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Decision 82 06 107 JUN 17 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)

ORDER MODIFYING DECISION 92251

On March 24, 1982, the Commission staff filed a petition for modification of Decision (D.) 92251, 4 CPUC 2d 258 (1980). The petition concerns the eligibility for rebates under the OII 42 program of owners of multifamily dwellings who acquire solar water heating systems using various third-party financing arrangements. Owners of multifamily dwellings who purchase solar water heating systems outright are already entitled to utility rebates in specified situations.

Staff Petition

In its petition the staff stated that:

". . . OII 42...should be reopened to allow all interested parties an opportunity to make recommendations and comments on the following two issues:

"1) Should rebates be allowed in the case of leases and/or lease-purchase arrangements of solar water heating equipment for multi-family dwellings?

"2) If rebates are allowed for leases and/or lease-purchase arrangements, what stipulations, if any, should be required in the lease agreements?

"In order for the Commission to have the information necessary to make the above determinations, the staff requests that interested parties also submit comments related to the following more specific issues:

"a) Should the lessor be required to sign a written agreement with the utility in which the lessor agrees not to seek removal of the solar equipment if the lessee defaults on the loan payments after rebates have been approved by the utility? If not, should some other action be taken to prevent the lessor from repossessing the solar water heating equipment?

"b) Should the lessor and lessee be required to sign an agreement with the utility stating that if the lessee or lessor voluntarily removes the solar equipment prior to 20 years after installation, the lessee will reimburse the utility the amount of the rebates without interest? Should there be some other payback arrangement for early removal of the equipment? How would such a rule be enforced?

"c) Should the Commission adopt the requirement that all leases or lease-purchase arrangements contain a full maintenance contract? In the case of lease-purchase arrangements, what should be the term of the maintenance contract, e.g., the term of the lease or 20 years?

"d) Should there be any minimum or maximum term required for leases or lease-purchases?

"e) Should the Commission make any distinctions, and if so what distinctions, between leases and lease-purchase arrangements?

"f) Should the Commission require that lease payments bear any particular relationship (i.e. less than, not more than 120% of, etc.) to the estimated or actual energy savings resulting from installation of the system?

"g) Should any special provision(s) be made in the case of leases by municipal solar utilities?

"h) Should the lessee be required to pay a minimum installation fee? If the lessee does voluntarily pay a minimum installation fee, should this result in the waiver of any other requirement?

"i) Should there be any requirements regarding the terms of termination clauses in lease or lease-purchase agreements?

"j) Are there legal considerations regarding leasing or tax law that the Commission should be aware of?

"The staff will review its position on leases and lease-purchases of solar water heating equipment in light of the comments and recommendations received in this proceeding. After its review, the staff anticipates making a further submission in this proceeding which may contain a modified position." (Petition, pp. 3-4.)

Procedural History

Comments were filed in response to the staff's petition by Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Gas Company (SoCal), the Cities of Oceanside and Santa Clara, Alten Corporation, California Energy Investment Corporation (CEIC), The Solar Center, and Jonathan Raab. In addition to commenting on straight leases and lease-purchase arrangements, several parties strongly recommended that the Commission allow rebates for third-party financing arrangements in which the building owner's payments are calculated from the owner's actual consumption of heat from the installed solar system. This type of financing arrangement is frequently referred to in the industry as a "solar micro-utility."

Because the staff's initial petition did not specifically solicit comments on solar micro-utility arrangements, Commissioner Grimes issued a Proposed Report on June 2, 1982. In this Proposed Report, the Commission specifically solicited comments on micro-utility arrangements as well as other issues. Comments were due to be filed by June 14, 1982, and as of that date comments had been received from The Solar Center, CEIC, PG&E, and the staff.

Comments on Staff's Petition

PG&E recommends that rebates not be authorized for installation of solar water heating systems under lease or lease-purchase agreements. It believes that inclusion of leased

systems in the demonstration program will necessarily require significant additional commitment of utility resources and ratepayer funds. PG&E urges the Commission to deny the staff petition and not authorize program eligibility for leased solar water heating systems.

