



February 3, 2020

TO:

Andrew Bateman
General Counsel
South Carolina Office of Regulatory Staff
1401 Main Street Suite 850
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FROM:

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RE: Public Comments on Solar Consumer Protection

Dear Mr. Bateman,

Please find the Solar Energy Industries Association's comments regarding consumer protection regulations for solar leases.

Sincerely,
/s/ Amir Yazdi
Amir Yazdi

/s/ Maggie Clark
Maggie Clark

STATE OF SOUTH CAROLINA
OFFICE OF REGULATORY STAFF

Dear Mr. Bateman,

The Solar Energy Industries Association (SEIA) respectfully submits these comments in response to the South Carolina Office of Regulatory Staff's ("ORS") request for comments regarding solar consumer protection.¹

Established in 1974, SEIA is the national trade association of the United States solar energy industry and is a broad-based voice of the solar industry in South Carolina. Through advocacy and education, SEIA and its 1,000 member companies are building a strong solar industry to power America. SEIA member companies operate in South Carolina working in all market segments – residential, commercial, and utility-scale. SEIA member companies provide solar panels and equipment, financing, and other services to a large portion of South Carolina solar projects. In addition, SEIA has an active consumer protection initiative that has been actively engaged throughout the country and has published consumer guides, disclosure forms, business and business best practices along with working with regulators.²

These comments address the ORS's request for comments regarding consumer protections pursuant to South Carolina Code Section 58-27-2660(A).

Introduction

SEIA supports the efforts of South Carolina to move toward achievement of the goals as set forth in 2019 Act No. 62 (H.3659). SEIA commends the ORS's leadership in seeking to establish a viable regulatory framework for ensuring the responsible growth of solar energy in South Carolina. The initial request for comments is an important step, and SEIA appreciates the opportunity to provide comments.

¹ See South Carolina State Register Vol. 43, Issue 12, at page 9.

² The positions expressed herein represent the views of SEIA and not any individual member company.

SEIA acknowledges the ORS has a role in ensuring that the expansion of the solar marketplace in South Carolina is done responsibly. In performing that role, however, SEIA urges ORS to avoid over-regulating, particularly in a way that creates unnecessary barriers to the deployment of solar resources. To that end, SEIA suggests that new regulations made applicable to the solar industry should be supported by the identification of specific and unique risks that solar business practices pose to consumers, and mindful of the extensive body of local, state and federal law that already regulates solar providers. In essence, any regulatory framework must consider existing regulations and oversight and avoid overly broad, unnecessary, duplicative, and unworkable regulations over residential transactions.

During the January 9 workshop, stakeholders raised a variety of topics of interest including savings estimates, home solicitations, contract terms, and rights of rescission. Many of the topics and practices outlined in the January 9, 2020 workshop in Columbia are governed by no fewer than fourteen (14) federal laws, eight (8) state laws, as well as various local consumer protection laws, and a complex web of federal, state, and local regulators.³ The South Carolina legislature has multiple times positively referenced federal consumer protection laws in state consumer protection laws.⁴ SEIA's Solar Business Code, a code of conduct for member companies, offers guidance on many of the topics raised. Further, SEIA's and its members' experiences in some other states show that targeted rules enhance consumer protection while overly broad rules result in confusion, uncertainty, and unnecessary hurdles for both consumers and industry.

Finally, the solar industry, led by SEIA, has engaged in substantial consumer protection efforts that should inform the ORS's deliberations, as these efforts represent industry-vetted proposals that can be easily adopted by most solar companies. Our member companies wholeheartedly share the ORS's goal of ensuring that consumers have the tools and information they need to fully understand transactions with solar providers. Maintaining consumer confidence in solar providers and their products is key to the success in South Carolina. But SEIA would caution the

³ See Appendix A for a non-exhaustive list of South Carolina and federal consumer protection laws.

⁴ For example, compliance with the FTC's home solicitations rules will result in compliance with South Carolina's analog law. See SC Code § 37-2-501 et seq. And the South Carolina Unfair Trade Practices Acts directs state courts to be guided by FTC guidelines and federal case law. See SC Code § 39-5-20

ORS against creating requirements that either do not directly address concerns or would make compliance with a proposed regulatory framework cost prohibitive. The comments below address topics raised at the January 9 workshop and applicable laws and regulations.

For all these reasons, we believe the ORS should use existing resources and apply a targeted approach to clearly identified and otherwise unaddressed solar-specific risks.

Standardized Disclosure Forms

SEIA's Consumer Protection Committee spent over two years with industry stakeholders and consumer advocacy organizations to develop model disclosure forms for solar cash purchases (which would also be used for systems purchased with loans) and solar leases.⁵ The disclosure forms provide a succinct, model disclosure form for residential solar products that represent the industry consensus concerning the essential terms that every consumer should know before they enter into a solar transaction. The disclosure forms are not designed to regurgitate all contract terms, but instead focus only on the key contract terms.

Our experience working with other state agencies (including Florida, Massachusetts, New Mexico, and New York) as they have developed their residential disclosure forms is that disclosure forms must follow three principles: 1) avoid being overly proscriptive and inadvertently confuse consumers; 2) only include information known by the company at the time the contract is generated; and 3) summarize information in the agreement between the company and the consumer. Disclosures untethered to these principles lead to long, confusing, and unworkable disclosures. For example, in California, the current disclosure form drafts, after multiple rounds of comments, are over 5 pages long with dense text and questions about information a solar company may not have access to like a customer's marginal tax bracket or agreements between the customer and third-parties.

