

Opening Remarks of FTC Chairwoman Edith Ramirez
Something New Under the Sun: Competition and
Consumer Protection Issues in Solar Energy
Washington, D.C.
June 21, 2016

Good morning, and welcome to the Federal Trade Commission’s workshop on the solar energy industry.

Nearly forty years ago, the FTC held a symposium to examine the developing solar energy industry.¹ That symposium looked at the emergence of new technologies including photovoltaic arrays for generating electricity and stressed the importance of competition and consumer choice.

Today, we are exploring many of the complex issues that arise when consumers generate their own electric power using solar photovoltaic panels—a practice known as “solar distributed generation” or simply “rooftop solar.”

I. The FTC’s Interest in Rooftop Solar

There is a real possibility of a future in which individuals and small communities will generate a growing amount of their electricity needs at or near the point of consumption, instead of drawing that power via the electricity grid from a distant generation source like a utility company. Whether this decentralized future becomes a reality depends, however, on how expensive distributed generation is compared to utility-scale generation, after factoring in all the costs.

The FTC believes that competition in the marketplace should play a key role. As the nation’s competition and consumer protection agency, we want to ensure that rooftop solar—no

¹ Fed. Trade Comm’n, Bur. of Competition, Symposium on Competition in the Solar Energy Industry (Dec. 15 & 16, 1977).

differently from any other new technology or product—develops in an environment of vigorous competition and responsiveness to consumer demand.

For solar power, however, that environment is complex and multi-layered. Rooftop solar necessarily competes in a much broader market for the generation and distribution of electric power. That market is regulated to varying extents at the local, state, and federal levels. Consequently, policies and decisions made by utilities and regulators, like those affecting “net metering,” which gives rooftop solar customers credit for excess electricity that they generate, could render the environment more or less hospitable for the growth of solar distributed generation.

Furthermore, solar power, similar to other renewable sources of electricity generation, receives certain federal and state subsidies such as investment tax credits. A patchwork of subsidies and incentives, however, may create an environment that leads to uneven or inconsistent growth of solar distributed generation because it can cause a misallocation of the resources needed to stimulate competition and consumer-focused strategies.

The FTC has convened this workshop to gain a deeper understanding of the complex matrix of laws, regulations, policies, subsidies, and incentives that apply to solar distributed generation. This will help policymakers assess how best to protect consumers in connection with their purchase, installation, and use of rooftop solar. Today’s discussion will also help us identify and isolate competition concerns, such as use of the regulatory process to block or impede the adoption of rooftop solar.

II. FTC’s Interest and Activities in Electricity Markets Generally

As I noted at the outset, the FTC has had a longstanding interest in electricity markets, including solar power.

In the intervening decades since the FTC held its first workshop on solar power in 1977, the Commission has submitted numerous comments in an effort to inject competition analysis into the dialogue regarding how best to structure wholesale electricity markets. We also have issued reports that detail consumer protection and competition issues in the electric power industry, and have held several workshops related to energy and electricity markets.²

More recently, states have been exploring ways to reform electricity markets at the distribution and retail levels of the supply chain. The FTC has submitted comments in connection with a number of these state efforts and regulatory reviews, including, most recently, multiple comments to the New York State Public Service Commission in connection with its “Reforming the Energy Vision” proceeding.³

In June 2015, the FTC issued consumer education guidance on issues related to rooftop solar. The guidance explains solar power options to consumers and provides advice on how to decide if solar power is right for them. It also discusses the issues and questions consumers might ask in connection with purchases, leases, and purchase power agreements for rooftop

² See, e.g., Energy Markets in the 21st Century: Competition Policy in Perspective (Apr. 10–12, 2007), <https://www.ftc.gov/news-events/events-calendar/2007/04/energy-markets-21st-century-competition-policy-perspective>; Workshop: Market Power and Consumer Protection Issues Involved with Encouraging Competition in the U.S. Electric Industry (Sept. 13–14, 1999), <https://www.ftc.gov/news-events/events-calendar/1999/09/workshop-market-power-consumer-protection-issues-involved>; Electric Energy Market Competition Task Force, Report to Congress on Competition in Wholesale and Retail Markets for Electric Energy (Apr. 2007), <https://www.ftc.gov/sites/default/files/documents/reports/electric-energy-market-competition-task-force-report-congress-competition-wholesale-and-retail/epact-final-rpt.pdf>; FTC Staff Report, Competition and Consumer Protection Perspectives on Electric Power Regulatory Reform (July 2000), <https://www.ftc.gov/reports/competition-consumer-protection-perspectives-electric-power-regulatory-reform>.

