

Decision SZ 03 072 MAR 16 1982

ORIGINAL

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 24, 1979)

OPINION ON ISSUE OF PLACE HOLDING

Background

By Decision (D.) 93774 (November 17, 1981) the Commission ordered Southern California Gas Company (SoCal) to cease sending out applications for 6% solar water heater loans in excess of \$4,000. It also ordered hearings on the loan ceiling issue, which were held December 10 and 15, 1981. By D.93885 (December 17, 1981) the Commission ordered that the \$4,000 limit on 6% solar loans be retained, but that SoCal may issue loans for more than \$4,000 if the excess was assessed interest at 16% per annum or the maximum rate allowed by law, whichever is the lesser rate.

In D.93885 the Commission required SoCal to "file a report within 20 days on the status of the loan program." That report was mailed to all parties by letter dated January 6, 1982. The Commission also ordered that:

"In no event shall SoCal process any loan applications that are not within the initial 9,500 applications submitted until further order of the Commission."

SoCal's report showed that of the initial 9,500 applications, 292 had been rejected for credit or title deficiencies and 617 had been canceled. Thus, of the original 9,500 potential loans, 909 would not be issued absent further action of the Commission. In addition,

potential loans in other categories might never be issued because loan offers might not be accepted or because deficiencies in applications might not be corrected.

Because of the problem of unissued loans, Administrative Law Judge (ALJ) Robert T. Baer on January 21, 1982 filed and mailed to all parties his ruling on the place holding issue. It called for written comments by February 5, 1982 on these questions:

- a. Is the homeowner or contractor entitled to hold a place among the first 9,500 applications?
- b. Under what circumstances will the homeowner or contractor be deemed to have waived or relinquished his place?
- c. When and under what circumstances will SoCal be justified in processing applications with numbers beyond 9,500?

Eight parties filed comments: California Solar Energy Industries Association (Cal-SEIA), Warren D. Buckmaster, Capistrano Solar Systems, Inc. (Capistrano), A-1 Energy Savers, Inc. (A-1), United Solar Associates, Inc. (United), Reynolds Metals Company (Reynolds), SoCal, and staff.^{1/}

Status of Loan Program

SoCal submitted as part of its comments a progress report of the loan program through February 3, 1982. The report shows:

^{1/} Solarcal Council submitted comments by letter, which has been placed in the correspondence file.

Loan offers mailed before 11/23 (of this group 3,601 were executed on or before 12/31/81 and 307 were canceled for no response by 12/31/81)	3,908
Loan offers originally under \$4,000 - mailed 11/23 through 12/31/81	639
Revised loan offers mailed 11/30 through 12/31/81	1,820
Revised loan applications processed but pending because of various deficiencies	<u>0</u>
Subtotal	6,367
Loan applications mailed 12/31/81 through 2/3/82	1,763
Loan applications over \$4,000 (duplicates)	195
Loan applications rejected for credit/title/ occupancy	406
Loan applications canceled	<u>769</u>
Subtotal	3,133
Total	9,500

SoCal informs us that 964 places (the 769 canceled plus the 195 duplicates) are now available for substitute offers. A majority of the 307 places of customers who failed to respond by December 31 will ultimately be available for substitute offers, once certain claims of failure to receive offers are resolved. A majority of the 406 applications rejected for credit/title/occupancy may become available for substitute offers, since SoCal has given these customers 90 days to resolve the problems with their applications. Finally, some of the pending offers may not be accepted, making some of those places available.

SoCal's Proposal

SoCal proposes that the Commission establish these principles for its guidance in administering the solar loan program:

1. The customer should, for any reason, be able to substitute a new contractor without losing his place in line.
2. If a customer cancels his loan application entirely, the next customer in line should be allowed to have his loan application processed until the number of cancellations is equaled by the number of customers on the waiting list who then become eligible.
3. A customer cannot in any way transfer his priority status to someone else.
4. A customer should be deemed to have relinquished his place in line only upon cancellation.
5. "Cancellation" includes:
 - a. Written notification by a customer that he no longer wants to participate in the program;
 - b. Telephone notification by a customer followed by a letter from SoCal to the customer confirming the phone call; and
 - c. Expiration of SoCal's offer to provide a loan, which is now set at 90 days following issuance of the offer.

SoCal's proposal favors the customer, rather than the contractor. SoCal argues that the solar loan program was designed to provide a customer with the ability to obtain a low-interest loan for a solar water heater. Moreover, SoCal contends customers on the waiting list have a reasonable expectation that they will have an opportunity to participate, depending on their applications' priority, in the event of cancellations by any of the first 9,500 applicants.

This expectation was created by the establishment of the waiting list in the first instance. SoCal also alleges that when customers have called to find out their place on the waiting list, SoCal's practice has been to tell them what their priority numbers are. SoCal believes that the Commission should not frustrate the reasonable expectations of customers on the waiting list.

Cal-SEIA's Position

Cal-SEIA proposes that the issues raised in the ALJ's ruling be resolved as follows:

1. If the homeowner does not cancel, but merely chooses as a result of D.93774 to rescind his contract with one contractor and purchases a cheaper system, he should be allowed to hold his place for that purpose, provided he complies with all other time deadlines.
2. If a customer cancels entirely, SoCal should give the contractor written notice, and the contractor should be allowed to hold his place for 30 days, while he attempts to sell another customer on the revised program. Similar action should be taken if a customer does not formally cancel, but merely defaults, e.g. by not accepting his loan offer in time.
3. If a customer is rejected for credit or title deficiencies, and these deficiencies are not corrected within a reasonable time, both the homeowner and contractor should lose their place in line, and the next application in order after No. 9,500 should be taken. It seems reasonable to require that a contractor qualify his customers in order to be entitled to hold his place in line.
4. If a homeowner cancels or defaults and there is no contractor, or the contractor fails to produce another application in

30 days, the place should go to the next party in line after No. 9,500.

