Something New Under the Sun: Competition and Consumer Protection Issues in Solar Power
A Federal Trade Commission Workshop

The following comments are submitted on behalf of the Alliance for Solar Choice (TASC), an organization founded by some of the largest rooftop solar companies in the nation and a leader in solar advocacy and protecting consumer energy choice. TASC maintains a diverse membership of national and local installers, including Geostellar, Inc., LGCY Power, REPOWER by Solar Universe, SunTime Energy, Sunrun, Lightwave Solar, Palmetto Solar and Demeter Power. TASC's members are committed to ensuring consumers across the United States have a viable choice in energy providers that offer near-term, low-cost, and customer-based solutions to integrate renewable energy resources and improve operational efficiencies.

TASC would like to thank the Federal Trade Commission (FTC) for the opportunity to publicly respond to its many thoughtful questions, ranging from the current state of the solar industry to competition in the utility industry. These are all important topics to learn and understand and we welcome the FTC's interest and involvement. Because of the expansive breadth of the questions presented in the announcement notice, we have participated in and contributed to the Solar Energy Industry Association's (SEIA) white paper entitled "Competition Issues Between Solar Distributed Generation (DG) Firms and Regulated Utilities," filed on June 6, 2016 and we incorporate those responses into our own by reference. We similarly incorporate the information in SEIA's letter, filed in this proceeding on June 7, 2016, detailing the solar industry's leadership in consumer protection. In addition to the information provided in the white paper and letter, we supplement some responses below. We also anticipate filing additional information on the record and before the August 22nd deadline in response to the letter drafted by Edison Electric Institute[1] and submitted via Rep. Yvette Clark.

Competition Issues

Is solar DG a competitive threat to distribution utilities? Does this depend on whether the distribution utility owns generation assets?

Solar distributed generation (DG) is perceived as a competitive threat to profits by many utilities whether or not the utility owns generation assets. As further discussed below, cost of service regulation incentivizes utilities to build, own, and make customers pay for more infrastructure to receive a larger rate of return; thus, the sale of energy itself is not the only competitive threat. As the FTC has explained, distribution utilities have various incentives to undermine the competition posed by unaffiliated distributed energy

[1] *See Lawmaker presses FTC on solar oversight with EEI letter*, Politico.com (Jun. 6, 2016), available at: http://go.politicoemail.com/?qs=e828ed1d5be135624edf6a36fd743bd54e375345cf03d1866ff37b68ccd26f13

resources (DER).[2]

As the rooftop solar photovoltaic (PV) market has expanded, some utilities have reacted with alarm regarding the impact that the growth of the rooftop solar PV market and other DERs may have on utility future sales, revenue, and profits. Notably, the investor-owned utilities' (IOU) trade association, the Edison Electric Institute (EEI) published a paper in 2013 identifying DER as a "disruptive challenge" and as DERs gain market share, "utility revenues will be reduced."[3] While the EEI paper purports to provide an objective menu of options for policymakers to consider when designing rates in response to DERs, the paper actually works against broader policy objectives by presenting a narrow view of ratemaking that would protect the interest of utility shareholders at the expense of customers, stifling competition and innovation while shielding utilities from pressures that would otherwise force them to reduce total utility system costs.

Regardless of whether a utility owns its generation assets, some have acted on this perceived threat through policies and actions, such as through precluding timely interconnection. For example, chronic delays in the process of connecting DG systems to the grid through a utility is costing rooftop solar owners millions and potentially slowing solar adoption rates across the country.[4] Further, some are interpreting rules unfavorably to the DG industry, denying interconnection of net-energy metering (NEM) systems based on how a system is financed.[5]

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[2] *See Reply Comment of the Staff of the Federal Trade Commission* ("FTC New York REV Comments"), Proceeding on the Motion of the Commission in Regard to Reforming the Energy Vision, State of New York Public Service Commission Case No. 14-M-0101 at 6 (Nov. 23, 2015), available at: https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-reply-comment-state-new-york-public-service-commission-reforming-energy-vision-proceeding/112315nypsc.pdf.