SEIA believes that the use of the model disclosure forms by solar providers address consumer confusion, facilitate comparisons between offers, and provide an opportunity outside of a solar

⁵ SEIA's model disclosure forms are attached hereto as **Exhibit B** and are available at <http://www.seia.org/research-resources/solar-transaction-disclosures>.

contract or a sales presentation for a consumer to review key terms and obligations of a solar transaction. Copies of SEIA's purchase and lease disclosures can be found in Appendix B.

Solar Marketing and Sales

As every other industry, solar companies use advertising and marketing to attract customer interest and explain the value of their products and services. While customer interest in solar is relatively new, laws regulating solar marketing & sales are not.

For well over fifty years federal law has recognized the importance of truthful advertising and the Federal Trade Commission Act ("FTC Act") has prohibited "unfair or deceptive acts or practices in or affecting commerce."⁶ Prohibited practices include acts that likely mislead a reasonable consumer about a material terms.⁷ The FTC further requires that specific claims, such as performance, need to be substantiated and have a reasonable basis for that substantiation.⁸ The law is broad in reach and applies to the solar industry. Examples of past enforcement actions relevant to solar 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 was endorsed by 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)

The FTC also publishes guidelines and regulations on a wide range of business practices with respect to the FTC Act. Some topics addressed in the FTC guides and regulations include:

⁶ 15 U.S.C. § 45

⁷ *See, e.g., Bildstein v. MasterCard Int'l Inc.*, 329 F. Supp. 2d 410 (S.D.N.Y. 2004).

⁸ *See FTC Policy Statement Regarding Advertising Substantiation*. Available at <https://www.ftc.gov/public-statements/1984/11/ftc-policy-statement-regarding-advertising-substantiation>.

- Warranties and Guarantees⁹
- Deceptive Pricing¹⁰
- “Free” and Similar Representations¹¹
- Renewable Energy Credits¹²
- Testimonials and Endorsements¹³

South Carolina has an analog law to the FTC Act – South Carolina Unfair Trade Practices Act – that also prohibits “unfair or deceptive acts or practices.”¹⁴ The South Carolina law directs state courts to “be guided by the interpretations given by the Federal Trade Commission and the Federal Courts to Section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)), as from time to time amended.” As can be seen, the state legislature has voiced a policy preference for its advertising and marketing law to be consistent with its federal counterpart.

Taken together, existing state and federal rules offer breadth and depth of guidance as to what constitutes false or misleading claims. The ORS should adopt by reference the same language as the state’s Unfair Trade Practices Act along with the FTC guidelines.

SEIA also recognizes the benefit of providing some specific guidance to common business practices. Based on the workshop, there was an interest in production and savings estimates.

Production & Savings Estimates

Savings estimates help explain the value proposition of solar, and, like other marketing claims specific to a customer, the estimate requires some level of substantiation and a reasonable basis. Typical savings estimates are based on an estimated system production, cost, available incentives, applicable utility rates, estimated future utility rates, and net-metering or similar programs. SEIA and its members support efforts to help consumers have reasonable assurance that savings estimates are not based on unrealistic assumptions. That is why solar providers and

⁹ 16 CFR 239
¹⁰ 16 CFR 233
¹¹ 16 CFR 251
¹² 16 CFR 260.15
¹³ 16 CFR 255
¹⁴ SC Code § 39-5-20

software developers have spent years perfecting savings estimating tools, and these tools are continually evolving with changing rate structures and customer use cases.

Production estimates should reflect the proposed system's actual characteristics. Section 3.10 of SEIA's Solar Business Code directs members to use factors like system size, tilt, azimuth, and shading when estimating annual production.

Businesses rely on sophisticated software that incorporate many factors to estimate production; however, consumers should have some tool at their disposal to obtain at least a ballpark production estimate. One way the ORS can assist is by pointing consumers to National Renewable Energy Laboratory's PVWatts which offers a user-friendly interface. PVWatts allows for a quick and easy way to estimate annual production, but the tool, as the PVWatts user guide notes, does not account for a number of important factors (like shading) and therefore is better suited for preliminary production estimates.¹⁵

Current and estimated future electricity rates play an important role in an estimate. Estimates of utility rate escalators should be based on relevant data and not rules of thumb. Perfection may not be guaranteed, but escalators based on historical data offer a useful tool to consumers to understand trends in electricity rates. ORS should annually publish the last ten years of utility rates, including breakdowns of the rates, along with an estimated escalation rate based on the previous ten years for each utility territory. This approach offers a useful number to businesses and someone who uses this number, or a lower one, can be presumed to have used a reasonable escalator rate.

Next, a customer's utility rate structure and net-metering (or equivalent) program should be used in the estimate. The state should publish the electricity rates and compensation programs for all utility territories. This will ensure businesses know what to use while offering consumers a one-stop shop to access all important solar information.

A customer's tax liability impacts their ability to fully monetize the residential solar tax credit and their effective out-of-pocket cost for a purchased system (i.e., not a lease). Federal

¹⁵ See <https://pvwatts.nrel.gov/pvwatts.php> (click Help button and "Get Started")

residential tax credits for purchased systems are currently at 26% of the system cost for projects completed in 2020, 22% for projects completed in 2021, and 0% starting in 2022, provided the buyer has enough tax liability to use the tax credit. While unused portions of the tax credit can be carried over to subsequent years, it cannot be redeemed for cash. SEIA's code of conduct requires advertised prices that assume tax credits or incentives to fully explain the appropriate details for eligibility in recognition of the fact that some customers may not be eligible or able to take advantage of certain incentive programs.

Finally, an increasing number of businesses are moving away from savings estimates and emphasizing other benefits such as price certainty, self-sufficiency, and clean power in part due to increasingly complexity in rate structures. We would therefore recommend that South Carolina not require savings estimate

Home Sales and Re-financings

Over the past decade, the residential PV installations has seen consumer finance innovations, including third-party owned finance models (in the form of leases and power purchase agreements) or – more recently – a variety of asset-specific loan products that offer increasingly attractive terms. Now homes with solar are increasingly coming on the real estate market. The most common area of confusion during home sales regards Uniform Commercial Code (UCC) and precautionary fixture filings made by lease providers or lenders of secured solar loans. Some housing industry professionals have confused such filings with a lien on the consumer's home.

