPA and other FCC-related telephone laws provide both the FCC and private parties a right of action.

The FTC also maintains and operates the Do-Not-Call Registry for both cellphones and landline telephones.¹¹ Once a consumer registers a phone number, no marketing calls may be made to that number and reregistration of the phone number is unnecessary. A company may call a registered number under a limited set of circumstances;¹² however, even then, a consumer may demand that the company cease future calls. Do-Not-Call Registry violations can result in lawsuits for damages from either the FTC or aggrieved consumers.

⁶ *Id.* at slide 48.

⁷ The FTC's Consumer Sentinel Network is available at <https://www.ftc.gov/enforcement/consumer-sentinel-network>

⁸ <https://www.fcc.gov/consumer-help-center-data>

⁹ 47 U.S.C. § 227(e)

¹⁰ https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-72A1_Rcd.pdf

¹¹ 15 U.S.C. § 6151; 16 CFR 310.

¹² <https://www.consumer.ftc.gov/articles/0108-national-do-not-call-registry>

At the state level in California, laws and regulations to control robocalls exist.¹³ The laws and regulations dictate the time of day a call may be made, consumer consent requirements, the use of a live voice during a robocall, and other conditions. Aggrieved consumers and the Public Utilities Commission can sue under the law.

2. Advertising Claims

The traditional core of customer acquisition is advertising. Advertisements highlight a product's cost, capabilities, sponsorship, and other qualities to build consumers' interest in the product. Advertisements can be made in print, electronically, or through another medium. Terms that significantly affect a reasonable consumer's decision making process are referred to as "material terms." Because of the importance of material terms in consumer decision-making, state and federal laws and regulations forbid false or misleading statements about a product's material terms. As with telemarketing, there is a long-standing and significant body of state and federal law regarding advertising that applies to the solar industry. Major applicable laws include the Federal Trade Commission Act (FTC Act), Lanham Act, California Unfair Competition Law, California False Advertising Law, and Consumer Legal Remedies Act.

The Federal Trade Commission Act

Under Section 5(a) of the FTC Act, it is unlawful to engage in "unfair or deceptive acts or practices in or affecting commerce."¹⁴ The FTC Act defines deceptive acts and practices as those that likely mislead a reasonable consumer about a material term,¹⁵ and FTC guidelines state that material claims need to be substantiated and have a reasonable basis for that

¹³ See Public Utilities Code § 2871 et seq., Cal. Bus. & Prof. Code §17363.5, Cal. Civ. Code §1770(a)(22).

¹⁴ 15 U.S.C. § 45.

¹⁵ See, e.g., *Bildstein v. MasterCard Int'l Inc.*, 329 F. Supp. 2d 410 (S.D.N.Y. 2004).

substantiation.¹⁶ Further, the determination as to whether an act is unfair or deceptive rests on the entirety of the facts and circumstances surrounding a claim or advertisement. The FTC Act is broad in its reach and applies to the solar industry. Topics of some relevant past enforcement actions include:

- Advertisements featured unsubstantiated energy savings claims. *See, e.g., Long Fence & Home, LLLP*, FTC Docket No. C-4352 (Apr. 5, 2012)
- Advertised prices were not generally available to consumers. *See, e.g., TC Dealership, L.P.*, FTC Docket No. C-4536 (Aug. 13, 2015)
- Company representatives masqueraded as government and/or public utility representatives. *See, e.g., Holland Furnace Co. v. Federal Trade Com.*, 295 F.2d 302 (7th Cir. 1961)
- Company claimed that its product had an endorsement from an independent third-party when the product lacked such endorsement. *See, e.g., Niresk Industries, Inc. v. Federal Trade Com.*, 278 F.2d 337 (7th Cir. 1960)

In enforcing the law, the FTC can seek injunctions, restitution for injured consumers, and other appropriate relief. However, there is no private right of action under the FTC Act. In many cases, the FTC coordinates with state attorneys general on enforcement actions.

Lanham Act

To protect the public and competitors from false or misleading statements, Congress passed the Lanham Act which allows a business competitor to bring a lawsuit in connection with trademark violations and false claims about a company's or the competitor's product.¹⁷ The law, which applies to the solar industry provides a right-of-action only for competitors, not the public at-large, but helps to protect consumers from false product claims. Successful lawsuits may result in injunctions or monetary damages.