³ See, e.g., [Federal Trade Commission Staff Reply Comment to the New York State Public Service Commission on “Reforming the Energy Vision” Project](#) (Oct. 2014); [FTC Staff Reply Comment Before the State of New York Public Service Commission in the Reforming the Energy Vision Proceeding, Responding To Third-Party Comments on the NY PSC Benefit-Cost Analysis](#) (Sept. 2015); [FTC Staff Reply Comment Before the State of New York Public Service Commission in the Reforming the Energy Vision Proceeding, Concerning the NY PSC Staff White Paper on Ratemaking and Utility Business Models](#) (Nov. 2015).

solar. In its Green Guides, the FTC has also provided guidance to businesses concerning marketing claims related to solar and other renewable energy sources.⁴

Finally, where there is evidence of a law violation, we will take action. For example, this past March, in coordination with the Department of Justice we brought a federal court action to stop a telemarketing operation that we contend made illegal robocalls promising consumers energy savings, in an effort to generate leads to sell to solar panel installation companies.⁵ Although our complaint did not directly involve participants in the market for rooftop solar, it serves as a cautionary reminder to all businesses to exercise care when selecting third parties to assist with their promotional efforts.

III. Preview of Today's Program

In addition to supporting our competition and consumer protection advocacy with respect to electricity markets, my hope is that today's dialogue will yield additional information to the many state legislators, regulators, and attorneys general who are grappling with the complex issues surrounding retail electricity rates, and the consumer and competition issues that can arise when consumers turn their homes into sources of distributed generation.

For our program, we have gathered federal and state officials; academics; representatives of electric utility, solar industry, consumer, and regulatory associations; and market participants.

We will begin with a framing presentation by Dr. Severin Borenstein, a professor of business administration and public policy at the University of California, Berkeley, who will

⁴ Guides for the Use of Environmental Marketing Claims, 77 Fed. Reg. 62,124 (F.T.C. Oct. 11, 2012) (codified at 16 C.F.R. pt. 260), <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguides.pdf> (see esp. part 260.15, dealing with renewable energy claims).

⁵ Complaint, United States v. KFJ Marketing, et al., No. 2:16-cv-1643 (C.D. Cal. filed Mar. 10, 2016), <https://www.ftc.gov/system/files/documents/cases/160310kfjcmpot.pdf>.

explain some of the background economics of the electricity industry, and the economic implications of incorporating solar distributed generation onto the electricity grid.

Our first set of panelists will discuss how solar electricity generation has grown in recent years and whether we should expect that growth to continue. They will explore the sources of that growth (including government incentives), how consumers and incumbent utilities have reacted, and what we might reasonably expect from the solar industry in the future.

The second panel will discuss some of the issues surrounding net metering and other ways to put a price on the excess electricity that rooftop solar customers generate. In most jurisdictions, retail electricity rates generally are not set by the marketplace, but are the product of ratemaking proceedings overseen by state regulators, such as public utility commissions. There is significant debate about whether the retail price is the appropriate price at which utilities should compensate solar customers for the power they generate, which our panelists will delve into.

Following the two morning panels, we are fortunate to have Chairperson Ellen Nowak of the Wisconsin Public Service Commission and Commissioner Ann Rendahl of the Washington State Utilities and Transportation Commission join us to share their experiences relating not only to some of these ratemaking issues, but also to competition and consumer protection issues as well.

In the afternoon, two separate panels will explore issues related to competition and consumer protection. During the first afternoon panel discussion, participants will explore the differing viewpoints concerning the roles of regulation, competition, and antitrust in electricity markets and their underlying rationale.

The last panel of the day will examine consumer protection issues raised by rooftop solar. Our panelists will explore existing guidance, the legal and regulatory environment, the role of industry self-regulation, and what more, if anything, needs to be done and by whom.

IV. Conclusion

With increasing rates of adoption, we want to ensure that rooftop solar develops under conditions of free and fair competition, and that consumers are well-informed about its pros and cons and the options available to them. As the nation's principal advocate for sound competition and consumer protection policy, the FTC is uniquely positioned to assist with such efforts.

Thank you all for being here today.