SoCal's response is in the form of a motion to convene formal evidentiary hearings on whether the solar financing program should be opened to leased systems. SoCal believes that evidence should be taken on a number of issues, including:

> "1) Whether the administrative complexity and cost resulting from utility involvement in such arrangements (from merely monitoring or by becoming a party to the lease arrangements) is justified;
>
> "2) Whether the reluctance of lessors to participate with the utility as a party to the lease may result in a complete absence of lessor participation;
>
> "3) The variety of legal questions resulting from utility liability as a party to a lease agreement; and
>
> "4) Whether the costs of such a program as proposed by the Staff outweigh the benefits of such a plan." (SoCal Motion, pp. 1-2.)

SoCal argues that these issues are sufficiently complex that mere written comments are not adequate.

SDG&E believes that leased systems with a purchase option should be eligible for rebates under the multifamily program. SDG&E suggests that adequate disincentives to early removal of the solar water heating units can be built into the lease-purchase agreements. These disincentives would include:

> (a) An escalation-protection clause (not explained).
>
> (b) An early removal penalty clause.
>
> (c) An attractive purchase option after five years.
>
> (d) A provision for total refund of the rebate to the utility from the lessee if a system is removed without cause. If a system is removed for cause, the rebate would be

> refundable to the utility on a prorated basis. For the purposes of this provision "cause" means any event not under the control of the lessee, e.g. acts of God, such as earthquakes, fires, or floods.

Basically, SDG&E's proposal calls for the Commission to establish certain minimum requirements for a lease-purchase to be eligible for rebates. Otherwise, neither the utility nor the Commission would be intimately involved in the administration of such lease-purchases.

SDG&E believes that a properly structured lease/purchase option would not add substantially to the administrative costs of its solar incentive program and would eliminate an extensive policing effort that would be required for a 20-year lease.

Other comments were submitted in letters[1] from Alten Corporation, The Solar Center, Tenderloin Neighborhood Development Corporation, California Energy Investment Corporation, Jonathan Raab, the City of Oceanside, and the City of Santa Clara. These persons or entities uniformly support the proposition that building owners should be eligible for rebates whether they purchase a system, lease it with or without a purchase option, or acquire it under a micro-utility arrangement.

Definitions

These letters mention various third-party financing arrangements, which can be roughly divided into three types: leases, lease/purchases, and the so-called "micro-utility arrangements." As used in this decision:

1. "Lease" means any contract for the rental of solar water heating equipment that is not a lease-purchase agreement as defined below;
2. "Lease-purchase agreement" means any lease of domestic solar water heating equipment with a lease term of at least five years and which gives the lessee an option to purchase all the solar water heating equipment at the end of the lease term; and
3. "Micro-utility arrangement" refers to any contract between an owner of a multifamily

[1] The letters have been placed in the correspondence file for OII 42.

dwelling and a second party in which the owner agrees to purchase from the second party heat energy from a solar water heating system located at the premises of the building owner at a price based on the amount of heat energy delivered.

Lease-Purchase Agreements

The lease with a purchase option has become increasingly popular since the Economic Recovery Tax Act of 1981 (ERTA) modified the tax status of these agreements. Such an arrangement should appeal to an apartment building owner because it allows him to install a solar water heating system without having to make a large down payment or obtain relatively expensive financing himself. Because of the tax advantages associated with a lease-purchase arrangement, the effective interest rate the building owner will pay under the lease should be substantially lower than the interest rate available to commercial customers from banks or other traditional sources. The building owner would typically pay the water heating utility bills for his building and therefore would be the recipient of the rebates. These rebates would significantly offset the lease payments. Consequently, the building owner should not encounter any serious cash flow problems with this type of transaction.