¹⁶ *See*, FTC Policy Statement Regarding Advertising Substantiation, available at: <https://www.ftc.gov/public-statements/1983/03/ftc-policy-statement-regarding-advertising-substantiation>

¹⁷ 15 U.S.C. § 1125.

California Unfair Competition Law

California's Unfair Competition Law (UCL) defines unfair competition as "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by [California's False Advertising Law]."¹⁸ Unfair acts include those that are likely to mislead the public, such as misappropriation of trademarks.¹⁹ The law reaches almost any business conduct. What constitutes an unfair or fraudulent act depends on the facts of the case,²⁰ and California courts will look at FTC enforcement actions to guide their decision as to whether an act is unfair or fraudulent.²¹

Private actors, the Office of the Attorney General, district attorneys, and certain county attorneys may initiate enforcement actions and pursue injunctions and penalties, with enhanced penalties for targeting elderly or disabled individuals. In private actions, successful consumers can seek restitution and injunctions, while injunctions are available for competitors. The law can be used to protect consumers from any violating acts that may occur in the solar industry.

California False Advertising Law

Further, California's False Advertising law also applies to the solar industry and disallows false or misleading statements about goods and services to consumers.²² Covered claims include those "that (1) purport to be based on factual, objective, or clinical evidence, (2) compare the product's effectiveness or safety to that of other brands or products, or (3) purport to

¹⁸ Cal. Bus. & Prof. Code § 17200 et seq.

¹⁹ See, *Morton v. Morton*, 148 Cal. 142 (Cal. 1905).

²⁰ See, e.g., *People v. Toomey*, 157 Cal. App. 3d 1 (Cal. App. 1st Dist. 1984).

²¹ See, e.g., *People ex rel. Mosk v. National Research Co.*, 201 Cal. App. 2d 765 (Cal. App. 3d Dist. 1962).

²² Cal. Bus. & Prof. Code § 17500 et seq.

be based on any fact.”²³ Plaintiffs need to show that a reasonable consumer is likely to be deceived. Sample cases include:

- *Yeager v. Cingular Wireless LLC*, 627 F. Supp. 2d 1170 (E.D. Cal. 2008). In this case the defendant used a well-known individual’s name without their permission.
- *Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310 (Cal. 2011) In this case the defendant, a manufacturer, advertised products as “Made in the U.S.A.” when the products allegedly included foreign-made components.

Government officials can bring either a civil or criminal enforcement action against a company, often in conjunction with California’s Unfair Competition Law. Violation of the law is a misdemeanor, with fines up to \$2,500, jail terms of up to six months, or both.

Consumer Legal Remedies Act

Consumer remedies are available through the Consumer Legal Remedies Act which forbids unfair or deceptive acts or practices made to sell or lease consumer goods or services, including those in the solar industry.²⁴ Section 1770 provides a non-exhaustive list of 24 covered acts and practices which includes:

- Passing off goods or services as those of another
- Claims about certification, endorsement, and sponsorship
- Claims about affiliations and associations with other groups
- Claims about the standard/quality or model/style of a good/service
- No intent to sell goods/services as advertised
- False or misleading statements about price reductions

Injured private parties can bring an action for actual damages, injunctions, punitive damages, and other relief that a court deems fit.²⁵ And senior citizens and disabled individuals are eligible for enhanced remedies.²⁶ This is not an exclusive remedy and may be combined with

²³ Cal. Bus. & Prof. Code § 17508 .

²⁴ Cal. Civ. Code § 1750 et seq.

²⁵ Cal. Civ. Code § 1780(a).

²⁶ Cal. Civ. Code § 1780(b).

remedies available in other laws.²⁷

Sponsorship/Endorsement

Some stakeholders identified situations where some third-party claims that their product is sponsored or endorsed by the government or utility when no sponsorship or endorsement exists. A consumer may be swayed to purchase the product (assuming it even exists) over another product because they would incorrectly believe that the government or utility mandated or blessed it. A court most likely will treat such claims as false or misleading to a consumer and one that hurts competing businesses and the government/utility invoked in the claim.

