



June 4, 2015

Douglas Elfner
New York State Public Service Commission
Empire State Plaza
Agency Building 3
Albany, New York 12223-1350

Re: Public Comment on Solar Industry Consumer Protection

Mr. Elfner,

We appreciate the New York State Public Service Commission (“Commission”) for providing public notice of your interest in ongoing consumer protection efforts surrounding third-party solar providers. As demonstrated by our prior engagement with various public utility commissions and consumer protection agencies around the country, SolarCity holds itself to a very high standard and is committed to dealing with customers fairly and honestly at all times.

The solar industry is built on the concept that consumers should have a choice about how they meet their energy needs, and we believe that consumers with complete and accurate information will overwhelmingly choose to go solar. We look forward to our continued conversations around this very important issue.

The purpose of this memo is to provide an overview of the current regulatory regime under which solar companies must operate and also to provide a summary of the consumer industry’s self-policing efforts. This memo will provide summary of the following eight topics which the commission has expressed an interest in understanding:

- Current laws and regulations that govern the solar industry
- Current consumer protection agencies that oversee the solar industry
- Development of solar contracts
- Current consumer protection efforts by the solar industry
- Professional training and education requirements for solar workers
- Current eligibility criteria to provide solar services in the state
- Current marketing laws the govern the solar industry
- Current consumer complaint and resolution process

Laws and Regulations

SolarCity provides solar services in 18 states and in Washington, D.C. In doing so, it is subject to a variety of federal and state consumer regulations as well as a host of other industry specific regulations (including local utilities’ permission to operate requirements). Regardless of the state in which a solar company operates, federal laws

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will always apply. Below are just a few of the federal consumer protection regulations with which SolarCity complies.

- CAN-SPAM ACT
- Consumer Leasing Act
- Electronic Funds Transfer Act
- Electronic Signatures Act
- Equal Credit Opportunity Act
- Fair Credit Reporting Act
- Fair Debt Collection Practices Act
- Federal Magnuson-Moss Warranty Act
- Federal Trade Commission Act
- Gramm–Leach–Bliley Act
- OSHA Law and Regulations
- Right to Financial Privacy Act
- Servicemembers Civil Relief Act
- Telephone Solicitations Rules
- Truth in Lending Act
- Unfair Deceptive Practices Act (UDAAP)
- Uniform Commercial Code

Current Consumer Protection Agencies

There are many consumer agencies that oversee the solar industry to make sure that solar companies are treating customers fairly and operating safely, including:

- Consumer Financial Protection Bureau
- State Attorney General Offices
- State Consumer Protection Agencies
- Federal Trade Commission
- State Contracting Licensing Boards
- Local Municipalities Licensing/Permits
- State Engineering Licensing Boards
- United States Department of the Treasury
- State Department of Labor
- Occupational Safety and Health Administration
- Federal Department of Labor
- Financial Crimes Enforcement Network

In addition to the agencies identified above, there are additional consumer protection agencies, including:

- New York State Department of Financial Services
- Consumer Protection Division of the Department of New York State
- Consumer Fraud Bureau of the Office of the State Attorney General
- Consumer Fraud Bureau of each county's Attorney General's office

- Department of Consumer Affairs for New York City
- Albany County Department of Consumer Affairs Consumer Affairs
- Ulster County Consumer Fraud Bureau
- Nassau County Office of Consumer Affairs
- Orange County Department of Consumer Affairs
- Putnam County Department of Consumer Affairs
- Rockland County Office of Consumer Protection
- Schenectady County Department of Consumer Affairs/Bureau of Weights & Measures
- Westchester County Department of Consumer Protection
- Town of Colonie Attorney Consumer Protection Board
- Mt. Vernon Office of Consumer Affairs City Hall
- Yonkers Consumer Protection Bureau

Solar Contracts

As you can see from the lists above, there are a host of regulations and agencies in charge of their oversight that are in place today to protect solar customers. SolarCity has been subject to diligence over 24 times by leading law firms in the United States and has retained its own consumer compliance counsel to perform a comprehensive federal and state compliance review of both its solar lease and power purchase agreement (PPA).