From the perspective of the lessor/seller, a lease-purchase arrangement also has advantages. Under ERTA the lessor appears to be able to depreciate the full value of the solar equipment over a five-year period notwithstanding any purchase option that may be contained in the lease agreement. After five years under the Accelerated Cost Recovery System the lessor is protected from recapture of excess depreciation by the Internal Revenue Service.

In its petition, the staff noted that it was the position of the Energy Conservation Branch (ECB) staff that the general body of ratepayers of the participating utilities should be protected from any undue risk if solar systems installed in the OII 42 program are removed prior to the 20-year minimum estimated life for the system.

Accordingly, the ECB staff urged that rebates be allowed for leased solar water heating systems only when the lease arrangements are structured to remove, or minimize to the extent feasible, any financial incentive for either the lessor or the lessee to remove the solar system from operation prior to the end of its 20-year estimated useful life.

The Commission shares the concern of the ECB staff. In its Proposed Report, to protect the general body of ratepayers, the Commission adopted as minimum requirements for eligibility for rebates that lease-purchase agreements contain the following provisions:

1. The lease term shall be for a minimum of five years.
2. The lease must contain a provision stating that the lessor will notify the utility within 90 days in the case of a default by the lessee during the term of the lease.
3. The lease must contain a full maintenance contract stating that all maintenance required of a properly designed solar system under normal use (not resulting from the negligence of the lessee or from damage to the system from causes not under the control of the lessee) shall be provided without charge by the lessor during the term of the lease.
4. The lease must provide an option to the lessee to acquire the system at the end of the lease period.

In addition, the Commission has determined that for the lessee to be eligible for rebates, the lessee must agree to pay back the rebates to the utility with 16% interest compounded annually if: (1) the solar water heating system is removed during the term of the lease and not replaced with a comparable solar water heating system within 180 days; or (2) the lessee does not provide to the utility proof of ownership of the solar water heating system at the conclusion of the lease term. The payback provisions should be incorporated in the contract to provide notice to potential buyers of the building.

Straight Leases

The Commission received relatively few comments regarding straight leases of solar water heating equipment. SDG&E and PG&E both recommended that rebates not be allowed for systems acquired under straight leases. The Cities of Oceanside and Santa Clara, which have municipal solar utilities providing domestic hot water systems under straight lease agreements, both commented that lease arrangements should be approved for rebates.

The Commission is concerned that the financial incentive of the building owner to renew a lease at a price to be negotiated at the end of the lease period might be less than for an owner to purchase a system in a lease-purchase agreement.

In his Proposed Report, Commissioner Grimes found that the present record does not support a finding that rebates should be offered in the case of straight leases. In its comments on the Proposed Report, The Solar Center recommended that rebates be allowed for straight leases. The Solar Center argues that the only condition that should be considered is a rebate payback provision similar to that proposed for lease-purchases. The Solar Center also questioned the desirability of providing rebates in the case of municipal solar utilities which allegedly already have a competitive advantage over private industry due to government subsidization. In contrast, PG&E reiterated its recommendation that rebates not be allowed for systems acquired under straight leases.

Notwithstanding The Solar Center's comments, the Commission still does not believe that rebates can be provided to building owners under straight leases while simultaneously protecting the general ratepayer in a cost-effective manner. The Commission's conclusion on this issue is consistent with the recommendations of its staff.

Micro-Utility Arrangements

Several contractors submitted comments to the initial petition regarding proposed micro-utility arrangements. These arrangements have many of the same tax advantages as lease-purchase

agreements and promise lower monthly payments to building owners especially in the nonprofit sectors. The contractors recommended that micro-utilities be treated similarly to lease-purchases.

As noted above, the staff petition did not refer to micro-utility arrangements. However, these arrangements were discussed in some detail in the Proposed Report and the Commission specifically solicited comments on the micro-utility concept. Comments were received from The Solar Center, CEIC, PG&E, and the staff.