[3] Peter Kind, prepared for Edison Electric Institute, *Disruptive Challenges: Financial Implications and Strategic Responses to a Changing Retail Electric Business*, January 2013, available at: http://www.eei.org/ourissues/finance/documents/disruptivechallenges.pdf.

[4] *See, e.g.*, Silvio Maracci, *Solar Interconnection Delays Cost America Millions*, Clean Technica (Aug. 12, 2015), available at: http://cleantechnica.com/2015/08/12/solar-interconnection-delays-cost-america-millions-heres-solve/ (Chronic delays in the process of connecting third-party energy systems to the grid through a utility is costing rooftop solar owners millions and potentially slowing solar adoption rates across the country); *see also* Stacia Naquin, *Call 12 Investigates the Solar Energy Waiting Game*, 12news.com (May 13, 2016), available at: http://www.12news.com/money/business/consumer/call-12-for-action/call-12-investigates-the-solar-energy-waiting-game/187674000 (APS ratepayers complain about habitual interconnection delays for third-party solar panels)

[5] *See, e.g.*, Kim Uhlenhuth, *Stymied by its utility, Iowa college looks at solar backed by storage*, Midwest Energy News (May 31, 2016), available at: http://midwestenergynews.com/2016/05/31/stymied-by-its-utility-iowa-college-looks-at-

It is important to note that most utilities are monopolies and thus not subject to market competition, or free market forces. Their mistakes are sheltered by regulators and paid for by ratepayers when they are permitted to rate-base assets, sales and services. A person generally cannot choose their electric utility and cannot terminate their customer relationship, regardless of how unsatisfactory the service may be. This is in contrast to rooftop solar companies that do operate in a competitive market and rely largely on referrals from pleased customers.

How does regulation affect market entry decisions by solar DG firms? What regulatory policies support or discourage market entry?

Open market access, through sound regulation, is fundamental to solar market entry. Further, stable solar policy and steady, gradual ratemaking established by regulators is crucial to encourage solar market entry and sustain participation in the market by solar companies. One such crucial policy is net energy metering (NEM), a simple and user-friendly instrument to credit solar customers for energy generated from DG systems that is then exported to the grid.

NEM has proven itself as a stable policy over the course of three decades.[6] Currently, 42 U.S. states and the District of Columbia require IOUs to offer retail NEM to their customers.[7] An analysis published by the National Renewable Energy Laboratory described NEM as "foundational for distributed generation market growth," adding that "states in all contexts experienced more robust [distributed solar] markets with the implementation of interconnection [procedures] and net metering."[8] According to the U.S. Energy Information Administration, as of the end of 2014, more than 688,000 electric customers had installed NEM solar facilities in the United States.[9]

NEM has several demonstrated advantages in developing robust DG options for customers. NEM offers residents a straightforward billing mechanism, allowing customers to receive fair credit for on-site DG production. This enables a customer to choose to offset a portion of their energy load, rather than relying on a utility for all of their energy needs. Another key advantage of NEM is its flexibility as a policy for

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solar-backed-by-storage/ (An Iowa college at loggerheads with its utility over interconnecting renewable energy projects is forced to consider energy storage instead).

[6] Iowa adopted one of the first NEM policies in 1984. IAC § 199-15.11(5) (1984), available at: https://www.legis.iowa.gov/docs/ACO/IAC/LINC/07-28-2010.Rule.199.15.11.pdf.

[7] *See* Freeing the Grid 2015: Best Practices in State Net Metering Policies and Interconnection Procedures, available at: http://freeingthegrid.org.

[8] Steward, D. and Doris, E., *The Effect of State Policy Suites on the Development of Solar Markets* at v. National Renewable Energy Laboratory (Nov. 2014), available at: http://www.nrel.gov/docs/fy15osti/62506.pdf.

[9] U.S. Energy Information Administration, Form 861, Net Metering 2014 (Oct. 21, 2015), available at: http://www.eia.gov/electricity/data/eia861/index.html.

sustaining or growing on-site DG resources. State NEM rules can, and have, been amended over the years to increase system capacity limits, aggregate capacity caps, and add additional qualifying technologies, as the modern needs of energy consumers have evolved. This flexibility allows individual states to craft NEM rules to best serve their unique set of DG resources and energy policy landscape.

