

Decision 84 03 042 MAR 7 1984

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the feasibility of establishing various methods of providing low-interest, long-term financing of solar energy systems for utility customers.

OII 42
(Filed April 23, 1979)

ORIGINAL

O P I N I O N

On January 14, 1983 San Diego Gas & Electric (SDG&E) filed a petition to modify Decision (D.) 92251 and D.82-07-101 to upgrade the size of solar systems that would be eligible for rebates in the multifamily phase of the OII-42 program. At the suggestion of the staff (letter of March 17, 1983), SDG&E amended its petition on May 18, 1983 to request that D.82-04-025 also be modified to upgrade the size of nontraditional solar systems as well.

Alten Corporation (Alten) responded twice to SDG&E's petition. First, it filed on March 22, 1983 its response to SDG&E's original petition. Second, after the staff filed its response on May 5, 1983, Alten filed a second pleading responding thereto. No other representative of the solar industry filed a pleading, although the Commission received letters from Peter Barnes and California Solar Energy Industries Association (CAL-SEIA). None of the pleadings or letters requested a hearing.

On October 5, 1983 the Commission issued D.83-10-014 in which it granted the petition of SDG&E with the modifications recommended by the staff. D.83-10-014 increased the multifamily sizing multiplier from 0.5 to 1.0 for all types of solar heaters; and for purposes of sizing collectors and tanks on atypical multifamily dwellings (e.g., dormitories and nursing homes) D.83-10-014 defined "bedroom" as each bed.

On October 21, 1983 CAL-SEIA filed an application for rehearing of D.83-10-014 and on November 2, 1983 Alten also filed an application for rehearing.

Discussion

We will first address CAL-SEIA's petition, as it involves a question of standing to file an application for rehearing. As noted above, CAL-SEIA did not file a pleading in reply to SDG&E's original petition, to its amended petition, or to the staff's response. The question arises, then, how did CAL-SEIA become a "party" for the purpose of filing an application for rehearing?¹ Although CAL-SEIA did not address the standing issue, it could have achieved standing in only three ways:

1. It could have filed a protest and request for hearing under Article 2.5 of our Rules. This it did not do.
2. Its letters could, arguably, have conferred standing.
3. Its status as a party to the original proceedings in OII 42 (assuming it ever acquired such status) could, arguably, confer standing.

CAL-SEIA did not file the "formal pleading" required under Rule 8.1, and, therefore, did not become a formal protestant under Article 2.5.

CAL-SEIA's letters may not be considered as a substitute for the formal pleading required by Rule 8.1 because they do not include a request for a public hearing or an offer of the evidence which CAL-SEIA would sponsor or elicit at the hearing (Rule 8.1(b) and (c)). Moreover, by Article 2.5 we intended to eliminate the practice of sending "lightweight" protests by letter. By allowing CAL-SEIA's letters to be considered the equivalent of a formal pleading we would be violating both the letter and the intent of Article 2.5. Finally, CAL-SEIA's letters were not timely (Rule 8.3) and were not served on the petitioner (Rule 8.5).

¹ "After any order or decision has been made by the commission, any party to the action or proceeding...may apply for a rehearing..." (Public Utilities (PU) Code § 1731; emphasis added).

For the purpose of these supplementary proceedings, CAL-SEIA did not acquire party status by appearing in the original proceedings in OII 42. The original proceedings in OII 42 are closed and the decisions issued therefrom are final. The Commission, nevertheless, allows the filing of petitions for modification of its prior decisions. The effect of these petitions is to open a supplementary proceeding, the purposes of which are limited to the scope of the petition. PU Code § 1708 requires, and the Commission requires (Rule 43) that copies of petitions for modification be served upon all parties to the original proceeding. Thereafter, the protest rules (Article 2-5) come into play. The filing of a protest, as defined in Rule 8.1, constitutes the "appearance" of a protestant in the supplementary proceeding and makes him a party thereto. If no protests are filed, the Commission may reasonably assume that the petition is noncontroversial and may grant it without hearing. Failure to file a protest constitutes a waiver of the opportunity to be heard, granted by § 1708, to parties in the original proceeding.