Before discussing the desirability of authorizing rebates for micro-utilities, it is necessary to dispose of the threshold issue of the Commission's jurisdiction over such arrangements. This issue was discussed in depth in the staff's comments and in the comments of CEIC and The Solar Center. After reviewing these comments, it is our conclusion that the Commission's jurisdiction regarding solar micro-utilities extends no further than its jurisdiction over other types of third-party financing for solar water heaters.

As noted in the staff's comments, certain corporations which sell heat energy to the public are considered public utility heat corportions within the meaning of Public Utilities (PU) Code §§ 216 and 224. We note that there are substantial differences between the solar micro-utilities that have been proposed and firms such as PG&E which are clearly heat corporations under the statute. The proposed micro-utilities will involve no centralized heating plant which will serve more than one facility. Rather, each building or small complex of buildings will have its own solar collectors and hot water storage on the premises of the building owner. To qualify for rebates, each of these systems would have to be sized according to minimum Commission standards. Thus, a customer of such an arrangement is not presented with the potential dilemma facing typical utility customers of the heat corporation acquiring more customers than its system can adequately provide for.

Second, solar micro-utilities will work in a competitive market, unlike most typical heat corporations. Each solar system

customer will have a backup system to heat the water for those occasions when more hot water is needed than the system can provide. The customer can generally obtain heat from this backup system at rates regulated by this Commission. In order to sell heat, the solar micro-utility will have to provide it at a price lower than the regulated price for the backup system. Thus, the threats of monopolistic price gouging are probably nonexistent for solar micro-utilities.

We conclude that a micro-utility is nothing more than another permutation of third-party financing structures designed to optimize returns to both solar water heater users and investors. To conclude that it is a heat corporation subject to our regulatory jurisdiction would go far beyond the intent of either the investors or the customers and would appear to frustrate the intent of the Legislature exprssed in PU Code §§ 216(d), 2801, 2802, and 2851.

The California Supreme Court has stated that there is a second test required to determine whether a firm is a public utility in addition to the statutory test. The court has held that there must be a finding that the firm has dedicated its assets to public use before it can be considered a public utility subject to the jurisdiction of this Commission. (Richfield Oil Corp. v Public Utilities Commission (1960) 54 C 2d 419, 6 Cal Rptr 548, 254 P 2d 4.) We have concluded that the proposed solar micro-utilities do not meet the test of dedication, and therefore are not public utilities. As noted above, the solar water heating systems in question are not centralized, but rather located on the premises of the customer. The high installation costs associated with retrofitting buildings to accept solar water heaters and their relatively low resale value further suggest to us that in the vast majority of cases these systems will be used to serve only the original site. For these reasons, we conclude that these systems should not be considered dedicated to public use as that phrase is understood by the California Supreme Court. We could not find that the installation

has been dedicated to public use. If anything, it seem abundantly clear that the solar installation of a micro-utility would instead be dedicated to private use at the site of the installation.

We are persuaded by the comments of CEIC that a micro-utility subject to the same conditions as a lease purchase presents no greater risk to the ratepayers than the lease purchase itself. It is the protection of the ratepayers that requires action on our part. We should leave to the marketplace the determination of the nature of the financing of solar installations in multifamily residences. Therefore, we shall authorize that rebates be made available for micro-utility installations subject to the same conditions that we require for the eligibility of a lease purchase.

Regarding the desirability of allowing rebates for solar micro-utility arrangements, the Commission has received comments from The Solar Center and CEIC which recommended in favor of rebates, PG&E which recommended against rebates, and the staff which recommended that the Commission postpone action on this concept. CEIC stated it could support a decision which authorized rebates under conditions similar to those imposed on lease-purchase arrangements. CEIC contends, and the Commission concurs, that such conditions will provide an adequate level of protection for the general ratepayers. Therefore, we have determined that rebates for the building owner/customer should be authorized for micro-utility arrangements in cases where:

1. The contract to purchase heat from the solar water heating system is for a minimum of five years.
2. The contract contains a provision stating that the firm selling the solar heat shall notify the utility within 90 days in the case of a default by the customer during the term of the contract.