This issue is based on a misunderstanding about the filings which are designed to publicize the company's interest in the system, not to place a lien on a home. The filings protect the company's interest in the system if customer defaults on their obligations to the solar company or if the home is foreclosed. During a foreclosure sale, the filings put the mortgagor on notice that they cannot claim the system or sell it off with the home. For homeowner defaults, the filing allows the company to repossess the system if necessary. In fact, industry standard leases include sections explaining the purpose and effect of the filings.

Customer Information Packets

Some attendees raised the possibility of sending information packets to all potential solar customers. 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 encourage solar companies to thrive. With any information packet there is a balance to be struck between including enough information without overwhelming consumers. The South Carolina Energy Office recently published a handout which contains useful contact information and where consumers can go to learn more about solar, including *A Consumer Guide to Solar for the SC Homeowner*. The handout with some supplemental information is an ideal information packet that can be handed to customers.

Based on our experiences, it is important for all stakeholders – utilities, government agencies, nonprofits, and solar providers – to spread the information packet. A link to the information can also be included on the disclosure form for solar transactions. The local load-serving electric utility can proactively and on a regular basis include information in residential utility bills directing consumers to the state website hosting the information packet. In addition, information packets can be provided by the first solar company to interact with the consumer.

Home Solicitations & Rescission

While some solar companies are moving towards online sales for their products, many sales occur during or after in-person meetings. Home solicitation sales have additional requirements compared to goods sold at a company's place of business.¹⁶

For non-English speaking households, the contract's language must match the language of the sales presentation (*e.g.*, Spanish presentation and Spanish contract) under federal regulations.¹⁷ A customer must receive a signed and dated copy of the agreement per FTC guidance.¹⁸ Two copies of the cancellation form, that include specific language, must be included in the contract left with the consumer.¹⁹ In immediate proximity to the signature line is a statement about the

¹⁶ 16 CFR 429

¹⁷ 16 CFR 429.1

¹⁸ *Id.*

¹⁹ *Id.*

customer's cancellation rights.²⁰ South Carolina law follows the FTC's door-to-door rules closely and holds that compliance with the FTC's home solicitation sales rules "shall constitute compliance with" the state law.²¹ Some municipalities impose additional requirements on door-to-door sales.²²

Customer receipt of all the required documents (signed copy of contract and two copies of the cancellation form) triggers a three-business day cooling off period whereby a consumer can cancel a home solicitation agreement for any reason until midnight of the third-business day. Failure to furnish any of the required documents effectively extends the cooling off period. In addition, customers are not obligated to pay a company who acts on the contract during the cooling off period, provided that the customer exercises their cooling off rights before the end of the cooling off period.²³

During the workshop, an idea was raised of extending right of rescission time period to right before an interconnection application is approved. This would extend rescission rights far beyond what any other state allows and kill the rooftop market. The impetus for the suggestion was apparently some customers did not receive the system that they expected. Consumer protections offer a wide variety of rights and remedies if a consumer is wronged, but such rights and remedies must be proportionate and not unfairly penalize businesses acting in good faith. A blanket right of rescission after installation is untenable. An honest company would be subject to the specter of cancellation after a normally expected time period. A company would incur significant expenses by not being able to recoup the cost of installing and uninstalling the system, and there may be some unsalvageable components which increases the sunk costs for the business. This kind of financial risk would make residential solar unfinanceable. The result: no more residential solar installations in South Carolina.

Contract Terms

²⁰ *Id.*

²¹ See SC Code §§ 37-2-501 – 506

²² For example, the cities of Charleston and Greenville require businesses engaged in door-to-door sales to obtain a permit. <https://www.charleston-sc.gov/141/Peddlers-Permit>;

<https://www.greenville-sc.gov/DocumentCenter/View/735/Peddlers-Application-PDF>

²³ <https://www.consumer.ftc.gov/articles/0195-some-home-security-systems-may-be-scams>

While interest in residential solar has skyrocketed in the past decade, the laws regulating contract terms have existed for decades.

The Consumer Leasing Act was passed in 1976,²⁴ and Regulation M was created in 1981.²⁵ 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 party, and warranties. Certain terms are separated into their own sections. As a result, consistent with the state's directives to look to federal law for guidance, solar leases that comply with Regulation M should be deemed compliant.

To assist businesses interested offering leases, SEIA published model residential leases that were originally developed through a National Renewable Energy Laboratory working group that brought together lawyers, lessors, engineers, and other stakeholders to develop model agreements.²⁶ The model lease has been well vetted and can be shared by the State with companies interested in leasing systems.

For system purchases, several states have laws that require certain disclosures in home improvement contracts. Common terms required for home improvement contracts include:

- Name, business address, and license number of the contractor
- Total contract price and payment schedule
- Description of the project to be installed
- Approximate timing for installation
- If applicable, the list of documents incorporated into the contract
- Date the buyer signs the agreement

²⁴ 15 USC §§ 1667-1667e

²⁵ 76 FR 78500

²⁶ Model leases are available at <https://www.seia.org/sites/default/files/2017-10/SAPC-Residential-Lease-0-down-CA-Aggregated-Version-5-20-16-d%20%281%29.doc>

To the extent that South Carolina law does not explicitly mandate such disclosures in home improvement agreements, the ORS should consider requiring these terms for residential system purchases.

