

C A M P A I G N F O R ACCOUNTABILITY

October 27, 2016

Ken Paxton
Attorney General of Texas
300 W. 15th Street
Austin, TX 78701

Dear Attorney General Paxton:

Campaign for Accountability (CfA) requests that you open an investigation into companies that provide solar panels to individual homes in Texas. A review of the extensive consumer complaints filed with your office reveals many of these companies have engaged in false and misleading acts in the marketing and sale or lease of solar panels, in apparent violation of the Texas Deceptive Trade Practices-Consumer Protection Act, Tex. Bus. & Com. Code §§ 17.41, *et seq.*

Factual Background

In response to a public information request submitted by CfA, your office released over 190 pages of consumer complaints you received from 2012 through the present pertaining to the sale or leasing of solar panels and their installation on the roofs of customers' homes. Complainants identified 12 different solar companies that had provided poor or inadequate service, falsely represented the savings the customers would realize from solar power, lured them in with low price quotes that later proved to be false, required them to sign confusing and ultimately inaccurate contracts, and/or performed shoddy installation of the solar panels. By far the largest number of complaints was lodged against Global Efficient Energy in Fort Worth, Texas.

It appears from many of the complaints that these companies promised significant savings in customers' monthly utility bills with the installation of rooftop solar panels, but those savings never materialized. For example, an April 2016 complaint about Global Efficient Energy (Complaint No. CGS-3609)¹ describes how the company promised a savings "at minimum" of 40% on the complainant's energy bills, yet after the solar panels were installed his energy bills decreased by less than 5%. Moreover, he never received the promised tax credits and energy rebates, which were economic factors in the complainant's decision to install solar panels. *Id.*

Another complainant who also did not receive the promised credits and rebates similarly complained about a discrepancy between the financing cost quoted by Global Efficient Energy's salesman of \$70 per month and the rate reflected in the contract with the finance company of \$199 per month for the first year at an interest rate of 5.99% and \$299 per month for the second

¹ A copy of this complaint is enclosed as Exhibit A.

year at an interest rate of 13.99%. (Complaint No. CGS-4623) (Exhibit B). Describing the impact of this dramatic upswing in cost the complainant wrote:

With each and every month that goes by, we are seeing no savings, just extra money going out the window, and we are now stuck with a loan of 15,500. These solar panels were a horrible mistake.

Id.

Another complaint mentioned statements made in a cold call from a sales representative with Global Efficient Energy, who falsely represented he was associated with an energy program of the City of Houston (Complaint No. CGS-10490) (Exhibit C). In their face-to-face meeting, the complainant learned for the first time the appointment had nothing to do with the city's program, but nevertheless proceeded to purchase a solar energy package based on promises of significant savings in utility costs and rebates. As with the other complainants, these promises proved to be false. Further, when the complainant expressed concerns with the quoted interest rate of 13.99% after month 13 of the contract – a jump she initially made clear would prevent her from making the purchase in the first place —she was told she could refinance at a lower rate. When she tried to refinance, however, her repeated phone calls went unanswered, leaving her with “a substantial debt with a high interest rate.” *Id.* In the complainant's own words:

This company presented itself as a strong, successful company that had been in business for many years. I am disabled and on a fixed income. I purchased this system in an attempt to keep my electricity cost down and trusting what I was told about being able to refinance the debt. This has caused a great deal of stress for me as well as causing a significant financial hardship.

Id.

Consumers have filed complaints alleging false promises, unreturned phone calls, and factual misrepresentations by other solar companies as well. As with Global Efficient Energy, they tell a common story: consumers are lured in by promises of significant cost savings and lower teaser interest rates, then find themselves facing huge debts not offset by savings in their utility costs. For example, one complaint against Solar City detailed the numerous attempts by the complainant to obtain a promised signing bonus and an energy credit, only to discover the solar company had failed to provide her utility company with the information necessary for that credit. She wrote:

I am a 65 year old woman that lives on Social Security and a part-time job! I live on a budget and that did not include paying another \$75 in solar lease payments plus my

regular electric bills. I may be old but not stupid!²

As a result of Solar City's false promises, the complainant described

many hours of sleepless nights worrying about how I am going to pay my huge Reliant Bills because they were supposed to be \$5 - \$15 not \$116 - \$123 and then pay the \$75.93 lease payment on top.

Id.

Another complaint concerned the failure of the solar company Visionsolar to honor the terms of its contracts. In one instance, the complainant tried to stop the installation of solar panels by Visionsolar two days after agreeing to their installation because she was unable to get her questions answered.³ She called again one week later and thereafter made more than 20 calls to the company, but her concerns went unanswered and her request to cancel the order was ignored. *Id.* The contract she signed with Visionsolar provides that notice of cancellation can be made "any time prior to midnight of the third business day after the date of this transaction." *Id.* While there is some discrepancy between the date on the contract (June 9, 2016) and the date the complainant claims she first requested the installation be stopped (June 6), the complainant quite clearly took numerous steps to get out of her contractual obligations, all to no avail. In any event, Visionsolar's 24-page contract is far from a model of clarity and contains terms highly beneficial to the company and lender, but offers few, if any, protections to the customer.