The FTC Act, Lanham Act, and California's Unfair Competition, False Advertising, and Consumer Remedies laws all apply to false or misleading claims about government or utility sponsorship. As a result, consumers, the harmed utility or Commission, California's Attorney General, and the FTC may bring a claim or enforcement action against the entity disseminating the false statements. In addition, if a company uses another entity's trademarks or service marks without permission, then the affected mark holder may bring a lawsuit for trademark violation.

Savings Claims

Decisions to go solar are often based on savings estimates which in turn are based on estimated system production, system costs, government incentives, and utility rates. Parties have flagged situations where utility rate projections and other factors were inflated or misapplied to the savings estimate. Like any other claim about a product, savings claims require substantiation and a reasonable basis for the claim.²⁸ If neither substantiation nor a reasonable basis for the claim exists, the claim is likely to be deemed misleading, and the FTC could bring an

²⁷ Cal. Civ. Code § 1752.

²⁸ Thompson Medical Co., 104 F.T.C. 648 (1984); FTC Policy Statement Regarding Advertising Substantiation, 104 FTC 839 (1984); available at https://www.ftc.gov/sites/default/files/attachments/training-materials/policy_deception.pdf

enforcement action under the FTC Act. Indeed, the FTC has brought actions regarding unsubstantiated savings claims. The claim would also run afoul of California's Unfair Competition Law which means that consumers and the California Attorney General's Office could initiate a lawsuit. Regardless, there are multiple legal authorities already covering this area.

Renewable Energy Certificates

Solar sales often include assertions related to Renewable Energy Certificates (RECs). Renewable Energy Certificates (RECs). RECs are tradable tags that represent the renewable qualities of the electricity a solar system generates. RECs help consumers track how much solar power their home uses. The sale or assignment of a system's RECs to a third-party affects a consumer's ability to make certain claims about their home being powered by solar. Consumers are likely unfamiliar with RECs, and leasing and PPA agreements often assign RECs to a third-party.

In 2012, the FTC released the revised *Guides for the Use of Environmental Marketing Claims* ("Green Guides") which provides guidance on REC sales.²⁹ While not law, the Green Guides do indicate the FTC's views on what may be misleading advertising regarding RECs.

"Free Solar"

Some solar companies have marketed systems as "free" when the consumer pays nothing upfront and makes monthly payments. This is in violation of the SEIA Solar Business Code³⁰ and federal and state law. The FTC found that "free" is a powerful marketing phrase because a consumer is likely to assume that they will pay nothing over the life of the system. Thus, the FTC published guidance on the use of "free" in advertisements and requires advertisements for

²⁹ 16 CFR 260.15.

³⁰ <http://www.seia.org/policy/consumer-protection/seia-solar-business-code>

“free” products to include all conditions and obligations in a clear and conspicuous location.³¹

Because California courts consult FTC guidance to determine whether to treat a claim as misleading, it stands to reason that claims of “free solar” found misleading by the FTC are likely be treated as misleading in California.

3. In-person Marketing

While most marketing occurs through electronic and telephonic communications, some companies still rely on in-person marketing to sell products and services. Concerns have been raised about potentially aggressive in-person marketing. Below are two California laws applicable to in-person sales.

Home Solicitations

Goods offered through home solicitations, except for home improvement contracts, face additional requirements. There is a three-business-day cooling off period after either signing the agreement or receiving a signed and dated copy of the agreement.³² In addition, the contract’s language must match the language in which the sales presentation was made in (*e.g.*, Spanish presentation and Spanish contract), and the first page of the contract needs to list the seller’s contact information.³³

If a consumer rescinds the contract, they may “(a) bring[] an action to recover any money or thing owing to him by any other party to the contract as a consequence of such rescission or for any other relief to which he may be entitled under the circumstances or (b) assert[] such rescission by way of defense or cross-complaint.”³⁴

³¹ <http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=4c2a16712079bc4bcaa6fed5899c2537&mc=true&n=pt16.1.251&r=PART&ty=HTML>

³² Cal. Civ. Code § 1689.5-1689.13.

³³ Cal. Civ. Code § 1689.7.

³⁴ Cal. Civ. Code § 1692.