New Home Construction Exceptions

The sale and lease of solar systems is increasingly part of the new home purchase process. Other jurisdictions have recognized the very different needs and risks associated with solar purchases and leases connected with or made part of the new home purchase.²⁷ Like the FTC, these jurisdictions recognize that these are not in-home sales, and that it is that aspect of the sale – the pressures and challenges generally recognized as inherent in the in-home sale context – and not something specific to solar, that trigger the protections discussed elsewhere in these comments and that will be considered as this process moves forward.

Solar leases and sales entered together with the purchase of a new home differ from the in-home or “one-off” sales context for additional reasons. For example, while the purchase or lease of a solar system is or may be a relatively large investment by itself, entered into as part of the new home buying process, the solar system is a relatively smaller investment. Wood floors or other finish out, landscaping, fencing, and numerous other aspects of the new home may represent a greater cost to the home buyer than the solar system.

Additionally, there are protections and processes, and even a presumed level of sophistication, inherent to a new home purchase that may or may not be present in an in-home sale or lease of just a solar system. Protections historically regarded as appropriate in the in-home sale context do not fit and are not needed in the context of a new home sale.

Finally, imposing a right of rescission on the solar aspect of the new home sale can confound the process of selling the house itself. Typically, a consumer closes on the solar system contemporaneously with closing on the sale of the home itself. The installation of the solar system was likely integrated in the roofing of the new home, and the system is installed as part of

²⁷ [cite to fl and ca examples]

the roofing and wiring of the home. Allowing a consumer to rescind just the solar portion of the transaction after closing is therefore impracticable.

For all of these reasons and more, other states have exempted solar that is part of new homes from the requirements applicable to in-home sales. In Florida, for example, the Legislature imposed a right of rescission. However, the Legislature expressly carved out solar associated with new homes:

This subsection does not apply to a contract to sell or lease a distributed energy generation system in a solar community in which the entire community has been marketed as a solar community and all of the homes in the community are intended to have a distributed energy generation system, or a solar community in which the developer has incorporated solar technology for purposes of meeting the Florida Building Code in s. [553.73](#).²⁸

Moreover, the Legislature specially exempted from the entire Part all transactions “involving the sale or transfer of the real property on which a distributed energy generation system is located.”²⁹ Even California, which is currently drafting disclosure forms for residential solar transactions, the Legislature exempted from the disclosure requirements “a solar energy system that is installed as a standard feature on new construction.”³⁰

Warranties

Industry standard leases include warranties to maintain and repair the system so that it remains in good working order. The leases also include a system production guarantee which sets a minimum number of kWh that the system will produce each year. The lessor will compensate the consumer if the system fails to meet the annual production threshold.

Warranties for consumer goods must follow the Magnuson-Moss Warranty Act and the promulgated regulations.³¹ The law and regulations establish standards for how warranties may

²⁸ Fla. Stat. § 520.23(12).

²⁹ Fla. Stat. § 520.26(2).

³⁰ California Bus. & Prof. Code § 7169(h). Note that the disclosure requirement was placed in the portion of the California Code that addresses Home Improvement Business.

³¹ 16 CFR 700

be written, limits on disclaimers of implied warranties, and consumer remedies if a covered party fails to fulfill a warranty obligation.

For system purchases, there are equipment warranties for major system components: modules and inverters. Modules often have a twenty warranty and guarantee that module performance after twenty years will be at least 80% of module performance in year one. Inverters typically have warranties for at least ten years, but some products have longer warranties. Customers who wish to take a hands-off approach to system upkeep can purchase third-party maintenance service contracts which offer monitoring and repair services.

Complaint Processes

As ORS builds out its investigation and resolution programs, it should avoid reliance on bright-line tests or overly stringent enforcement mechanisms. Prioritization of investigations and sanctions, if warranted, are flexible inquiries that depend on factors like severity and frequency of the complaints, ratio of complaints to installations, company attempts to resolve the complaint, and existence of documented operating practices. Before imposing a sanction, an investigation should determine not only whether there is clear and convincing evidence to support a claim, but the severity of the sanction based on factors such as those listed above.

We suggest as a general rule that ORS offer a business an opportunity to remedy the situation before a formal investigation is initiated. The Massachusetts Attorney General Office's mediation program serves as a potential model. Under the program, a business provides a point of contact to the office, and if a complaint arises, before any formal investigation commences, there is an attempt to mediate the dispute and have parties settle the complaint. This would allow for an amicable resolution and conserve ORS's resources to pursue egregious cases. For customers whose primary purpose is financial restitution, the ORS can direct that consumer to small claims court and provide information about filing a claim.

Conclusion

SEIA appreciates the opportunity to provide the above comments and looks forward to working with ORS in developing a workable oversight regime for residential solar.

Respectfully Submitted,

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/s/ Maggie Clark

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Appendix A
Examples of Major Federal and State Consumer Protection Laws and Regulations

Federal Laws & Regulations

Section(s)	Name	Examples of Issues Covered	Links
47 USC § 227	Telephone Consumer Protection Act	<ul style="list-style-type: none"> * Robocalls * Spoofing * Unsolicited marketing calls 	https://www.law.cornell.edu/uscode/text/47/227
15 USC § 6151	Do-Not-Call Registry	Restricts calls to consumers on the Do-Not-Call list	https://www.law.cornell.edu/uscode/text/15/6151 https://www.ftc.gov/tips-advice/business-center/guidance/qa-telemarketers-sellers-about-dnc-provisions-tsr
16 CFR Part 310	Telemarketing Sales Rule	<ul style="list-style-type: none"> * Failure to disclose material information (cost, quantity, restrictions) for the good/service * Threats, intimidation, or profane language 	http://www.ecfr.gov/cgi-bin/text-idx?SID=da391d1bcb91b8767c56525f35c28ae7&mc=true&tpl=/ecfrbrowse/Title16/16cfr310_main_02.tpl
15 USC § 45	FTC Act	<ul style="list-style-type: none"> * Advertising and marketing claims * Use of fine print * Example enforcement actions include savings claims, utility or government affiliation, performance claims, endorsements 	https://www.law.cornell.edu/uscode/text/15/45
16 CFR Part 233	Guides Against Deceptive Pricing	<ul style="list-style-type: none"> * Misleading price reductions * Selective comparison between your price and competitor pricing (e.g., using only outlier pricing in your comparison) 	http://www.ecfr.gov/cgi-bin/text-idx?gp=&SID=4c2a16712079bc4bca6fed5899c2537&mc=true&tpl=/ecfrbrowse/Title16/16chapterI.tpl