3. The contract must contain a full maintenance contract stating that all maintenance required of a properly designed solar system under normal use (not resulting from the negligence of the customer or from damage to the system from causes not under the control of the customer) shall be provided without charge by the solar firm during the term of the contract.
4. The contract must provide an option to the customer to purchase or otherwise obtain title to the system at the end of the contract period.
5. The solar water heating system must be located on the customer's premises.

In addition, to be eligible for rebates, the customer must agree to pay back to the utility the amount of the rebates plus 16% interest compounded annually if: (1) the solar water heating system is removed during the term of the contract and not replaced with a comparable system within 180 days; or (2) the customer does not provide to the utility proof of ownership of the solar water heating system at the conclusion of the lease term. These payback provisions must be clearly stated in the contract so as to alert any future purchasers of the building of their potential liability.

We do so with the caveat that we offer no endorsement of the micro-utility structure or any other third-party financing structure. Each third-party financing arrangement raises unique tax and legal questions, which the parties must resolve to their own satisfaction. Our order today merely recognizes that third-party financing arrangements are commonly used to finance improvements in multifamily residential buildings. We conclude that it would be an unreasonable limitation to preclude solar installations financed in this way from participation in the Demonstration Solar Financing Program.

Disclaimer

The Commission is concerned about the use of the term "micro-utility" in that it might imply some type of authorization by the Commission for a particular financing arrangement. The

Commission recognizes that the term has wide usage in the industry and marketing value. To allow the continued use of the term and at the same time inform customers the Commission has determined that private firms seeking rebates under the OII 42 program must include in all their promotional announcements which use the term "micro-utility" or "solar utility" a disclaimer which clearly states that the firm is not regulated by the California Public Utilities Commission and that the Commission does not endorse or warrant any particular type of solar system or particular type of financing.

SoCal's Motion for a Hearing

On April 27, 1982, SoCal filed a motion for evidentiary hearings on the staff's petition for modification. SoCal argues that such hearings are necessary to create an adequate record. We have determined that no public purpose would be served by holding a hearing prior to issuance of this decision, and thus SoCal's motion should be denied.

The order we issue today moots the issues for which SoCal seeks a hearing. We have determined that lessors should not be required to enter into any agreement with a utility regarding leased solar systems. No party has suggested that the utility become a party to the actual lease agreement. Our decision makes no such requirement, so we believe that the company's concerns are unfounded.

The issue of costs of administering a modified program remains. We believe this to be an inappropriate proceeding in which to consider this issue. The record suggests that the modification adopted today will result, at most, in negligible increases in cost to the utilities. No utility has presented information or a detailed offer of proof which would suggest otherwise. SoCal is reimbursed for its costs in administering this program through a balancing fund established in solar rate adjustment cases. We believe that evidence of increased costs would be more appropriately presented in those proceedings. The minor costs the record suggests are involved in this modification and the possible major gains in program participation resulting from an expeditious handling of the proposed

modification reinforce our conclusion that scheduling an evidentiary hearing on cost issues prior to issuing this decision would not be in the public interest.

Findings of Fact

1. Earlier decisions in OII 42 did not address the eligibility of lease-purchases of solar water heating systems or micro-utility arrangments for rebates.

2. Letters in our files and inquiries to our staff show that manufacturers of solar water heating equipment, solar contractors, some utilities, and building owners are interested in the eligibility of lease-purchases and micro-utility arrangements of solar water heating for rebates.

3. Owners of multifamily dwellings have yet to show any significant interest in purchasing solar water heating systems even though rebates are available.

4. A major barrier to rapid market penetration of multifamily solar water heating systems is the high cost of money.

5. If lease-purchases were eligible for rebates, owners of multifamily dwellings would be more likely to participate.

6. Allowing rebates for properly structured leases with a purchase option would not add substantially to the administrative costs of the solar incentive program.

7. A solar micro-utility arrangement, is a form of third-party financing of solar installations in multifamily residential buildings.

