ALJ/nb

Decision 83 01 006 JAN 12 1983

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 providing low-interest, long-term financing of solar energy systems for utility customers.	OII 42 (Filed April 24, 1979)

O P I N I O N

On September 2, 1982, Solarsmith Corporation (Solarsmith) filed its petition for modification and clarification of Decision (D.) 82-06-107. That decision made owners of multifamily dwellings eligible for rebates when a solar water heating system is installed under a lease purchase or micro-utility agreement. Solarsmith would have us modify Ordering Paragraphs 2 and 3 of D.82-06-107 as follows:[1/]

"2. To enable the lessee/customer to qualify for a rebate under this decision, the lease-purchase or micro-utility 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., or shall include an option to the lessee/customer to renew the lease/micro-utility agreement at the end of every term which expires before 15 years after installation.

"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/~~

1/ Underscoring indicates new language; strike-out indicates deleted language.

~~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.~~ the solar water heater is removed within 15 years of installation and not replaced with a comparable system."

By separate petitions filed November 8, and 15, 1982, San Diego Gas & Electric Company (SDG&E) and Alten Corporation (Alten) join in requesting the modifications sought by Solarsmith. In its reply brief filed November 12, 1982, the staff opposes the modifications.

Rebates for Straight Leases

Solarsmith first requests that D.82-06-107 be modified to allow rebates when the agreement between the building owner and the lessor-micro-utility provides an option to renew the agreement at the end of every term which expires before 15 years after installation, and the building owner in fact executes this option. Solarsmith's primary argument in support of this request is its contention that without the modification, the lessor/micro-utilities will probably not be able to obtain unspecified federal and state tax benefits. Consequently, lease/micro-utility payments will be higher than they might be otherwise, discouraging low-income customers and nonprofit organizations from acquiring solar equipment. As a second argument, Solarsmith contends that the pressure on the building owner to purchase the system at the end of the lease period is so great that it will act as a major disincentive to building owners' acquisition of such systems under third party financing arrangements.

The staff first counters that Solarsmith's comments are too late. Solarsmith had three opportunities to contribute to the development of D.82-06-107, none of which it seized. It could have: (1) commented on the staff's petition to modify D.92251, filed March 24, 1982, (2) commented on the proposed report of Commissioner Grimes issued June 3, 1982, or (3) petitioned for rehearing of

D.82-06-107, issued June 17, 1982. Solarsmith failed to make its arguments on the tax aspects of lease/purchase or micro-utility agreements at any of these times. However, the formal file does not show that Solarsmith was sent copies of any of those documents.

Next, the staff contends that the allegations of the petition are vague. Solarsmith's conclusions on the tax aspects of leasing and micro-utility transactions are supported by a letter from Touche Ross & Co., San Diego Office, but the writer does not identify himself by title and does not state his qualifications to express expert opinion on the tax implications of those transactions. Neither the letter nor the petition are verified; and neither actually specify the federal and state tax "attributes" or "advantages" allegedly achievable only under Solarsmith's proposed language. Finally, the staff points out that the factual statements concerning what low-income or nonprofit groups will do are completely unsupported by any evidence; that is, they are mere conclusions without any allegations of fact to support them or any reference to evidence in the record.

The staff is also concerned about unfair leverage a lessor or micro-utility might have in any renegotiations of the lease under the options to renew. The staff cites this hypothetical case in support of its concern:

> "... assume after 14 years the lessee seeks to exercise his option [to renew the lease] for another 3 years. Unless the option price had been previously established, the lessor could ask for total lease payments equal to the accrued value of the rebates (plus interest compounded annually at 16%) minus some small discount. The lessee would be confronted with paying this exorbitant lease fee or paying a slightly larger amount to the utility. The lease fee negotiated in such circumstances might greatly exceed the market value of the best provided by the system." (Staff reply p. 4.)

The staff notes that Solarsmith does not mention any additional costs to the utilities (and thus to the ratepayers) that its proposals would cause. Yet, it is evident that Solarsmith's proposals would increase dramatically the number of leases that the utilities would be required to monitor for periods of 15 years or more.

We also agree with the staff that Solarsmith's substantive argument regarding tax benefits is far from compelling. The argument hinges on the building owner's agreement with the utility to repay the rebates if he does not purchase the solar equipment at the end of the initial lease period. Solarsmith claims that the rebate repayment agreement "taints" the lease/micro-utility contract to such an extent that the lessor/micro-utility will not be able to obtain unspecified federal and state tax credits. In support of this argument, Solarsmith cites § 4(1) of IRS Revenue Procedure 75-21 (1975) which states in pertinent part that "the lessor may not have a contractual right...to cause any party to purchase the property." (Emphasis added.) However, § 4(1) does not support Solarsmith's contention. Under D.82-06-107, the Commission does not require the lessor/micro-utility to obtain any "contractual right to cause" the building owner to purchase the solar equipment. Not even the utility has a contractual right to compel the building owner to purchase the solar equipment. For the building owner to qualify for rebates, the lessor/micro-utility need only grant the former an option to purchase the equipment. The lessor/micro-utility is not even a party to the rebate repayment agreement, which is an independent contract between the building owner and the utility. Solarsmith has not convincingly demonstrated how this independent payback contract to which the lessor/micro-utility is not a party can adversely affect the lessor/micro-utility's tax status.