16 CFR Part 239	Guides for the Advertising of Warranties and Guarantees	<ul style="list-style-type: none"> * Disclose in ads or marketing materials where a consumer can learn more about a warranty's details * Performance guarantees * Lifetime guarantees 	https://www.ecfr.gov/cgi-bin/text-idx?SID=681bb4d3b0035396fd5780c88dcb7b47&mc=true&node=pt16.1.239&rgn=div5
16 CFR Part 251	Guide Concerning Use of the Word "Free" and Similar Representations	"Free" must mean that the consumer will pay nothing (directly or indirectly) for the product/service. Otherwise, all terms and conditions must be conspicuously displayed	http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=4c2a16712079bc4bcaa6fed5899c2537&mc=true&n=pt16.1.251&r=PART&ty=HTML
16 CFR Part 260	Green Guides	Claims associated with RECs	http://www.ecfr.gov/cgi-bin/text-idx?SID=da391d1bcb91b8767c56525f35c28ae7&mc=true&tpl=/ecfrbrowse/Title16/16cfr260_main_02.tpl
16 CFR Part 255	Guidelines on Endorsements	<ul style="list-style-type: none"> * Covers expert, consumer, and celebrity endorsements * Endorsements must be genuine and supported * Expert endorsers must have expertise in the field and actual experience with the product 	http://www.ecfr.gov/cgi-bin/text-idx?SID=da391d1bcb91b8767c56525f35c28ae7&mc=true&tpl=/ecfrbrowse/Title16/16cfr255_main_02.tpl
15 USC § 1125	Lanham Act	<ul style="list-style-type: none"> * Infringement of trademarks by competitors * False advertising by competitors 	https://www.law.cornell.edu/uscode/text/15/1125
16 CFR Part 238	Guidelines on Bait & Switch	<ul style="list-style-type: none"> * Advertising a product that you don't intend to sell * Efforts to stonewall a consumer from obtaining a product at the advertised price * Not providing the product and forcing the consumer to go with another 	https://www.ecfr.gov/cgi-bin/text-idx?SID=681bb4d3b0035396fd5780c88dcb7b47&mc=true&node=pt16.1.238&rgn=div5

15 USC § 1667 et seq.	Consumer Leasing Act	Contract terms, format, disclosures, and advertisements for residential solar leases	https://www.law.cornell.edu/uscode/text/15/chapter-41/subchapter-I/part-E
12 CFR Part 213	Regulation M	Rules to implement the Consumer Leasing Act	http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=da391d1bcb91b8767c56525f35c28ae7&ty=HTML&h=L&mc=true&n=pt12.2.213&r=PART
15 USC § 1601	Truth in Lending Act	Required terms, disclosures, and formatting for consumer loans	https://www.law.cornell.edu/uscode/text/15/chapter-41/subchapter-I/part-A
12 CFR Part 226	Regulation Z	Rules to implement the Truth in Lending Act	http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=da391d1bcb91b8767c56525f35c28ae7&ty=HTML&h=L&mc=true&n=pt12.3.226&r=PART
16 CFR Part 429.1	Cooling-Off Rule	For door-to-door sales, must provide written notices about the consumer's 3 business day cooling off rights along with a copy of the contract.	https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=aee61584442c5958be0c37fe142c618b&rgn=div5&view=text&node=16:1.0.1.4.51&idno=16
15 USC § 2301 et seq.	Magnusson-Moss Warranty Act	*How warranties may be written *Disclaimers of implied warranties *Remedies in consumer disputes	https://www.law.cornell.edu/uscode/text/15/chapter-50
16 CFR Part 700	Interpretations of Magnusson-Moss Warranty Act		https://www.govinfo.gov/app/details/CFR-2016-title16-vol1/CFR-2016-title16-vol1-part700
15 USC §§ 1692-1692p	Fair Debt Collection Practices Act	*Timing of communications to debtor *Harassment or abuse *False or misleading representations made in connection with debt collection	https://www.law.cornell.edu/uscode/text/15/chapter-41/subchapter-V

		*Treatment of multiple debts involving a single creditor	
50 USC § 3901 et seq.	Service Members Relief Act	*Interest rate caps on pre-service loans *Protections against default judgment *Ability to stay proceedings if certain conditions are met	https://www.law.cornell.edu/uscode/text/50/chapter-50

South Carolina Laws

Section(s)	What's Regulated?	Examples of Issues Covered and Other Notes
§ 39-5-20	<p>Prohibits unfair and deceptive practices.</p> <p>Law directs state courts to follow FTC guidance and federal case law regarding the FTC Act's prohibition on unfair and deceptive trade practices.</p>	<p>A non-exhaustive list of past FTC cases and guidance include:</p> <ul style="list-style-type: none"> * Claims of government or utility affiliation or sponsorship * Unsubstantiated claims about product performance * Misrepresentation of savings claims * Use of "free" in advertising * Door to Door sales * Hiding key terms in obscure locations and tiny fine print
§ 39-5-110	<p>Civil penalties for willful violations or violations of injunctions</p>	
§ 39-5-120	<p>AG can petition for the company to forfeit its right to operate in South Carolina</p>	
§ 16-17-445	<p>For unsolicited calls, regulates the timing of the call, identification of the caller and purpose of the call, and that companies should have internal processes for an internal DNC list.</p>	<ul style="list-style-type: none"> * Calling a consumer who asked the company to cease future calls * Calls past 9pm * Claiming to represent someone else
§ 16-17-446	<p>Prohibits robocalls unless the consumer gives consent, caller has an existing or recent business relationship, or caller is following up on a transaction (<i>e.g.</i>, payment).</p>	