8. A solar micro-utility arrangement subject to the conditions set forth in this decision creates no greater risk or expense to the ratepayers than a lease-purchase arrangement.

Conclusions of Law

1. To be eligible for rebates, lease-purchases and micro-utility arrangements should be structured to minimize any incentive of the owner of the multifamily dwelling to remove the solar water heating equipment or to render it nonfunctional during its estimated 20-year useful life.

2. The lease or contract term should be a minimum of 5 years.

3. The lease or contract should contain a provision for purchase of the system by the end of the lease term.

4. The lease or contract should provide for full maintenance of the equipment by the lessor/solar firm.

5. In order to be eligible for rebates the lessee/customer shall agree to repay to the utility any rebates with 16% interest compounded annually if: (1) the equipment is removed during the term of the lease/contract and not replaced within 180 days; or (2) the lessee/customer fails to provide to the utility proof of ownership of the system at the term of the lease. These payback provisions must be clearly stated in the contract.

6. Lease-purchases and solar micro-utility arrangments with the above features should be eligible for rebates under the solar demonstration financing program.

7. A solar micro-utility is not a heat corporation public utility within the meaning of PU Code §§ 216, and 224.

8. A solar water heating system installed by a solar micro-utility serves a private need at the site of the installation and is not dedicated to the public use.

9. Market penetration of solar water heaters in the multifamily sector is very low. Third-party financing options will help apartment owners and the solar industry in achieving the Commission's established goal of solarizing more than 260,000 apartment units. This order should become effective today to allow maximum market penetration during the brief remaining life of the program.

IT IS ORDERED that:

1. Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Gas Company are directed to make rebates available to owners of multifamily dwellings: (a) who would otherwise qualify, (b) who enter into lease-purchase or micro-utility agreements for domestic solar water heating systems, and (c) who

satisfy the sizing criteria and meet the checklist requirements set by the Commission and meet the other requirements set forth below.

2. To enable the lessee/customer to qualify for a rebate under this decision, the lease-purchase or micro-utility agreement:

a. Shall have a minimum term of 5 years.

b. Shall contain a provision stating that the lessor/solar firm will notify the utility within 90 days in the case of a default by the lessee/customer during the term of the agreement.

c. Shall include a full maintenance contract for the term of the agreement.

d. Shall include an option to the lessee/customer to purchase or acquire the system at the end of the term of the agreement.

3. Before issuing rebates, the utility shall obtain from the lessee/customer an agreement that the lessee/customer shall pay back the rebates to the utility with 16% interest compounded annually if: (1) the solar water heating system is removed during the term of the lease/contract and not replaced with a comparable system within 180 days; or (2) the lessee/customer does not provide to the utility proof of ownership at the conclusion of the lease term.

4. Firms advertising micro-utility arrangements must include in their announcements the disclaimer set forth above in the decision.

5. Southern California Gas Company's motion for an evidentiary hearing is denied.

This order is effective today.

Dated June 17, 1982, at San Francisco, California.

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

Concur and Dissent: We concur in most of the order but would, in addition, make eligible for rebates straight-lease arrangements with a minimum term of ten years where such lease arrangements included lessor maintenance responsibility. It seems to us that, with lessors such as the Cities of Oceanside and Santa Clara, such leases protect the ratepayer's interest in long-term well-maintained systems at least as well as the five-year lease-purchases approved in the order. With such leases we would see no reason to require continuing utility policing of the arrangements.

JOHN E. BRYSON
Commissioner

LEONARD M. GRIMES, JR.
Commissioner

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

Joseph E. Bodovitz, Executive Director

dwelling and a second party in which the owner agrees to purchase from the second party heat energy from a solar water heating system located at the premises of the building owner at a price based on the amount of heat energy delivered.