Home Improvement Salespersons

System purchases (i.e., not leases or PPAs) are governed by home improvement contracting regulations. Salespersons must register with the California State Licensing Board (CSLB),³⁵ and violation of the law is a misdemeanor.³⁶ It is also a misdemeanor to use false, misleading, or deceptive advertising, “fraud in the execution of, or in the material alteration of, any contract,” and the use of “bait-and-switch” tactics.³⁷

A consumer induced to sign a contract due to false or fraudulent representations “may sue and recover from such contractor or solicitor a penalty of five hundred dollars (\$500), plus reasonable attorney's fees, in addition to any damages sustained by him.”³⁸ And the CSLB may take administrative action against companies or salespersons that break the rules.

B. Contract Terms

Some investor owned utilities assert that some solar contracts can be confusing and complicated for consumers. Both Federal and State law dictate the terms and format of solar agreements.

1. Consumer Leasing Act / Regulation M

The Consumer Leasing Act was passed in 1976,³⁹ and Regulation M was created in 1981.⁴⁰ Regulation M was developed to ensure accurate disclosure of a leasing agreement’s material terms and mandates disclosure and structural requirements for leasing agreements. An agreement must detail, among other terms, a description of the property, the number, amount, and due dates for scheduled payments, additional charges, maintenance responsibilities for each

³⁵ Cal. Bus. & Prof. Code § 7152.

³⁶ Cal. Bus. & Prof. Code § 7153.

³⁷ Cal. Bus. & Prof. Code § 7161.

³⁸ Cal. Bus. & Prof. Code § 7160.

³⁹ 15 U.S.C. §§ 1667-1667e.

⁴⁰ 76 FR 78500.

party, and warranties. Certain terms must be described in their own sections. The Federal Trade Commission (FTC) and Consumer Financial Protection Bureau (CFPB) enforce Regulation M, and consumers can bring private actions as well.

Truth in Lending Act (TILA)

The Truth in Lending Act (TILA) was passed in 1968,⁴¹ and Regulation Z was promulgated to implement specific requirements.⁴² TILA helps consumers make informed choices about credit offers and compare credit offers by requiring full disclosures of an offer's terms and conditions. Like Regulation M, Regulation Z requires key financing terms to be provided and segregated. Most of TILA's rulemaking authority is vested in the CFPB. The CFPB and consumers have the authority to bring lawsuits until TILA.

Unfair, Deceptive or Abusive Acts or Practices (UDAAP)

The Dodd-Frank Act prohibits all covered entities from committing unfair, deceptive, or abusive acts or practices (UDAAP). An unfair act causes substantial injury, typically monetary, is not reasonably avoidable, and whose injury to consumers outweighs any benefits. A deceptive act misleads or likely misleads a consumer about a material issue and the "consumer's interpretation of the act is reasonable under the circumstances."⁴³ While an abusive act either "[m]aterially interferes with the ability of a consumer to understand a term or condition" or "[t]ake[s] unreasonable advantage of - (A) a consumer's lack of understanding of the material risks, costs, or conditions of the product or service; (B) a consumer's inability to protect his or her interests in selecting or using a consumer financial product or service; or (C) a consumer's

⁴¹ 15 U.S.C. § 1601.

⁴² 12 CFR Part 226.

⁴³ http://files.consumerfinance.gov/f/201307_cfpb_bulletin_unfair-deceptive-abusive-practices.pdf

reasonable reliance on a covered person to act in his or her interests.”⁴⁴ The Consumer Financial Protection Bureau enforces Dodd-Frank’s provisions and a private right of action is available.

State Contract Law

Solar system purchases are subject to the home improvement contract requirements detailed in California’s Business and Professions Code. The law mandates certain disclosures, including contractor information, pricing, scope work, and cooling-off periods.⁴⁵ Failure to adhere to the rules can result in discipline by the CSLB or potential criminal action.

C. Real Estate: Home Sales and Refinancing

The most common area of confusion during home sales regards Uniform Commercial Code (UCC) filings made by companies providing leases, Power Purchase Agreements (PPAs), or secured solar loans. A number of housing industry professionals believe that the filings constitute a lien on the consumer’s home which in turn can halt a home sale or refinancing. The exact number of incidents is unknown.