As the FTC itself has noted, accurate and timely price signals are the means to gain the benefits of competitive markets and efficient investment, placement, and operation of DERs.[10] Voluntary time of use (TOU) rates encourage consumers to adjust their electric consumption based on more transparent price signals than with today's "flat rates." They also allow utilities to vary what they charge customers for power delivered on site based on when that power is most and least expensive to produce and deliver. Well-structured TOU rates are a fairer, more cost-based and accurate approach to ratemaking for all customers and can be used in conjunction with NEM. Well-designed TOU rates should set peak and off-peak periods according to how time-varying loads impact the causation of all types of utility costs – generation, transmission, and distribution – on all portions of the utility system upstream of a customer's specific meter and service drop. When designed based on appropriate data, TOU rates create powerful price signals to shift usage out of the periods when electricity use is both ramping up and at its peak, or to use storage or west-facing PV system orientations to shift PV production into the on-peak period when it is most valuable to the system.

Some utilities have proposed higher fixed fees and demand charges specifically for PV customers as a means to eliminate competition from increased levels of DER. Such fees and charges on solar customers, though widely rejected, have in some cases been adopted and have had a devastating impact. For example, the Salt River Project cooperative utility in Arizona imposed mandatory demand rates, among other fees, on new DG customers in February 2015.[11] Data show a steep decline in residential solar applications after that change. Specifically, the generating capacity associated with new residential DG interconnection applications from January 2015 to September 2015 was 4.2% of the residential capacity volume submitted during the same months in 2014 (i.e., a decline of approximately 96%).[12] It is worth noting that this cooperative, i.e. non-regulated, utility is the only utility in the country with a mandatory demand charge specific to DG customers.[13]

Instead of singling out PV customers for discriminatory charges, utilities and

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[10] FTC NY REV Comments at p. 10.
[11] Salt River Project, Schedule E-27, available at: http://www.srpnet.com/prices/priceprocess/customergenerated.aspx. Note that Schedule E-27 contains a complex TOU-based demand rate structure that differs from what would result from S.B. 1585.
[12] *See* Arizona Goes Solar, *Salt River Project: Installations*, available at: http://www.arizonagoessolar.org/UtilityIncentives/SaltRiverProject.aspx.
[13] Proposed demand charges have been defeated in California, Nevada, Illinois, Oklahoma, Kansas, Arkansas, South Dakota, Idaho, and Montana.

commissions should ensure open access to the distribution system for DERs in a fair, safe and reliable manner, and expand options for customers to manage their electricity use. This requires recognition of the value that DG provides to the grid. The categories of both system and societal costs that DG PV can avoid to various degrees include energy production, environmental compliance, transmission, distribution, generation capacity, operations and maintenance, fuel hedging, and renewable portfolio standard compliance costs. Regulators should conduct independent analyses of costs and benefits of rooftop solar that consider, among other factors, long-term cost impacts of NEM systems based on calculations of the utility's long-run avoided costs for generation, transmission, and distribution. Nearly every independent benefit-cost study of NEM recently conducted has reached the conclusion that rooftop solar is a benefit to all ratepayers.[14]

Value of Solar Tariffs (VOSTs), a form of buy all, sell all arrangement between a homeowner and the utility, are a direct challenge to a consumer's right to self-generate and use that generation for displacing their own load.[15] This right to self-generate is as fundamental as the right to reduce your energy consumption through turning off lights and turning down the thermostat; both are simply a customer reducing their demand on the system. Diluting the right to self-generate then subjects the consumer to the regulatory uncertainty of the future compensation for the energy and other services generated, among other tax and market uncertainties. In fact, many legal experts agree that compensation through a value of solar tariff could be characterized as taxable income and result in inability to access the residential Investment Tax Credit, and the issue is currently under review by the Internal Revenue Service.