Staff Position

The staff believes that the customer should be allowed to keep his place on the priority list of applications but only for a reasonable time. During that time the customer could renegotiate his contract with his existing contractor or other contractors. The staff also recommends that SoCal give notice to the customer that he must correct the defects in his application, if appropriate, or submit a revised application within 45 days of receipt of the notice. If he fails to do so, he shall be deemed to have canceled his application and waived any right to retain his place on the priority list. Finally, staff proposes that whenever an applicant cancels his application or fails to comply with the provisions described above, another application shall be selected in numerical order from among the applications numbering 9,501 and above to replace the canceled application.

Other Comments

Buckmaster suggests that the place on the priority list belongs to the homeowner until he cancels. At that time he proposes that the place should revert for 30 days to the contractor. He also proposes that contracts rejected for title or credit deficiencies should revert to the applicants on the waiting list, since program delay had nothing to do with these rejections.

Capistrano observes that the most important consideration is that all 9,500 loans be made. It concludes:

"Our best course of action would be to see that all 9,500 loans are filled on a first come first served basis, and draw on the total of more than 14,000 applications in order to do this."

United proposes that the contractor be entitled to replace canceled applications with applications of his choice. Applicants among the first 9,500 should be deemed to have waived or relinquished their places when their applications have been rejected by SoCal, when the offer has not been accepted on time, or when the contractor provides SoCal with the written cancellation of his customer.

A-1 supports the contractor's right to hold the place of his customer for 60 days after his customer cancels. A-1 believes that the contractor should first give any of his customers with numbers over 9,500 a chance for a loan before going outside of the list.

Reynolds favors place holding by customers succeeded by those on the waiting list.

Discussion

The positions of the parties are largely polarized. SoCal, staff, Reynolds, and Capistrano favor place holding by customers in the first 9,500 applications, succeeded if necessary by those on the waiting list. Cal-SEIA and most of the contractors favor place holding by customers in the first 9,500 applications; but, if the customer cancels, then the contractor should be given a limited time to fill the place of his customer on the list.

The arguments in favor of both positions are fairly well defined. SoCal and staff argue that the demonstration program was customer-oriented from its inception; that, from the point of view of the industry as a whole, it should make little difference whether a given customer or contractor is accommodated, so long as 9,500 applications are ultimately approved; and that the customers on the waiting list have reasonable expectations which should not be frustrated.

The arguments in favor of the contractors generally revolve around the alleged damage to them caused by the \$4,000 limitation required by D.93774. The contractors claim that most of the

cancellations were due to D.93774 and the resulting delay and uncertainty. Now, they argue, it would be inequitable to visit upon them the consequences of the Commission's own actions.

One voice has not been heard in all of this contest of views: the customers on the waiting list. They have expectations, largely based upon SoCal's conduct toward them in the past and upon the axiom first in time, first in right. Were we to confer upon a contractor the place of the canceled customer among the first 9,500 applicants, some person not on the waiting list might be preferred to those on the list. If we limited the contractor to selecting one of his customers already on the waiting list, then that person would be preferred over others with lower numbers.

We can see no way of doing justice to all parties. Therefore, those on the waiting list in numerical order should succeed to the places of those among the first 9,500 customers whose applications are canceled or rejected until the quota of 9,500 loans are issued. In the following order we will adopt the proposal of SoCal.

Findings of Fact

1. SoCal has established a priority list based on when applications were received by it.
2. SoCal's customers, of priority numbers higher than 9,500, have, upon inquiry, been advised of their priority number.
3. SoCal's customers have a reasonable expectation that in the event of cancellations within the first 9,500 applications received they stand a chance to participate depending on where they stand in priority.

Conclusions of Law

1. The customer should, for any reason, be able to substitute a new contractor without losing his place in line.
2. If a customer cancels his loan application entirely, the next customer in line should be allowed to have his loan application processed until the number of cancellations is equaled by the number of customers on the waiting list who then become eligible.
3. A customer may not in any way transfer his priority status to someone else.
4. A customer should be deemed to have relinquished his place in line only upon cancellation.
5. "Cancellation" includes:
 - a. Written notification by a customer that he no longer wants to participate in the program;
 - b. Telephone notification by a customer followed by a letter from SoCal to the customer confirming the phone call; and
 - c. Expiration of SoCal's offer to provide a loan.
6. SoCal should be authorized to substitute an application on the waiting list for each application rejected for credit, title, or occupancy deficiencies.
7. SoCal should be authorized to substitute an application on the waiting list for every duplicate application.
8. The following order should be effective today to allow immediate processing of all eligible loan applications.

O R D E R

IT IS ORDERED that Southern California Gas Company is authorized to substitute one solar loan application on the waiting list for each loan application among the original 9,500 applications

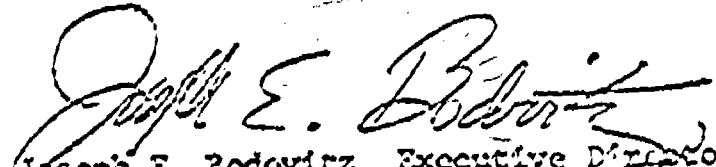
canceled, rejected, or duplicated; such substitutions shall be administered in accordance with the principles in Conclusions of Law 1 through 7.

This order is effective today.

Dated MAR 16 1982 , at San Francisco,
California.

JOHN E. BRYSON
President
RICHARD D. CRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. CREW
Commissioners

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


Joseph E. Zedovitz, Executive Director