This issue is based on a misunderstanding about the filings which are designed to protect company’s interest in the system by publicizing their interest and declare that the system is personal property, not to place a lien on a home.

State and local law determines what is a fixture which is based on the parties’ intent. For example, industry standard lease and PPA agreements explicitly state that the system is to be treated as personal property and that the company can repossess the system under certain conditions. The precautionary fixture filings reiterate that the system is personal property and that its purpose is to publicize the company’s interest in the system. Taken together, TPO systems are personal property and any precautionary filings do not constitute a lien on a home.

⁴⁴ *Id.*

⁴⁵ Cal. Bus. & Prof. Code § 7159.

D. Installations

Like other contractors, California licenses providers that install solar systems to ensure that they have the necessary technical qualifications to perform their job. Providers that install solar systems require a license issued by the CSLB in either a C-10 or C-46 classification.⁴⁶ Complaints regarding the provider are investigated by the CSLB who may suspend or revoke a contractor's license, and in certain cases, refer the matter to the District Attorney.⁴⁷

Local governments oversee inspections and permitting of solar installations consistent with the California Building Code.⁴⁸ Systems must “[c]onform to all applicable state fire, structural, electrical and other building codes as adopted or amended by the city, county or city and county and paragraph (3) of subdivision (c) of Section 714 of the Civil Code.”⁴⁹ Local inspectors ascertain whether the installation meets the applicable codes.

III. RESPONSE TO QUESTION 2

Most of the issues highlighted above, in addition to understanding net metering, can be addressed in an information packet for consumers. The Solar Energy Industries Association's (SEIA) guide for residential consumers goes over options for going solar and key questions that consumers should ask solar companies.⁵⁰ The guide addresses topics like net metering, RECs, savings calculations, and contract terms. The guide can be updated to include information on which agencies handle consumer complaints.

Last year, SEIA published an industry update on telemarketing rules that is directed at industry which discusses issues such as robocalls and spoofing. And SEIA is currently drafting guides on home sales, advertising practices, and how consumers should deal with robocalls.

⁴⁶ http://www.cslb.ca.gov/Media_Room/Industry_Bulletins/2010/June_30.aspx

⁴⁷ http://www.cslb.ca.gov/Contractors/Dealing_With_A_Complaint.aspx

⁴⁸ https://www.opr.ca.gov/docs/California_Solar_Permitting_Guidebook_2014.pdf, page 12.

⁴⁹ https://www.opr.ca.gov/docs/California_Solar_Permitting_Guidebook_2014.pdf, page 9.

⁵⁰ <http://www.seia.org/research-resources/residential-consumer-guide-solar-power>

Finally, SEIA's disclosure forms for all three main types of residential solar transactions (purchases, leases and PPAs) provide a snapshot of key terms, including net metering, in an agreement to help consumers better understand and compare offers. Taken together, most of the issues discussed in Question 1 are already addressed in SEIA's own consumer protection materials, and those materials can serve as the foundation for a consumer information packet.

IV. RESPONSE TO QUESTION 3

Education and thorough understanding of the residential solar transaction would be greatly benefited through a consumer education packet—provided that such packet is readily available on the- websites and social media of a wide variety of state and local government offices, non-profits, utilities, consumer organizations (such as the Better Business Bureau, with which SEIA has a strong relationship), and solar companies. In addition, protection mechanisms that are critical to be presented at the point of sale (or transaction) should be presented in the appropriate disclosure forms (developed already by SEIA and submitted with this commentary) even if redundant with the information packet. SEIA will continue to maintain and build upon its consumer protection portal on its website so that new issues that arise in the solar industry, or are flagged by a state or federal agency, can be brought to the attention of consumers and companies. The key is repetitive communication to make sure that consumers hear consistent messaging multiple times and know to turn to this information packet and key websites for information before and during the solar transaction, as well as making sure that a wide variety of outreach channels are used to reach the largest possible percentage of solar consumers.