While enacting and maintaining policies like NEM is important to creating a competitive DG market, the threat of elimination of these policies can be just as damaging, and can keep a robust market from developing or, in the case of Nevada, the actual elimination of NEM can virtually eliminate an existing market. The uncertainty that comes from some utilities' continual attacks on DG polices has stunted business

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[14] Recent Commission-led studies that demonstrate DG is a benefit to ratepayers include: Nevada, available at: http://puc.nv.gov/About/Media_Outreach/Announcements/Announcements/7/2014_-_Net_Metering_Study/; Maine, available at: https://mpuc-cms.maine.gov/CQM.Public.WebUI/Common/CaseMaster.aspx?CaseNumber=2014-00171; Mississippi, available at: http://www.psc.state.ms.us/InsiteConnect/InSiteView.aspx?model=INSITE_CONNECT&queue=CTS_ARCHIVEQ&docid=337867; Vermont, available at: http://publicservice.vermont.gov/sites/psd/files/Topics/Renewable_Energy/Net_Metering/Act%20125%20Study%2020130115%20Final.pdf; and Missouri, available at: http://moenergy.org/images/Net%20Metering%20%20in%20Missouri%202015%201.pdf

[15] *See* Jon Wellinghoff and Steven Weissman, *The Right to Self-Generate as a Grid-Connected Customer*, November 16, 2015. Available at http://www.felj.org/sites/default/files/docs/elj362/23-305-326-Wellinghoff_FINAL%20%5B11.10%5D.pdf.

investment and customer choice. Utilities do not try to outcompete rooftop solar in the marketplace – again, utilities are government-sanctioned monopolies. Instead, some are countering a competitive threat by bringing spurious arguments before regulators and attempting to get the regulators to close down markets through destabilizing NEM and other market structures. These state level fights do not have reasonable parameters, and can result in massive job losses and market destabilization.

In recent years, Congress has become aware of anti-competitive utility practices. In response, bills like the Free Market Energy Act (S. 2003) have been introduced. While it is the province of state regulators to make decisions on state market structures, the federal government should consider reasonable reforms to the Federal Power Act and the Public Utility Regulatory Policies Act, to ensure that state regulators make decisions on the merits and not due to regulatory capture. Concepts included in S. 2003 would allow DERs and utilities to compete, with customers ultimately winning. As further discussed below, we welcome competition from utilities and their affiliates as long as they are not allowed unfair competitive advantages like rate-basing DG assets and, therefore, guaranteeing a return on their investments. Further, the federal government could provide guidance for methodology that regulatory agencies could use when evaluating long-term impacts of DERs to the grid.

Some utilities attempt to use electric rate design to stifle competition. In a recent paper entitled, "Unjust, Unreasonable and Unduly Discriminatory – Electric Utility Rates and the Campaign Against Rooftop Solar," Ari Peskoe of the Harvard Environmental Policy Initiative examines the utilities' arguments for rate changes in response to rooftop solar. In the paper, Peskoe observes that "IOUs have launched a nationwide campaign against cross subsidies, in the name of consumer protection," claiming that "failure to adopt their rate design proposals would allow subsidies between customers" and proposing rate structures that would "substantially reduce customers' incentives to generate their own electricity or buy less from the IOU."[16]

Are there barriers to entry not related to regulatory policies? If so, is antitrust enforcement an appropriate tool to address them?

Some utilities use more than rate design and regulatory policies to stifle investment in DG. Some have used ratepayer money to secretly fund political campaigns,[17] sponsored confusing ballot initiatives and otherwise misled or confused consumers,[18] used illegal tactics to lobby public utility commissioners,[19] to name a few.

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[16] Ari Peskoe, *Unjust, Unreasonable and Unduly Discriminatory: Electric Utility Rates and the Campaign against Rooftop Solar (condensed)*, The Texas Journal of Oil, Gas and Energy Law (forthcoming) at p. 16.