§ 40-11-1 et seq.	Regulates the licensing of contractors, including the creation of the SC Contractor's licensing Board, procedures for license revocation, etc.	<p>* Licensure of solar contractors (electrical or plumbing depending on type of system installed) by the Contractor's Licensing Board</p> <p>*Contractor's Licensing Board can order violators to take remedial actions and issue other sanctions</p> <p>http://solar.sc.gov/files/REQUIRED%20LICENSE%20FOR%20SOLAR%20INSTALLATION%20IN%20SOUTH%20CAROLINA.pdf</p>
§ 37-5-108(2)	Unconscionable Debt Collection	
§ 58-27-2600 et seq.	Solar lease providers and leases	
§ 37-5-101 et seq.	Remedies and penalties associated with consumer leases, loans, and credit sales	
§ 37-2-501 et seq.	<p>Home Solicitation Sales</p> <p>*Three business day cooling off period</p> <p>*Written notice of buyer's right to cancel</p> <p>*Refund payments within 10 days of receiving notice of cancellation</p>	*Seller's compliance with FTC rules on door-to-door sales constitutes compliance with state law

Appendix B

Residential Solar Lease and Purchase Disclosure Forms

SEIA® SOLAR LEASE DISCLOSURE

This disclosure is designed to help you understand the terms and costs of your lease of a solar electric system ("System").
It is not a substitute for the lease ("Lease") and other documents associated with this transaction.
All information presented below is subject to the terms of your Lease.

Read all documents carefully so you fully understand the transaction.
For more information on being a smart solar consumer visit www.seia.org/consumers.

LESSOR: Address: Tel.: License # (if applicable): Email:	INSTALLER: Address: Tel.: State/County Contractor License #: Email:	WARRANTY/MAINTENANCE PROVIDER: (If Different from Installer or Provider): Address: Tel.: License # (If applicable) Email:
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LESSEE:
Customer ID:
System Installation Address:
Lessee Mailing Address:
Email:

*** NOTE: YOU ARE ENTERING INTO AN AGREEMENT TO LEASE A SOLAR ELECTRICITY GENERATING SYSTEM. YOU WILL LEASE (NOT OWN) THE SYSTEM INSTALLED ON YOUR PROPERTY.**

Amount & Term (A)	Amount Due Up-Front (B)	Total Estimated Lease Payments (C)	Other Possible Charges (D)
Your monthly payment during the first year of the Lease: \$ _____ The initial term of Lease: <input type="checkbox"/> _____ Years <input type="checkbox"/> _____ Months See Box G , "Lease Payment Escalator", for factors that may affect the amount of future monthly payments.	Amount you owe at Lease signing: \$ _____ Amount you owe at the commencement of installation: \$ _____ Amount you owe at the completion of installation: \$ _____ Total up-front payments: \$ _____	Total of all your monthly payments and estimated taxes over the course of Lease: _____ Your estimated total Lease payments over the initial term of the Lease excluding taxes are \$ _____ Your estimated total tax payments over the initial term of the Lease are \$ _____ based on estimated average monthly tax payment of \$ _____ Incentives Included in Your Estimated Lease Payments: <input type="checkbox"/> None <input type="checkbox"/> _____ _____ _____	Other charges you may have to pay under your Lease: Late Charge: <input type="checkbox"/> If a payment is more than _____ days late, you will be charged \$ _____ OR <input type="checkbox"/> Late payments accrue interest at _____% annually not to exceed the maximum allowable by law Estimated System Removal Fee: \$ _____ UCC Notice Removal and Re-filing Fee: If you refinance your mortgage, you may have to pay \$ _____ Returned Checks: If any check or withdrawal right is returned or refused by your bank, you may be charged: \$ _____ (or a lower amount if required by law) Non-Connection to Internet: If you do not maintain a high-speed internet connection, you will be charged a monthly fee of \$ _____ and/or your monthly payments may be based upon estimates. Non-connection may affect any guarantee. See Box N . Automatic Bank Withdrawals (ACH): [\$ _____ per month fee for not paying your Lease using automatic bank withdrawals] OR [\$ _____ per month discount if you pay your Lease using automatic bank withdrawals] Other: You may be charged \$ _____ for _____

Number of Lease Payments (E)	When Payments Are Due (F)	Lease Payment Escalator (G)
Number of Lease payments: _____	The first payment on your Lease is due on the _____ day of the first calendar month after your System is connected. You will receive: <ul style="list-style-type: none"> <input type="checkbox"/> Electronic Invoices (sent to your email address above) <input type="checkbox"/> Paper Invoices (sent to your U.S. mail address above) 	Your Lease <input type="checkbox"/> HAS <input type="checkbox"/> DOES NOT HAVE a payment escalator. If your Lease HAS a payment escalator: <p>Your Lease payment will increase:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Annually <input type="checkbox"/> Other _____ <p>Your Lease payment will increase by the following amount _____%</p> <p>The first Lease payment increase will occur in _____, 20__ or with your 13th payment, whichever comes later.</p>

Site & Design Assumptions for your Leased System (H)

- Estimated size of the System in kilowatts: _____ (kWdc)
- Estimated gross annual electricity production in kilowatt-hours (kWh) from your leased System in the first year of the Lease: _____
- Estimated annual System production decrease due to natural aging of the System: _____%
- System location on your property: _____
- System WILL WILL NOT be connected to the electric grid
- At the time of installation, your local utility DOES DOES NOT credit you for excess energy your System generates. The rules applying to such credit are set by your jurisdiction.