We note in further support of the staff's position on the tax issue that the guidelines in Revenue Procedure 75-21 are not controlling as a matter of law. Section 3 of that procedure states:

> "These guidelines do not define, as a matter of law, whether a transaction is or is not a lease for Federal income tax purposes and are not intended to be used for audit purposes. If these guidelines are not satisfied, the Service nevertheless will consider ruling in appropriate cases on the basis of all the facts and circumstances."

For all of the reasons mentioned above, except for the first, Solarsmith has not presented compelling reasons why D.82-06-107 should be modified to allow rebates for straight leases. Accordingly, this aspect of its petition should be denied.

Limiting Rebate Repayment Period to 15 Years

Solarsmith's second request is that the period during which the building owner remains liable for repayment of rebates if the solar system is removed be limited to 15 years.

Under D.82-06-107, the building owner is liable to repay to the utility the amount of the rebates received plus 16% interest compounded annually if the equipment is removed during the term of the lease and not replaced with a comparable system within 180 days. The building owner's liability to repay the rebates exists only until the building owner acquires title to the equipment. In almost all cases transfer of title will occur at the end of the initial lease period in accordance with D.82-06-107. Thus, the building owner's liability typically extends only for the term of the lease which will be at least five years and probably less than ten. Once the building owner acquires title to the equipment, he is no longer liable for repayment of the rebates if the equipment is removed.

Solarsmith's request is tied to its first request that rebates be allowed for lease agreements that are periodically renewed. In such cases Solarsmith would limit the building owner's liability to pay back the rebates to the case where the lease is not renewed for at least 15 years from the time the initial lease was entered late.

For the reasons set forth above, the staff opposes Solarsmith's first request that leases which are in fact renewed be made eligible for rebates. Given this position, the staff also opposes Solarsmith's second requested modification as unnecessary and lacking justification.

Since we will deny Solarsmith's first request for modification, we will also deny this request because the two are closely related. We also note, as the staff points out, that Solarsmith has presented no evidence which would suggest that the Commission should abandon its assumption that solar equipment should remain in place and functional for 20 years to make the program cost-effective. See D.92251, 4 CPUC 2d 267-68; D.82-06-107 at 6-7.

Rebates after Resale of Multifamily Buildings

Solarsmith requests "clarification" of D.82-06-107 regarding the continued payment of rebates in the case of a sale of a multifamily building. Solarsmith urges that this decision be "clarified" by explicitly authorizing the utilities to continue to pay rebates to the new owners after sale of a multifamily dwelling. The staff believes that this request is procedurally defective and without substantive merit.

Our policy on this issue was clearly set forth in D.92251, 4 CPUC 2d 258, 281 (1980) where we stated:

> "Only utility credits shall be available for multi-family water heater retrofits. These credits shall be $8 per unit served per month for 36 months payable quarterly or until sale of the building, whichever occurs first." (Emphasis added.)

D.82-06-107, which Solarsmith alleges is ambiguous, in no way alters the policy that rebates shall be terminated upon resale of the building.

The question of rebates after resale of the building was never raised either in the staff's petition for modification of D.92251, which led to D.82-06-107, or in responses to the staff's petition. It is being raised for the first time here in Solarsmith's petition.

The staff goes on at some length to describe the procedural and substantive defects in Solarsmith's petition to "clarify" D.82-06-107. Suffice it to say that such a petition is an inappropriate vehicle for modifying D.92251; and Solarsmith's allegations and arguments are insufficient support for such a modification, even if Solarsmith's petition were properly framed.

Findings of Fact

1. Solarsmith's allegations in support of its petition to modify D.82-06-107 are conclusory, unverified, and not convincing.

2. Solarsmith has stated no facts which would support its requests for modification of D.82-06-107.

Conclusions of Law

1. The federal tax regulations cited by Solarsmith do not compel the result for which Solarsmith argues.

2. A petition to modify D.82-06-107 is an inappropriate vehicle for seeking changes in D.92251.

3. Solarsmith's petition should be denied.

4. The petitions of SDG&E and Alten in support of Solarsmith should be denied.

O R D E R

IT IS ORDERED that:

1. The petition of Solarsmith Corporation for modification and clarification of D.82-06-107 is denied.

2. The petitions of San Diego Gas & Electric Company and Alten Corporation in support of the petition of Solarsmith Corporation are denied.

This order becomes effective 30 days from today.

Dated JAN 12 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
Commissioners

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

Joseph E. Bodovitz, Executive Director