V. RESPONSE TO QUESTION 4

As the national trade association for solar companies, SEIA members represent the entire value chain from residential solar companies to law firms. In 2015, SEIA launched its Consumer

Protection Committee (CPC), an active group made up of leading legal experts in solar and consumer law. The CPC was set up with the intention of protecting solar consumers as an unbiased source, despite being a committee of a trade association. The materials published by the CPC are usually reviewed by dozens of attorneys, including consumer protection attorneys. No entity has a greater interest in protecting the solar consumer than the solar industry: the industry relies on word of mouth for a large portion of its transactions and has every interest in informed, satisfied consumers, and no interest in circumventing rules or laws.

The CPC partners or has engaged with a broad coalition of stakeholders, including non-profit organizations such as California SEIA, Vote Solar, the Better Business Bureau, and the Interstate Renewable Energy Council, federal regulators, state attorney general offices, public utility commissions and other state offices of jurisdiction. SEIA hosts webinars and conference presentations, develops education materials, and publishes compliance guides to promote greater understanding of solar technology and transactions. All materials are regularly reviewed and revised to reflect up-to-date information on consumer protection. Through SEIA's experience and expertise in consumer protection education, SEIA is the appropriate source for preparing an information packet in conjunction with the state authorities. SEIA has been asked to present at dozens of private and governmental sessions on solar consumer protection as the preeminent entity covering this issue on a national scale.

VI. RESPONSE TO QUESTION 5

Multiple channels associated with energy, electricity, solar and consumer matters should be used to convey the information packet to solar consumers by posting the information packet in a prominent place on their websites. SEIA is willing to help in the outreach to such organizations, especially industry, states outside of California, and non-profits with which SEIA

has relationships. Casting a wide net will maximize the number of consumers that obtain the information packet. The Commission should examine the ability to use public radio and public television to conduct public service announcements to consumers, reaching some consumers who may not ordinarily access information via websites. Further, the approach increases the likelihood that a consumer receives an information packet early in their decision process.

VII. RESPONSE TO QUESTION 6

The issues identified in Question 2 can be presented in a format like SEIA's consumer guide and industry alerts. For example, RECs and savings claims are addressed in the consumer guide in their own sections and the guide also provides key questions applicable to each issue. In addressing patently illegal acts (*e.g.*, robocalls), the guide's format can mimic SEIA's industry alerts. Links to SEIA's consumer guide, industry alerts, and disclosure forms are provided in the Appendix.

VIII. RESPONSE TO QUESTION 7

The information packet should be made available in both electronic and print copies, with a strong emphasis on electronic copies. Electronic copies can be easily shared and accessed and can be posted on the websites of the many stakeholders mentioned earlier. However, some consumers may be uncomfortable with electronic copies or lack internet access, so providing print copies in high traffic areas, such as county offices and post offices, would be appropriate.

IX. RESPONSE TO QUESTION 8

California has a large and growing population of Spanish-speaking residents. Considering the prevalence of Spanish-only households, a Spanish-version of the information packet should be developed. SEIA has already developed and released a Spanish language version of its *SEIA Residential Consumer Guide to Solar Power* and plans to issue similar Spanish versions of its

transaction disclosures. As to the information packet in other languages, that determination needs to be based on the number of California residents that only speak a non-English language and the number of solar consumers who fall into that category. The Commission can make that determination; however, if the Commission selects a language, then it should be responsible for translating the information packet from English to the selected language. It would be worthwhile for the Commission work with other State offices to study solar deployment trends in areas with primarily non-English speaking households. Decisions to translate the solar information packet in languages other than English and Spanish can then be informed by actual field data.

X. RESPONSE TO QUESTION 9

Ideally, a solar consumer will be able to readily obtain an information packet upon first interest in residential solar. That packet may be available from several sources, as explained above. In addition, information packets can be provided by the first solar company to interact with the consumer (either with a hard copy or electronically). Moreover, the local load-serving electric utility can on a regular basis (*e.g.*, bi-annually) include information in residential utility bills directing consumers to the state website hosting the information packet.

It is important that the consumer receive the information packet as early as possible in the solar decision-making process so that the consumer can determine if solar is even appropriate for the consumer's residence (orientation, ownership, roof age etc.) and the options open to the consumer (*e.g.*, community solar). It allows the consumer the time to evaluate past electricity bills more thoroughly.