Security Filings (I)

Lessor WILL WILL NOT place a lien on your home as part of entering the Lease.

Lessor WILL WILL NOT file a fixture filing or a UCC-1 on the System. The UCC-1 is a public filing providing notice that Lessor owns the System, but is **not** a lien.

System Maintenance & Repairs (J)

“System maintenance” refers to the upkeep and services required or recommended to keep your System in proper operation. System maintenance IS IS NOT included for _____ years by _____ (e.g., Installer, Maintenance Provider).

“System repairs” refers to actions needed to fix your System if it is malfunctioning. System repairs ARE ARE NOT provided by the _____ (e.g. Installer, Other).

Please review your Lease for additional information about any warranties on the System installation and equipment. Certain exclusions may apply. Note that equipment warranties for hardware are not required to include labor/workmanship.

Roof Warranty (K)

Your roof IS IS NOT warranted against leaks from the System installation for _____ years by _____ (e.g. Provider, Installer, Other).

Your roof IS IS NOT warranted against leaks caused by removal of the System for a period of _____ years following System removal. Any portions of your roof impacted by the System WILL WILL NOT be substantially returned to their original condition upon the removal of the System (ordinary wear and tear excepted).

Transferring Your Lease and Selling Your Home (L)

If you sell your home, you MAY MAY NOT transfer the Lease to the purchaser(s) of your home. If you may transfer the Lease, the transfer will be subject to the following conditions:

- Credit check on the purchaser(s)
- Minimum FICO score requirement: _____
- Transfer fee of \$ _____
- Assumption of Lease by purchaser(s)
- Other _____

If you sell your home, you ARE ARE NOT permitted to move the System to a new home.

You may also have the options to purchase the System or prepay some or all of the Lease balance as part of or prior to a transfer.

Transfer of Obligations by Lessor (M)

The Lease may be assigned, sold or transferred by Lessor without your consent to a third-party that will be bound to all the terms of the Lease. If such a transfer occurs, you will be notified if this will change the address or phone number to use for Lease questions, payments, maintenance or service requests.

System Guarantee (N)

In terms of your full System, Lessor is providing you with a:

- System performance or electricity production guarantee
- Other type of System guarantee
- No System guarantee

You may have additional guarantees or warranties in addition to those that cover the entire System.

Utility and Electricity Usage/Savings Assumptions (O)

You **HAVE** **HAVE NOT** been provided with a savings estimate ("Estimate") based on your Lease.

If you HAVE been provided with an Estimate, Lessor provides the following:

Lessor **IS** **IS NOT** guaranteeing these savings.

Lessor **IS** **IS NOT** using savings calculations that conform to the *SEIA Solar Business Code*. See **Box R** or www.seia.org/code.

Your Estimate was calculated based on:

- Your estimated prior electricity use
- Your actual prior electricity use
- Your estimated future electricity use
- Any escalator in your monthly Lease price

Your Estimate assumes the following:

- Years of electricity production from the System: _____
- A current estimated **utility electricity rate** of _____ [cost per kilowatt-hour] during the first Lease year with estimated increases of _____ percent annually. Lessor based this estimate on the following source(s): _____
- Your utility will continue to credit you for excess energy your System generates at **ESTIMATED FUTURE** **CURRENT** utility electricity rates

NOTE: It is important to understand that utility rates may go up or down and actual savings may vary. Historical data are not necessarily representative of future results. For further information regarding rates, you may contact your local utility or the public regulation commission. Tax and other state and federal incentives are subject to change or termination by executive, legislative or regulatory action, which may impact savings estimates. Please read your Lease carefully for more details.

Renewable Energy Certificates (RECs) (P)

Any renewable energy certificates or credits (RECs) from producing renewable solar energy with the System **WILL** **WILL NOT** be assigned to the Lessor. If Lessor is assigned the RECs, you will not own the RECs to sell, use or claim them, and Lessor may sell the RECs to a third party.

Cooling Off Period/ Right to Cancel (Q)

In addition to any rights you have under state or local law, you **HAVE** **DO NOT HAVE** the right to terminate this Lease without penalty within _____ [no less than three] business days of _____ by notifying Lessor in writing at the above address.

SEIA Solar Business Code (R)

Installer and Lessor **DO** **DO NOT** abide by and agree to be bound by the *SEIA Solar Business Code* (www.seia.org/code) and its complaint resolution process. For more information about the *SEIA Solar Business Code* and complaint resolution process, please visit www.seia.org/consumers or email SEIA at consumer@seia.org.

Additional Disclosures or Terms (S)

Individual Completing this Form:

Name: _____ Signature: _____

Title: _____ Company: _____ Date: _____

SEIA® SOLAR PURCHASE DISCLOSURE

This disclosure is designed to help you understand the terms and costs of your purchase of a solar electric system ("System").
It is not a substitute for the contract ("Contract") and other documents associated with this transaction.
All information presented below is subject to the terms of the Contract.

Read all documents carefully so you fully understand the transaction.
For more information on being a smart solar consumer visit www.seia.org/consumers.

To better understand the cost of the electricity produced by your System, consult the separate form,
SEIA® Solar Purchase Disclosure Addendum – Estimated Cost Per kWh.