[17] *See, e.g.*, Howard Fischer, *AG: Burns has right to depose APS*, Arizona Daily Sun (May 5, 2016), available at: http://azdailysun.com/news/local/ag-burns-has-right-to-depose-aps/article_c50be99f-ff88-55dc-94a7-8889f1e1e4e8.html (Arizona's Attorney General explains that state utility regulators have a legal right to question APS executives about secretly funneling money into political campaigns, despite APS's refusal to

If regulatory policy affects entry conditions, is there a role for antitrust enforcement or competition advocacy to encourage entry? Is antitrust an appropriate tool to police efforts by utilities to maintain or strengthen regulatory barriers to entry from solar DG firms? Can such efforts by utilities be characterized as exclusionary conduct under the antitrust laws? Or is regulation the preferred tool to shape electricity distribution going forward? Are regulated distribution utilities protected from antitrust suits through any immunity or exemption? Should they be?

Although the electric industry is still heavily regulated, it has undergone significant deregulation at both the federal and state levels in the past 40 years. This deregulation was intended to introduce competition into many aspects of the industry.[20] As a result, some of the antitrust protection traditionally afforded to utilities to protect anti-competitive behavior may be outdated. Jeffery Schwartz explains:

> The drive toward competition will bring many new challenges to both those within the industry and to those that depend upon it. One change will be a narrowing of the protection that pervasive regulation has traditionally provided electric utilities against challenges to anti-competitive behavior under the federal antitrust laws. Traditionally, utilities have been protected from such challenges because state and federal agencies were intimately

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disclose); *see also* Evan Wyloge, *APS employee drafted anti-solar letter signed by AZ Congressmen*, azcir.org (Jan. 16, 2015), available at: http://azcir.org/2015/01/16/aps-employee-drafted-anti-solar-letter-signed-by-az-congressmen/ (Metadata revealed APS drafted a letter, signed by a group of Congressmen for which it is one of the largest campaign donors, alleging rooftop solar companies are deceiving consumers in an effort to stymie the solar companies who are presenting a challenge to APS's business model).

[18] *See, e.g.*, Mary Ellen Klas, *Rival solar petitions spawn confusion, race for signatures*, Miami Herald (Oct. 30, 2015), available at: http://www.miamiherald.com/news/politics-government/state-politics/article41968473.html (Florida consumers are scammed into signing a utility-backed "Consumers for Smart Solar" voter petition by being told it would make it easier for people to switch to solar power); *see also* Kate Sheppard, *Lobbyist-Tied Group Accused of Faking Support for Potentially Higher Energy Bills*, Huffington Post Politics (Oct. 31, 2014), available at: http://www.huffingtonpost.com/2014/10/31/solar-energy-policy-wisconsin_n_6084604.html (A utility lobbyist-tied group in Wisconsin faked customer support for a proposal that would make it less economical for consumers to own or lease solar panels).

[19] *See, e.g.*, Laurie Roberts, *AG's Office widens Arizona Corporate Commission investigation*, AZ Central (Jul. 23, 2015), available at: http://www.azcentral.com/story/opinion/op-ed/laurieroberts/2015/07/22/corporation-commission-attorney-general-investigation-aps/30543369/ (A criminal investigation was initiated regarding secret meetings between APS and utility regulators).

[20] *See* Jeffery D. Schwartz, *The Use of the Antitrust State Action Doctrine in the Deregulated Electric Utility Industry*, 48 Am. U. L. Rev. 1449 at 1-2 (August 1999).

> involved in utility regulation. Utilities often operated in anti-competitive ways and received protection through various antitrust doctrines. As the industry deregulates, however, many of the traditional reasons for such antitrust immunity vanish. One doctrine that provides such protection is the state action doctrine, which provides immunity from antitrust liability for state sanctioned anti-competitive behavior. As deregulation of the electric industry moves forward, the states will, by definition, be sanctioning less anti-competitive behavior.[21]

For an entity to successfully allege state action immunity, it must prove that it is advancing the state's interests rather than its own. This can be done by showing that the conduct is pursuant to a "clearly-articulated" state policy and that it has been "actively supervised" by the state.[22] Elizabeth Trujillo explains:

> In the context of state action immunity and partial deregulation of electricity, broad deference to regulatory policy in addition to broad application of state action would favor already established companies in the electricity market, essentially empowering the regulatory agencies and in turn, advancing the interests of the dominant companies which they regulate.[23]

In a deregulated electric environment, clarification of this doctrine may be necessary "to guide the courts in their application of antitrust legislation to private conduct without limiting the states' ability to regulate certain markets while introducing competition into others."[24] Current application of this doctrine will make it more difficult for new entrants in electric markets to compete with established utilities.