XI. RESPONSE TO QUESTION 10

SEIA recommends against verification of consumers receiving information packets. It is unclear how the verification process could work or whether it is necessary and the expense it

would impose on the state and companies with no set benefit. SEIA companies already must abide by the national solar business code and are strongly encouraged to use the residential disclosures. SEIA will include a link to its site containing the California state residential information package.

A solar company should not be forced to provide a list of potential consumers to the state because such lists are proprietary. Nor can the Commission verify receipt of the information packet even by calling every solar consumer as the consumer may forget receiving the information packet by the time the system is interconnected. If such verification is ever required, then only verification of the receipt of the information packet should be mandated. The purpose of the information packet is to deliver useful information to a consumer; however, a third-party cannot control whether the consumer chooses to use the information packet.

XII. RESPONSE TO QUESTION 11

SEIA does not believe that the Commission should develop any additional requirements beyond the information packet at this time. This affords the Commission the ability to evaluate the packet's efficacy with consumers, how to best disseminate the packet, and any key information missing from the packet. It is possible that any shortfalls in the education of consumers and solar companies to ensure a fuller understanding of the solar transaction may be closed by additional Commission or State action, but it is too early to predict the type of actions at this point. Focus on the content of the packets, partnerships to disseminate them, and feedback from consumers is warranted now.

XIII. RESPONSE TO QUESTION 12

In 2015, SEIA launched its Consumer Protection Committee (CPC), an active group made up of leading legal experts in solar and consumer law. The CPC has produced a robust set

of consumer protection materials for consumers, industry, and other stakeholders. All consumer protection materials are available for free to the public at www.seia.org/consumers. SEIA and its CPC work collaboratively with government to ensure that consumers understand the residential solar transaction.

The *SEIA Residential Consumer Guide to Solar Power* summarizes options for going solar, tips on evaluating whether one's home is right for solar, and key questions to ask a company. SEIA has published a Spanish-version of the guide. A community solar version of the guide was recently released as well as one for owners of farmland leasing to solar developers.

SEIA adopted model lease and PPA contracts created by a National Renewable Energy Laboratory (NREL) working group. The contracts are clear and complete, provide standardized language, and still give companies flexibility to innovate. SEIA's disclosure forms summarize key details in an agreement so that consumers can easily compare and understand offers. The largest residential solar installers have committed to using them.

The heart of SEIA's consumer protection work is the *SEIA Solar Business Code* (SEIA Code) that all SEIA members must abide by and nonmembers are free to adopt. The SEIA Code lists laws that companies need to be familiar with and has rules on advertising, marketing and consumer interactions, and contract terms. To enforce the SEIA Code, there is a complaint resolution process where the public can submit a complaint about a solar-company (member or non-member) and SEIA will work to get the complaint resolved. The complaint process is designed to supplement government regulation, not supplant it. If a complaint alleges criminal conduct or other issue best handled by government regulators, SEIA passes that complaint onto the appropriate government agency.

To help industry better understand consumer protection regulations, SEIA holds consumer protection panels and webinars for the public. SEIA has also hosted webinars and presented at government hearings to educate officials on solar transactions, applicable regulations, and the solar industry's consumer protection efforts. Further, compliance guides have been released and are being developed in key areas, such as telemarketing, lead generation, and advertising.

XIV. RESPONSE TO QUESTION 13

SEIA does not believe that a Consumer Advocate is currently needed. As illustrated above, existing California and federal government offices regulate all aspects of the solar industry using laws and regulations that have been in existence for years. The Commission and its public and private partners can house the information consumers need to learn about solar and direct them to the appropriate government office to assist with complaints. Indeed, the information packet can contain information as to how to resolve a complaint and where to submit complaints. Finally, stakeholders need to gather data on the number and breakdown of complaints before deciding whether expend resources on a new consumer advocate. It could be that several years of use of the information packet, combined with a solar industry dedicated to working with informed consumers, advocacy groups that promote consumer rights, and robust use of new channels to reach consumers is sufficient to alleviate any concerns of the Commission or consumers in this area. With limited resources, the State should carefully consider prioritizing the education of consumers over the creation of a position which may or may not address the primary issues at hand: educated consumers and compliant solar companies.