SolarCity's SolarLease and PPA include substantial protections for consumers. For example:

- Every SolarLease and PPA states, in a clear, prominent chart on the first page of the document: the system's estimated annual production for the first year; the exact amounts due from the customer at contract signing, installation, and following inspection; the annual increase in the lease payment or price per kilowatt hour, if any; the first year's monthly SolarCity bill or estimated monthly SolarCity bill; and the length of the contract term.
- Both SolarLease and PPA display SolarCity's applicable contractor and/or electrical license in the State or county where the project is installed.
- Additional key, material terms are summarized on that first page for the customer's convenience.
- SolarCity's lease contracts with customers also state the exact amount of every monthly payment that the customer will make to SolarCity over the term of the lease, as well as the exact total dollar amount of all lease payments over the entire term of the lease.

- SolarCity's PPAs include a performance guarantee that guarantees a certain kilowatt hour output for each year of the PPA and that provides the customer a refund payment per kilowatt hour if the guaranteed output is not met.
- In addition, SolarCity, not the customer, bears the risk of damage, theft, or destruction of the system, unless the customer is grossly negligent or intentionally damages the system.
- Every SolarLease and PPA includes a substantial warranty that covers the entire system for the entire term of the lease or PPA. SolarCity also provides a warranty that covers damage or leaks that result from penetrating the roof during system installation.
- In the unlikely event of a legal dispute between SolarCity and a customer, the lease and PPA provide for a speedy and convenient arbitration process. SolarCity pays all of the arbitration fees and costs other than a \$125 filing fee, and SolarCity pays the customer's legal fees if the customer ultimately is awarded more than SolarCity offered that customer.
- Every customer who signs a SolarLease or PPA has the right to cancel the contract for fourteen days for any reason or for no reason at all. SolarCity's contracts allow customers to cancel anytime up until installation.

In short, SolarCity's consumer leases and PPAs have been extensively reviewed and scrutinized to maximize clarity, intelligibility, fairness and compliance with applicable law, all of which ensure substantial customer protections.

Because the forms have been reviewed so closely by many of the nation's top consumer law firms, the Solar Energy Finance Association (SEFA) and the Solar Energy Industries Association (SEIA) have used SolarCity's SolarLease and PPA as the template for the SEFA/SEIA-approved template contracts. These templates were developed as a result of an industry-wide review of the consumer solar agreements in the United States alongside the National Renewal Energy Lab (NREL) and the Solar Access to Public Capital (SAPC) working group.

The purpose of this exercise was to standardize consumer solar agreements so that they (i) could be securitized and (ii) were uniform in their approach to complying with consumer protection laws. SEFA has successfully brought together many of the leading residential solar companies throughout the country to create uniform adoption of its standardized solar lease and PPA. The vast majority of solar contracts entered into by customers comply with the SEFA/SEIA approved templates. SEIA and SEFA are working to raise customer awareness of approved contract templates to protect consumers from less reputable companies that do not comply with this standard.

Current Consumer Protection Efforts

The major efforts of consumer protection have been driven by SEFA. SEFA was formed as the successor to the SAPC initiative, funded by the U.S. Department of Energy and managed by NREL. SEFA's current membership comprises companies that collectively have a vast majority of the solar installation market. Consistent with this focus on consumer protection, SolarCity is an active member in SEFA. SEFA members have a firm commitment to ensure the safety and quality of its members' solar installations, and SEFA, in conjunction with NREL, has released a standard form of solar contract. SEFA members are dedicated to their customers and make every effort to develop trusted, long-lasting relationships with them.

As the industry continues to expand, so will SEFA's efforts to ensure that its members continue to put customers first. SEFA wants consumers to make the decision that is best for themselves and their families. SEFA is constantly reviewing current market practices to ensure that its members are maintaining best industry practices. For instance, it recently created the 4-page SEFA Consumer Solar Contract Best Practices Checklist (see attached). This form was created to assist customers considering a solar contract by empowering them to ask the right questions so that they have a clear understanding of the contract that they are signing.

In addition, SEFA has partnered with SEIA to implement the Consumer Protection Committee (CPC), with input from SolarCity and other industry leaders. In addition to the creation of the consumer solar checklist, this group is now working toward standardizing its members' policies and procedures in key areas such as Fair Credit Reporting, Telemarketing, Equal Credit Opportunity Act and the Truth in Lending Act. The group is also working on developing a 1-page document which contains all the key provisions of a solar agreement - similar to the Truth in Lending disclosure for loans. Lastly, the group is also developing an industry self-policing oversight program.