Lease-Purchase Agreements

The lease with a purchase option has become increasingly popular since the Economic Recovery Tax Act of 1981 (ERTA) modified the tax status of these agreements. Such an arrangement should appeal to an apartment building owner because it allows him to install an ~~expensive~~ solar water heating system without having to make a large down payment or obtain relatively expensive financing himself. Because of the tax advantages associated with a lease-purchase arrangement, the effective interest rate the building owner will pay under the lease should be substantially lower than the interest rate available to commercial customers from banks or other traditional sources. The building owner would typically pay the water heating utility bills for his building and therefore would be the recipient of the rebates. These rebates would significantly offset the lease payments. Consequently, the building owner should not encounter any serious cash flow problems with this type of transaction.

From the perspective of the lessor/seller, a lease-purchase arrangement also has advantages. Under ERTA the lessor appears to be able to depreciate the full value of the solar equipment over a five-year period notwithstanding any purchase option that may be contained in the lease agreement. After five years under the Accelerated Cost Recovery System the lessor is protected from recapture of excess depreciation by the Internal Revenue Service.

In its petition, the staff noted that it was the position of the Energy Conservation Branch (ECB) staff that the general body of ratepayers of the participating utilities should be protected from any undue risk if solar systems installed in the OII 42 program are removed prior to the 20-year minimum estimated life for the system.

Accordingly, the ECB staff urged that rebates be allowed for leased solar water heating systems only when the lease arrangements are structured to remove, or minimize to the extent feasible, any financial incentive for either the lessor or the lessee to remove the solar system from operation prior to the end of its 20-year estimated useful life.

The Commission shares the concern of the ECB staff. In its Proposed Report, to protect the general body of ratepayers, the Commission adopted as minimum requirements for eligibility for rebates that lease-purchase agreements contain the following provisions:

1. The lease term shall be for a minimum of five years.
2. The lease must contain a provision stating that the lessor will notify the utility within 90 days in the case of a default by the lessee during the term of the lease.
3. The lease must contain a full maintenance contract stating that all maintenance required of a properly designed solar system under normal use (not resulting from the negligence of the lessee or from damage to the system from causes not under the control of the lessee) shall be provided without charge by the lessor during the term of the lease.
4. The lease must provide an option to the lessee to ~~purchase~~ acquire the system at the end of the lease period.

In addition, the Commission has determined that for the lessee to be eligible for rebates, the lessee must agree to pay back the rebates to the utility with 16% interest compounded annually if: (1) the solar water heating system is removed during the term of the lease and not replaced with a comparable solar water heating system within 180 days; or (2) the lessee does not provide to the utility proof of ~~purchase~~ ownership of the solar water heating system at the conclusion of the lease term. The payback provisions should be incorporated in the contract to provide notice to potential buyers of the building.

has been dedicated to public use. If anything, it seem abundantly clear that the solar installation of a micro-utility would instead be dedicated to private use at the site of the installation.

We are persuaded by the comments of CEIC that a micro-utility subject to the same conditions as a lease purchase presents no greater risk to the ratepayers than the lease purchase itself. ~~Carried one step further, it appears that any third-party financing arrangement subject to these conditions would offer basically the same protection to the ratepayers.~~ It is the protection of the ratepayers that requires action on our part. We should leave to the marketplace the determination of the nature of the financing of solar installations in multifamily residences. Therefore, we shall authorize that rebates be made available for micro-utility installations subject to the same conditions that we require for the eligibility of a lease purchase.

Regarding the desirability of allowing rebates for solar micro-utility arrangements, the Commission has received comments from The Solar Center and CEIC which recommended in favor of rebates, PG&E which recommended against rebates, and the staff which recommended that the Commission postpone action on this concept. CEIC stated it could support a decision which authorized rebates under conditions similar to those imposed on lease-purchase arrangements. CEIC contends, and the Commission concurs, that such conditions will provide an adequate level of protection for the general ratepayers. Therefore, we have determined that rebates for the building owner/customer should be authorized for micro-utility arrangements in cases where:

1. The contract to purchase heat from the solar water heating system is for a minimum of five years.
2. The contract contains a provision stating that the firm selling the solar heat shall notify the utility within 90 days in the case of a default by the customer during the term of the contract.