Yet some utilities have been held liable for antitrust violations. There are a number of cases in which utilities were found liable for anti-competitive conduct for refusing to sell electricity to potential competitors, for refusing to transmit power to potential competitors, and for engaging in costly litigation for the purpose of stifling

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[21] *Id.* at 2 (citations omitted).
[22] Elizabeth Trujillo, *State Action Antitrust Exemption Collides with Deregulation: Rehabilitating the Foreseeability Doctrine*, Fordham Journal of Corp. & Fin. Law, Volume 11, issue 2 at 352-353 (2006) (citations omitted).
[23] *Id.* at 353.
[24] *Id.* at 354 (citing Jim Rossi, *The Electric Deregulation Fiasco: Looking into Regulatory Federalism to Promote a Balance Between Markets and the Provision of Public Goods*, 100 Mich. L. Rev. 1768, 1787 (2002) (stating that "[u]nlike federal preemption and dormant commerce clause doctrines, which limit public actors, state action immunity relates to limits on the exercise of private decisionmakers in violation of antitrust laws.")).

potential competition.[25] Utilities were also found to have violated antitrust laws for illegally tying the sale of unregulated products to the sale of regulated electricity.[26]

Should utilities be permitted to offer rate-paying customers utility-supplied solar PV panels or access to community solar installations? Does it make a difference if, instead, it is an unregulated subsidiary or affiliate of a regulated utility that is offering the solar PV panels? Are anti-discrimination rules for utility affiliates effective in achieving a competitive landscape?

We welcome competition if there is a competitive market. However, as electric markets currently exist, a regulated utility may have financial incentives and the means to raise the costs that its rivals face to provide services to DER projects, among other competitive advantages. For example, as the FTC itself has recently noted in the New York REV proceeding, a regulated utility may have a bias against unaffiliated entities and as a result raise obstacles to gain approvals to connect to the grid.[27]

There can be inherent conflicts of interest that arise when utilities, or utilities' affiliates, look to compete in the open DG market as it exists today. And more often than not, utilities have not been looking to compete on a level playing field. Instead, many utilities across the country are seeking an unfair anti-competitive advantage, which would only lead to private, competitive installers being put out of business or precluded from entering the market.[28]

For example, the proposed SB320 in Ohio would authorize utilities (and affiliates) not only to own DG, but also grant them power to negotiate customer rates without oversight from the Public Utilities Commission of Ohio.[29] This unprecedented bill would allow utilities to write their own rules, while rolling back retail NEM provisions for the private market.[30]

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[25] Schwartz at 10 (citations omitted).
[26] *Id.* (citations omitted).
[27] *See* FTC New York REV Comments at 7.
[28] For example, in 2014, Washington utilities pushed legislation (HB 2176, section 4.1, available at: http://apps.leg.wa.gov/documents/billdocs/2013-14/Pdf/Bills/House%20Bills/2176.pdf) that would have granted them the right of first refusal over solar leasing. According to the proposed legislation, if a utility chose to lease solar panels to just one customer, no other companies could.
[29] SB 320, *Energy/special improvement districts/utility net metering services*, available at: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-320
[30] *See* Karen Uhlenhuth, *Advocates: Language in Ohio bill would 'basically shut down' solar*, Midwest Energy News (May 23, 2016), available at: http://midwestenergynews.com/2016/05/23/advocates-language-in-ohio-bill-would-basically-shut-down-solar/

While Michigan utilities support SB438,[31] which would eliminate NEM, they are also supporting its companion bill SB437, which would allow utilities to sell rooftop solar with little oversight by the Commission.[32] Further, Consumers Energy's proposed pilot DG program gives rise to legitimate concerns over the use of ratepayer funds to support an unregulated affiliate business as prohibited in Michigan's Code of Conduct.[33]

Utility affiliates (e.g., the unregulated subsidiaries of regulated utilities) may participate in the DG market as long as there are no unfair competitive advantages, such as rate-basing DG assets. However, there must be significant firewalls to ensure there is no unfair advantage given to these utility affiliates. For example, no ratepayer funds should be used, there should be no access to billing or energy data, etc.