<u>PROVIDER:</u> Address: Tel.: License # (if applicable): Email:	<u>INSTALLER:</u> Address: Tel.: State/County Contractor License #: Email:	<u>WARRANTY/MAINTENANCE PROVIDER</u> (If Different from Installer or Provider): Address: Tel.: License # (If applicable) Email:
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<u>CUSTOMER:</u> Customer ID: System Installation Address: Customer Mailing Address: Email: *NOTE: YOU ARE ENTERING INTO AN AGREEMENT TO PURCHASE A SOLAR ELECTRICITY GENERATING SYSTEM. YOU WILL OWN (NOT LEASE) THE SYSTEM INSTALLED ON YOUR PROPERTY.

Purchase Price (A)	Payment Schedule (B)	Financing (C)
Your purchase price: \$ _____ List of any credits, incentives or rebates included in the above purchase price: _____ _____ _____ *NOTE: You may not be eligible for all incentives available in your area. Consult your tax professional or legal professional for further information.	Amount you owe Provider at Contract signing: \$ _____ Amount you owe Provider at the commencement of installation: \$ _____ Amount you owe Provider at the completion of installation: \$ _____ You will make a final payment to Provider at the following time (e.g. interconnection): _____ and for the following amount: \$ _____	The System: <input type="checkbox"/> WILL be financed <input type="checkbox"/> WILL NOT be financed; or <input type="checkbox"/> Financing of System UNKNOWN to Provider NOTE: If your System is financed, carefully read any agreements and/or disclosure forms provided by your lender. This statement does not contain the terms of your financing agreement. If you have any questions about your financing arrangement, contact your finance provider before signing a Contract.

Installation Timing (D)**Interconnection Approval (E)**

Approximate Start Date: _____ days from the date the Agreement is signed *or* _____ (date).

Approximate Completion Date: _____ days from the date of the Agreement is signed *or* _____ (date).

YOU are or **PROVIDER** is responsible for submitting a System interconnection application.

Site & Design Assumptions for your Purchase (F)

- Estimated size of System in kilowatts: _____ (kWdc)
- Estimated gross annual electricity production in kilowatt-hours (kWh) from the System in the first year of operation: _____
- Estimated annual electricity production decrease due to natural aging of System: _____%
- System location on your property: _____
- System **WILL** **WILL NOT** be connected to the electric grid.
- At the time of installation, your local utility **DOES** **DOES NOT** credit you for excess energy your System generates. The rules applying to such credit are set by your jurisdiction.

System Maintenance & Repairs (G)

"System maintenance" refers to the upkeep and services required or recommended to keep your System in proper operation. System maintenance **IS** **IS NOT** included for _____ years by _____ (e.g., Installer, Maintenance Provider).

"System repairs" refers to actions needed to fix your System if it is malfunctioning. System repairs **ARE** **ARE NOT** provided by the _____ (e.g. Installer, Other).

Please review your contract for additional information about any warranties on the System installation and equipment. Certain exclusions may apply. Note that equipment warranties for hardware are not required to include labor/workmanship.

Roof Warranty (H)

Your roof **IS** **IS NOT** warranted against leaks from the System installation for _____ years by _____ (e.g. Provider, Installer, Other).

System Guarantee (I)

In terms of your full System, Provider is providing you with a:

- System performance or electricity production guarantee
- Other type of System guarantee
- No System guarantee

You may have additional guarantees or warranties in addition to those that cover the entire System.

Utility and Electricity Usage/Savings Assumptions (J)

You **HAVE** **HAVE NOT** been provided with a savings estimate ("Estimate") based on your Contract.

If you HAVE been provided with an Estimate, Provider states the following:

Provider **IS** **IS NOT** guaranteeing these savings.

Provider **IS** **IS NOT** using savings calculations that conform to the *SEIA Solar Business Code*. See **Box M** or www.seia.org/code.

Your Estimate was calculated based on:

- Your estimated prior electricity use
- Your actual prior electricity use
- Your estimated future electricity use

Your Estimate assumes the following:

- Years of electricity production from the System: _____
- A current estimated **utility electricity rate** of _____ [cost per kilowatt-hour] during the year of System operation with estimated increases of _____ percent annually. Provider based this estimate on the following source(s): _____

Your utility will continue to credit you for excess energy your System generates at **ESTIMATED FUTURE** **CURRENT** utility electricity rates.

NOTE: It is important to understand that utility rates may go up or down and actual savings may vary. Historical data are not necessarily representative of future results. For further information regarding rates, you may contact your local utility or the public regulation commission. Tax and other state and federal incentives are subject to change or termination by executive, legislative or regulatory action, which may impact savings estimates. Please read your Contract carefully for more details.

Renewable Energy Certificates (RECs) (K)

You may sell or assign any renewable energy certificates or credits (RECs) that you own from producing renewable solar energy to a third party (which may be the Installer) depending on the laws of your state. Under terms of the Contract, any RECs created by the System **WILL** **WILL NOT** be assigned to the Provider. If Provider is assigned the RECs, you will not own the RECs to sell, use or claim them, and Provider may sell the RECs to a third party. In some jurisdictions, you may have to surrender some or all of your RECs to receive state, local or utility incentives.

Cooling Off Period/ Right to Cancel (L)

In addition to any rights you have under state or local law, you **HAVE** **DO NOT HAVE** the right to terminate the Contract without penalty within _____ [no less than three] business days of _____ by notifying Provider in writing at the above address.

SEIA Solar Business Code (M)

Provider and Installer **DO** **DO NOT** abide by and agree to be bound by the *SEIA Solar Business Code* (www.seia.org/code) and its complaint resolution process. For more information about the *SEIA Solar Business Code* and complaint resolution process, please visit www.seia.org/consumers or email SEIA at consumer@seia.org.

Additional Disclosures or Terms (N)

Individual Completing this Form:

Name: _____ Signature: _____

Title: _____ Company: _____ Date: _____