3. The contract must contain a full maintenance contract stating that all maintenance required of a properly designed solar system under normal use (not resulting from the negligence of the customer or from damage to the system from causes not under the control of the customer) shall be provided without charge by the solar firm during the term of the contract.

4. The contract must provide an option to the customer to purchase or otherwise obtain title to ~~possession of~~ the system at the end of the contract period.

5. The solar water heating system must be located on the customer's premises.

In addition, to be eligible for rebates, the customer must agree to pay back to the utility the amount of the rebates plus 16% interest compounded annually if: (1) the solar water heating system is removed during the term of the contract and not replaced with a comparable system within 180 days; or (2) the customer does not provide to the utility proof of ~~purchase~~ ownership of the solar water heating system at the conclusion of the lease term. These payback provisions must be clearly stated in the contract so as to alert any future purchasers of the building of their potential liability.

We do so with the caveat that we offer no endorsement of the micro-utility structure or any other third-party financing structure. Each third-party financing arrangement raises unique tax and legal questions, which the parties must resolve to their own satisfaction. Our order today merely recognizes that third-party financing arrangements are commonly used to finance improvements in multifamily residential buildings. We conclude that it would be an unreasonable limitation to preclude solar installations financed in this way from participation in the Demonstration Solar Financing Program.

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2. The lease or contract term should be a minimum of 5 years.

3. The lease or contract should contain a provision for purchase of the system by the end of the lease term.

4. The lease or contract should provide for full maintenance of the equipment by the lessor/solar firm.

5. In order to be eligible for rebates the lessee/customer shall agree to repay to the utility any rebates with 16% interest compounded annually if: (1) the equipment is removed during the term of the lease/contract and not replaced within 180 days; or (2) the lessee/customer fails to provide to the utility proof of ~~purchase~~ ownership of the system at the term of the lease. These payback provisions must be clearly stated in the contract. SS

6. Lease-purchases and solar micro-utility arrangments with the above features should be eligible for rebates under the solar demonstration financing program.

7. A solar micro-utility is not a heat corporation public utility within the meaning of PU Code §§ 216, and 224.

8. A solar water heating system installed by a solar micro-utility serves a private need at the site of the installation and is not dedicated to the public use.

9. Market penetration of solar water heaters in the multifamily sector is very low. Third-party financing options will help apartment owners and the solar industry in achieving the Commission's established goal of solarizing more than 260,000 apartment units. This order should become effective today to allow maximum market penetration during the brief remaining life of the program.

IT IS ORDERED that:

1. Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Gas Company are directed to make rebates available to owners of multifamily dwellings: (a) who would otherwise qualify, (b) who enter into lease-purchase or micro-utility agreements for domestic solar water heating systems, and (c) who

satisfy the sizing criteria and meet the checklist requirements set by the Commission and meet the other requirements set forth below.

2. To enable the lessee/customer to qualify for a rebate under this decision, the lease-purchase or micro-utility agreement:

a. Shall have a minimum term of 5 years.

b. Shall contain a provision stating that the lessor/solar firm will notify the utility within 90 days in the case of a default by the lessee/customer during the term of the agreement.

c. Shall include a full maintenance contract for the term of the agreement.

d. Shall include an option to the ~~,~~ square lessee/customer to purchase the system at the end of the term of the agreement.

3. Before issuing rebates, the utility shall obtain from the lessee/customer an agreement that the lessee/customer shall pay back the rebates to the utility with 16% interest compounded annually if: (1) the solar water heating system is removed during the term of the lease/contract and not replaced with a comparable system within 180 days; or (2) the lessee/customer does not provide to the utility proof of ~~purchase~~ micro-utility at the conclusion of the lease term.

4. Firms advertising micro-utility arrangements must include in their announcements the disclaimer set forth above in the decision.

5. Southern California Gas Company's motion for an evidentiary hearing is denied.

This order is effective today.

Dated _____, at San Francisco, California.