CAL-SEIA must exhaust its administrative remedies before it can perfect its right to challenge the Commission's decisions. It may not sit on its hands until the Commission has acted and then make its concerns known, expecting that the Commission will accord its concerns the same weight as if they had been presented in a timely fashion and in the manner required in the Rules.

For the foregoing reasons we conclude that CAL-SEIA is not a party to these supplementary proceedings initiated by SDG&E's petition, and, accordingly, CAL-SEIA has no standing to file an application for rehearing under § 1731. Its application for rehearing should be dismissed on this ground alone.

Moreover, CAL-SEIA's application for rehearing also does not set forth legal grounds requiring the Commission to grant rehearing. Its brief pleading consists largely of arguments that it could have made by way of a formal protest and request for hearing under Article 2.5 of the Rules. It does state that the enactment of AB 1942 changed CAL-SEIA's initial assumption that the program would terminate in mid-September. CAL-SEIA alleges that "the industry" did not respond to SDG&E's petition because of that assumption.

These allegations do not require the Commission to grant rehearing. CAL-SEIA had adequate opportunity to protest and request a hearing. It could have filed its pleading in response to SDG&E's original petition, or to SDG&E's amended petition, or to the staff's pleading, during a period of almost six months. That it chose not to do so, acting on assumptions that proved to be mistaken, does not improve its position. CAL-SEIA let its opportunity to request a hearing, and to be heard, pass by. It has waived that right.

We next address Alten's application for rehearing. Alten attacks D.83-10-014:

1. For substituting beds for bedrooms in determining sizing of solar systems for atypical multifamily dwellings, e.g., dormitories and nursing homes;
2. For increasing the multifamily multiplier from 0.5 to 1.0.

Alten's reason for challenging D.83-10-014 is that it "has recently developed data on energy savings and hot water consumption rates which fundamentally contradict the SDG&E data on which the Commission staff relied in D.83-10-014 in revising sizing standards for multifamily housing." Alten requests that the Commission:

- "1. Adopt a sizing multiplier of 0.6 for regular multifamily and for atypical multifamily dwellings, other than health-care facilities;
- "2. Return to bedroom as the unit for collector and storage sizing for atypical multifamily dwellings other than health-care facilities."²

Alten's application for rehearing does not set forth any "grounds on which the applicant considers the order or decision of the "Commission to be unlawful or erroneous." (Rule 86.1). No cases, statutes, or constitutional provisions are cited; and no legal arguments are advanced. Reduced to its essentials, Alten's argument is that rehearing should be granted because Alten allegedly has new data that might cause the Commission to rescind or amend D.83-10-014. This type of plea is addressed to the discretion of the Commission, which is not bound to grant it.

We have considered Alten's application and do not believe that it merits further proceedings. We conclude that it should be denied.

Conclusions of Law

1. The application for rehearing of CAL-SEIA should be dismissed for lack of standing.
2. The application for rehearing of Alten should be denied.

² Alten concedes that for hospitals and nursing or convalescent homes, the Commission's new sizing standards are correct.

O R D E R

IT IS ORDERED that:

1. The application of CAL-SEIA for rehearing is dismissed.
2. The application of Alten for rehearing is denied.

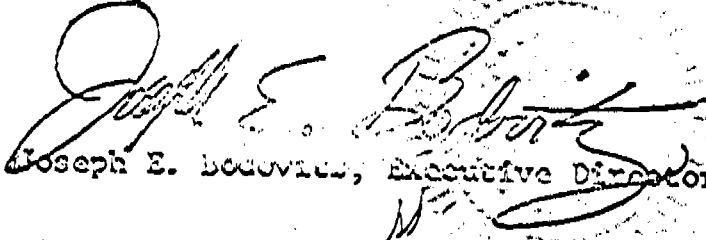
This order is effective today.

Dated MAR 7 1984, at San Francisco, California.

VICTOR CALVO
FRISCILLA C. GREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

Commissioner Leonard M. Grimes, Jr.,
being necessarily absent, did not
participate.

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Joseph E. Bodovitz, Executive Director