The leasing contract used by NRG Residential Solar Solutions LLC (NRG RSS) (Exhibit F) – another contract of adhesion – also contains terms highly unfavorable for customers. For example, it imposes on the customer an "absolute" and unconditional payment obligation with no "set-off, counterclaim, recoupment, defense or other rights that you may have against any person whatsoever." *Id.* While the contract provides a right of cancellation if the "size, cost, or energy production" differs more than seven percent from the original estimates, the company agrees to refund only the down payment, with no other amounts under the lease due. *Id.*

For those customers leasing solar panels from NRG RSS, that same contract places restrictions on their ability to sell their homes before the lease payments are fully satisfied. In those instances, the new owner must meet NRG's "credit requirements." Exhibit F, p. 6. Further, the original homeowner remains liable for all obligations under the lease "until you [home owner], the new owner, and NRG RSS have signed a transfer agreement under which all of your remaining rights and obligations under this Lease are transferred from you to the new owner[.]" *Id.*

² Complaint 460050 (enclosed as Exhibit D).

³ Complaint No. CGS-10267 (enclosed as Exhibit E with contract).

These provisions are particularly problematic given the evidence that leasing solar panels actually decreases the value of a home. According to the *Los Angeles Times*,

some would-be buyers balk when they learn that they'll need to qualify on credit to take over [the existing] solar lease payments for the next 15 to 17 years. Others say they like the house but won't sign a contract unless [the home owner] buy[s] out the remaining lease payment stream -- \$15,000 or \$20,000 or more -- because they're worried that the solar equipment will become obsolete or won't save as much on electricity bills as advertised.⁴⁴

Potential Violations of Law

Title 2 of the Texas Business and Commerce Code, Chapter 27 -- The Texas Trade Practices Act (DTPA) -- protects consumers from "false, misleading, or deceptive acts or practices[.]" *Id.* at § 17.46. Specifically prohibited actions include, *inter alia*:

- (5) representing that goods or services have . . . characteristics . . . benefits, or quantities which they do not have . . .
- (11) making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions . . .
- (28) delivering or distributing a solicitation in connection with a good or service that: (A) represents that the solicitation is sent on behalf of a governmental entity when it is not . . .

Id. at § 17.46(b).

The practices of numerous solar companies outlined in the complaints your office has received appear to violate these statutory provisions. By falsely representing the savings and rebates customers would receive from solar energy roof panels and the overall impact of solar energy as a more cost-effective energy alternative, companies like Global Efficient Energy and Solar City appear to have violated §§ 17.46(b)(5) and (11) of the DTPA. Further, by falsely representing himself as part of a Houston energy program, a salesman for Global Efficient Energy appears to have violated § 17.46(b)(28) of the DTPA.

The complaints reflect the harsh reality that solar companies operating in Texas often take advantage of a particularly vulnerable population: those living on fixed incomes. As a result, the impacts of these apparently fraudulent practices are all the more devastating, leaving

⁴⁴ Kenneth R. Harney, Leased Solar Panels Can Complicate – or Kill – a Home Sale, *Los Angeles Times*, Mar. 22, 2015, available at <http://www.latimes.com/business/realestate/la-fi-harney-20150322-story.html>. See also Solar Panels Can Be a Deal Killer, *Realtor Magazine*, Mar. 23, 2015, available at <http://realtor-mag.realtor.org/daily-news/2015/03/23/solar-panels-can-be-deal-killer>.

customers with even higher monthly utility costs and loans that often exceed what they can afford to pay, and plunging them into a cycle of debt.

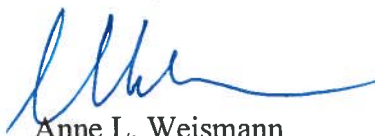
These problems are exacerbated by the one-sided contracts of adhesion those who purchase or lease solar roof panels are required to sign. Texas law defines contracts of adhesion as those “in which one party has absolutely no bargaining power or ability to change the contract terms.” *Serv. Corp. Int’l v. Lopez*, 162 S.W. 3d 801, 809 (Tex. App. 13th 2005) (citations omitted). Although such contracts are not *per se* unenforceable, they will be voided by a showing they were “procured in an unconscionable manner, induced or procured by fraud or duress[.]” *In re. Oakwood Mobile homes, Inc.*, 987 S.W. 2d 571, 573 (Tex. S. Ct. 1999).

The solar company contracts that complainants submitted to your office have all the earmarks of contracts of adhesion; there is no suggestion they could be changed in any way, shape, or form. A further investigation of whether they should be voided is warranted given the apparent fraud solar companies used in Texas to induce customers to buy or lease solar panels.

Conclusion

Solar companies operating in Texas are employing a variety of strategies and practices that may enhance their bottom line, but are leaving customers frustrated, unhappy, and facing even bigger utility bills. Laws like the Texas Trade Practices Act protect against the kinds of fraudulent practices that seem so prevalent in the solar energy industry, but their utility depends on more aggressive enforcement. CfA therefore requests that your office launch a statewide investigation into the consumer practices of solar energy companies, drawing on the many examples found in the complaints lodged with your office. If these companies have violated Texas law, they must be held accountable.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Anne L. Weismann', with a long horizontal flourish extending to the right.

Anne L. Weismann
Executive Director

Encls.