What is the state of competition among solar DG firms? Are there geographic areas where competition is particularly lacking between solar DG firms?

In many states where there are stable DG policies, like NEM, there is a healthy competitive solar market. Where there is elimination or instability of policies, or adoption of fees on solar customers, it has been shown to effectively shut down a market – putting installers out of business.[34] In fact, even as some private solar DG firms try to move markets away from punitive solar policies, the attacks and business uncertainty can follow.[35]

How is this competition affected by the fact that regulated utilities earn revenues that are based, in part, on regulated rates of return?

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[31]SB 438 (2015), available at: http://www.legislature.mi.gov/%28S%280s1hab3ddr0fpgxiv2phydnm%29%29/mileg.aspx?page=GetObject&objectname=2015-SB-0438.

[32]SB 437 (2015), available at: http://www.legislature.mi.gov/%28S%28lnmf51qk00aliqly5an1ddvo%29%29/mileg.aspx?page=getobject&objectname=2015-SB-0437.

[33]*See* Case 17875, *In the matter of the application of Consumers Energy Company for ex party approval of a solar distributed generation pilot program*, Michigan Public Service Commission (2015), available at: http://efile.mpsc.state.mi.us/efile/viewcase.php?casenum=17875&submit.x=32&submit.y=13

[34]*See, e.g.*, Daniel Rothberg, *Drop-off in Nevada rooftop solar applications sends ripple through industry*, Vegas Inc. (Feb. 18, 2016), available at: http://vegasinc.com/business/2016/feb/18/drop-off-in-nevada-rooftop-solar-applications-send/ (Rooftop solar interconnection applications dropped by 93% in just one month after NEM was eliminated and fees levied on solar customers).

[35]*See, e.g.*, Carol Browner, former EPA Administrator Letter to the Editor, *Letters: To save solar energy, save net metering*, Chicago Sun Times (May 22, 2016), available at: http://chicago.suntimes.com/opinion/letters-to-save-solar-energy-save-net-metering/

Unlike unregulated industries, where companies have a financial incentive to reduce fixed costs in order to maximize profits in the face of competition, regulated utilities have the opposite incentive: The more fixed infrastructure the utilities build, the more profit their shareholders earn from their ratepayers. This "cost-of-service" ratemaking structure was well-suited to solving the challenges of an earlier time in the industry's history, when it was imperative for utilities to build out infrastructure and expand essential service across their territories.

Now that universal service has largely been accomplished, however, it is clear that cost-of-service ratemaking is at odds with a number of important policy goals. For example, while policymakers may wish to encourage conservation to keep total electric system costs low, cost-of-service ratemaking motivates utilities to continuously seek new infrastructure investments.

Thus, the traditional utility business model conflicts with important policy goals, such as reducing total system cost, minimizing environmental impact and encouraging emerging technologies and innovation. In addition, the traditional business model might do little to ensure other goals – including improved customer service and reliability – are met. In light of the emergence of new technologies capable of reducing energy consumption and providing grid services on the customer side of the meter, regulators should consider whether the traditional utility business model should be adjusted.

Conclusion

Again, TASC thanks the FTC for the opportunity to comment on these important issues and we look forward to participating in the workshop on June 21st. If you have any follow up questions to our submission, please do not hesitate to contact us.

Sincerely,

/s/ S. Becca Polisuk
S. Becca Polisuk
Sr. Legal Counsel, Sunrun Inc.
Becca.polisuk@sunrunhome.com
202.689.5882

On Behalf of The Alliance for Solar Choice

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