XV. RESPONSE TO QUESTION 14

Assembly Bill 327 (Perea 2013) included a requirement that any net metering successor “ensures that customer-sited renewable distributed generation continues to grow sustainably”⁵¹. Maintenance of the solar installation tracking available on the www.gosolarcalifornia.org website will be an important resource for parties to use in ensuring the continued growth of distributed generation.

XVI. RESPONSE TO QUESTION 15

SEIA recommends that the Commission gather the complaints that it has received and publish yearly reports on the number and breakdown of consumer complaints (i.e., type and location). In preparing a report, the Commission can solicit complaint data from other agencies. Such a report would assist all stakeholders in understanding the key issues and where to target their efforts. It can also help identify trends and emerging issues, as well as those that are decreasingly problematic. If other states undertake a similar strategy, multistate information can also identify trends of problems and successes. The Commission could start with a simple database to catalogue complaints received. This approach is relatively straightforward and allows the Commission to have the necessary data on hand. SEIA and the solar industry is willing to share aggregated data it receives through its own complaint resolution process to augment this database. This is not an expensive undertaking- the database could run on Excel and be maintained by Energy Division, while the annual report could be a summary of the results from the database.

⁵¹ California PU Code § 2827.1 (B)(1).

XVII. RESPONSE TO QUESTION 16

While the NEM successor tariff includes significant departures from the original net metering tariff, a distinct marketing and outreach effort related to the successor tariff is unnecessary. Material claims made about savings customers can expect under the successor tariff and rights and obligations of that tariff will be part of ongoing consumer education efforts and existing protections described through these comments. While solar companies have had to invest significant effort in explaining the transition from the original net metering tariff to the successor tariff, a Commission-directed effort would likely be duplicative and too late; both Pacific Gas & Electric and San Diego Gas & Electric have already transitioned to the successor tariff and Southern California Edison will make the transition by July of this year at the latest.

XVIII. RESPONSE TO QUESTION 17

In addition to the marketing and outreach efforts detailed above, some potentially helpful initiatives are (1) a dedicated consumer hotline to triage consumer complaints and direct consumers to the best resource; (2) online videos for consumers to learn more about solar; and (3) an awareness campaign. This effort would be a joint-effort among all stakeholders to create so as to not burden any single entity. The hotline could be hosted by the appropriate consumer affairs department within the State. Partners previously identified, including SEIA, other nonprofits, residential service providing electric utilities and others can further disseminate educational materials. SEIA and its partners will volunteer to develop online training videos. The State – through the Commission or appropriate office – can develop the awareness campaign that utilizes online, broadcast, and advertisements in public spaces. The expense associated with this effort is dependent on its reach. It would be informative to understand whether the State has engaged in recent public information campaigns and their costs.

XIX. CONCLUSION

SEIA and the solar industry applaud the Commission for undertaking these efforts on the important topic of residential solar consumer protection. SEIA is ready to work closely and collaboratively with the State and its appropriate offices to ensure that California's consumers are better educated and prepared to enter into solar transactions. With solar becoming an increasing part of the State's and nation's electricity mix, now is the time to act to ensure satisfied consumers with myriad energy choices while enabling solar jobs to thrive in California.

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Appendix

Consumer information packets, disclosure forms, and other consumer protection materials:

- *SEIA Residential Consumer Guide to Solar Power*: <http://www.seia.org/research-resources/residential-consumer-guide-solar-power>
- SEIA Solar Transaction Disclosures (Cash, Lease and PPA): <http://www.seia.org/research-resources/solar-transaction-disclosure-forms>
- *SEIA Solar Business Code*: <http://www.seia.org/policy/consumer-protection/seia-solar-business-code>
- SEIA Consumer Protection Industry Alert: Telemarketing Rules: http://www.seia.org/sites/default/files/SEIA%20Industry%20Alert%20-%20Telemarketing%20Rules%20-%20Jan%202016_0.pdf
- SEIA Solar Business Code Complaint Resolution Process & Complaint Form: <http://www2.seia.org/l/139231/2016-09-19/pnqdc>
- Model Lease and PPA Agreements: <http://www.seia.org/research-resources/model-leases-ppas>

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