

Resolution Regarding Federal Trade Commission Intrusion into State Jurisdiction on Distributed Generation Policy

WHEREAS, On June 21, 2016, the United States Federal Trade Commission (FTC) held a workshop concerning the state of distributed energy resources (DER), electric utilities, and anti-consumer and anti-competitive activities in this field titled ***Something New Under the Sun: Competition and Consumer Protection Issues in Solar Power - A Federal Trade Commission Workshop*** (Workshop) (<https://www.ftc.gov/news-events/events-calendar/2016/06/something-new-under-sun-competition-consumer-protection-issues>); *and*

WHEREAS, The notice for the Workshop detailed the topics for consideration including:

- (1) The current state of the solar power industry, and anticipated technological advancements;
- (2) Current regulatory approaches to compensating consumers for the power they generate, with a particular focus on net metering laws and regulations;
- (3) Competition among solar distributed generation (DG) firms, between solar DG firms and regulated utilities, and between solar generation and other power generation technologies; and
- (4) Consumer protection issues, including how consumers obtain the information necessary to decide whether to install solar PV panels; *and*

WHEREAS, Each of these four topics of inquiry includes matters within the jurisdiction of most State public utility commissions (State commissions); *and*

WHEREAS, The FTC acknowledged explicitly State jurisdiction, stating:

Retail electric utilities remain statutory monopolies to some degree in every state because elements of their operations have been viewed as natural monopolies. In general, retail electricity rates are not set by the marketplace. Rather, in most states, they are the product of ratemaking proceedings overseen by state regulators (e.g., public utility commissions (PUCs)) or local authorities; *and*

WHEREAS, State commissions are statutorily obligated to regulate investor-owned utilities and ensure that service is available to all customers at just and reasonable rates; *and*

WHEREAS, The FTC Workshop considered how the FTC could maintain competition for the solar industry and ensure that distribution utilities are not unfairly erecting barriers to entry; *and*

WHEREAS, The FTC discussed the impact of rate design on the growth of solar resources in a given jurisdiction and utility service territory; *and*

WHEREAS, The notice for the workshop expressly criticized certain rate designs by stating:

[R]ate reform may be a disguised effort by utilities to make solar DG less desirable relative to the status quo, thereby minimizing solar DG as a competitive threat. There also may be competitive issues if a regulated public utility is permitted to use

revenues from regulated retail sales to compete directly with solar DG firms by offering to install utility-supplied PV panels to its current customers; *and*

WHEREAS, These rate-setting issues are the subject of formal regulatory proceedings in many State commissions; *and*

WHEREAS, State commission rate-setting decisions concerning solar DER involve specific policy preferences and safety, reliability, affordability, equity, environmental, and public interest concerns; *and*

WHEREAS, Certain State-specific decisions are ill-suited for uniform national approaches crafted by general interest stakeholders, such as the FTC; *and*

WHEREAS, The FTC is the federal consumer protection agency interested in protecting consumers from predatory and misleading business practices; *and*

WHEREAS, State commissions serve the primary role of regulating the business practices of investor-owned utilities; *and*

WHEREAS, DER deployment is increasing, which can impact utility costs, planning, and rate recovery; *and*

WHEREAS, In some States, utility costs are recovered exclusively through retail rates approved by State commissions; *and*

WHEREAS, As a general matter, State commissions oversee utility operations, protect the interests of customers, the health of the utilities, the reliability of the system, and the sustainability of our energy choices; *and*

WHEREAS, The National Association of Regulatory Utility Commissioners State commission members have achieved the appropriate balance of these interests for the past 128 years, including the accommodation of new technologies, business models, and customer requirements that have emerged; *and*

WHEREAS, Recognizing an evolution of the industry, NARUC created a separate Staff Subcommittee on Rate Design and tasked that subcommittee with preparing a manual to assist State commissions in crafting appropriate rate design and compensation options for DER; *and*

WHEREAS, The DER Compensation Manual contains two sections noting that customer protection initiatives should be considered, either by State commissions or in conjunction with the appropriate State and/or federal agencies, *and*

WHEREAS, In many States, State commissions have the sole authority to regulate the costs and rates of investor-owned utilities; *now, therefore be it*

RESOLVED, That the National Association of Regulatory Utility Commissioners, convened at its 2016 Annual Committee Meetings in La Quinta, California, opposes any attempt by the FTC, or any other federal agencies, to infringe on areas that are exclusively under State regulatory authority, because this could produce unintended consequences and would disrupt a carefully balanced set of technologies, markets, and interests; *and be it further*

RESOLVED, That NARUC believes that the FTC can contribute meaningfully in enforcement against the business practices of non-regulated power providers, DER marketers, and utilities that do not protect the interests of customers; *and be it further*

RESOLVED, That NARUC supports the development of a partnership and dialogue with the FTC and NARUC and its members such that the FTC will coordinate with State commissions in a manner that best protects consumers and serves the public interest.

Sponsored by the Committees on Energy Resources and the Environment and Electricity

Recommended by the NARUC Board of Directors November 15, 2016

Adopted by the NARUC Committee of the Whole November 16, 2016