The solar industry has been on the forefront of complex issues such as residential home sales. SEFA members are committed to never allowing a third-party owned solar system agreement to prevent a home sale. The conveyance of the home is not limited in any way by SEFA members' contract with the mortgagor. In fact, SolarCity engages in an interactive process with all customers who sell their home. As of today, SolarCity has facilitated well over 3,000 successful home transfers to new homeowners. Indeed, we find that most home buyers want solar; in SolarCity's business, over 95% of home buyers purchasing a home from one of our residential customers assumed the solar contract.

Moreover, one of the key advantages customers enjoy with a solar lease or PPA is the certainty of the cost of their solar electricity payments. Customers can choose a solar lease or PPA with no upfront cost and with payments escalating at a set rate, typically 2.9% per year, or they can select a contract that has some upfront cost and no annual

increase in payments. All of this is clearly set forth in the solar company's proposals and contracts.

The CPC representatives have had meetings with the Federal Trade Commission (FTC) on issues of consumer protection and are working with the FTC to provide better protection to solar consumers. CPC representatives have maintained ongoing dialogues with various Attorneys General and Public Utility Commissions around the country on the issue of consumer protection. If you know of any specific customers who have raised complaints to the Commission regarding a solar company's products and services, CPC would be happy to work with the Commission to resolve the issue or clarify any outstanding questions that you may have.

Professional Training, Education, and Industry Accreditations

SolarCity's sales and installation employees are provided with extensive training through SolarCity University, which includes over 220 different proprietary training programs developed by SolarCity, and through other internal and external venues. SolarCity has a dedicated North American Board of Certified Energy Practitioners (NABCEP) accredited training team that is able to provide continuing education credits to our installers for certain curricula. Additionally, a group of NABCEP certified technicians review installation quality and provide real-time remote support.

Specifically, all installers are required to complete at least 30 different training programs, including certification programs on field safety, installation quality, and company policies, procedures, and values. This training is supplemented by hands-on instruction and training by crew leads and other team members with significant installation experience, as well as our quality and safety coaches who visit job sites every day in order to review our installers' work.

Eligibility

Solar contracts (leases, PPA and solar loans) are financing agreements that make it possible for customers to acquire solar systems and generate their own electricity. Within the State of New York, all financing agreements fall under the jurisdiction of New York State Department of Financial Services (DFS). The DFS currently sets the license requirements for providing financial products within the state. Additionally, individual municipalities are allowed to create their own registration or licensing requirements applicable to industries involved in providing solar products within their jurisdiction.

For instance, for the companies that are installing solar systems in New York City, the New York Department of Consumer Affairs set forth the licensing requirements to obtain a home improvement contractor's license. Additionally, for certain electrical work an electrical license must be obtained through the New York City Department of Buildings.

Marketing

On the federal level, marketing to consumers is currently overseen by the Federal Trade Commission and the Consumer Financial Protection Bureau. Within the state, marketing laws are enforced by many of the regulatory agencies identified above.

Customer Complaints and Resolution

Customer complaints and dispute resolution are provided in the consumer protection laws previously cited in this memo. Customers can and do obtain recourse through existing state and federal agencies, including state contracting licensing boards, state consumer protection agencies, state engineering licensing boards, local municipalities or permitting agencies, state Attorney General offices, the Federal Trade Commission, the Consumer Finance Protection Bureau and the Better Business Bureau.

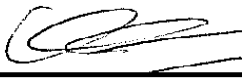
The Equal Credit Opportunity Act already provides ample protection for consumers against discrimination. Existing industry regulations regarding dispute resolution options also protect consumers. Dispute resolution requirements for any solar agreement are subject to the same state and federal laws and agency oversight as all other consumer contracts offered in the state.

SolarCity's existing arbitration process provides that, in the unlikely event of a legal dispute between SolarCity and a customer, SolarCity will pay all arbitration fees and costs other than a \$125 filing fee, along with the customer's legal fees if the customer ultimately is awarded more than SolarCity offered. These dispute resolution provisions comply with the latest guidance from the U.S. Supreme Court.

Role of the Commission

We believe that there is a role for the Commission to play in the solar industry's continued effort to protect consumers. We welcome the opportunity to include the Commission in the dialog with the other regulatory agencies within the state to identify the appropriate role of the Commission.

Sincerely,



Chet McGensy
Director of Policy & Electricity Markets and Regulatory Counsel