

C/LMG/SR/WPSC

Decision S3 04 014 April 6, 1983**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation of the Commission's)
 own motion into 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)

ORDER OF MODIFICATION

On March 7, 1983, the City of Santa Clara (Santa Clara) petitioned for modification and clarification of Decision 82-06-107. In that decision, the Commission established certain requirements for participation in the OII 42 program by owners of multifamily dwellings who install solar hot water systems under lease-purchase or micro-utility agreements. In particular, the decision required that utilities obtain an agreement from the customer/lessee that the customer will refund any rebate received plus 16 percent interest compounded annually, if the customer does not acquire ownership of the system at the conclusion of the lease term.

Santa Clara requests that the Commission modify D.82-06-107 to allow the customer/lessee to retain any rebate so long as the agreement is renewed, the solar system remains in place and operational for a minimum of 15 years, and otherwise complies

with all the terms and conditions of the decisions issued under OII 42. Santa Clara states that while it is interested in developing a municipal solar lease program, it does not want to get into the business of selling solar hardware since the City Charter prohibits it from doing so except by public auction. Santa Clara maintains that the modifications sought will provide reasonable protection to utility ratepayers since renewal of the agreement has the same effect as replacement of the system. A response to Santa Clara's petition was filed by the Commission staff on March 23, 1983.

Discussion

Santa Clara's request for modification is substantially similar to one presented by SolarSmith, which was rejected in D. 83-01-006. In denying the SolarSmith request, this Commission focused on two issues:

1. SolarSmith's major concern was that the mandatory purchase option would make the lessor or micro-utility ineligible for certain tax benefits needed to make the transaction attractive. The Commission found this argument to be "far from compelling."
2. The staff was concerned about the unfair leverage a lessor or micro-utility might have in any renegotiations of the lease under the option to renew.

In its petition, Santa Clara has both offered a compelling reason for allowing extended leases to qualify for rebates and suggested a method to resolve the staff's concern related to lessor advantage during lease renegotiation.

Santa Clara stated that the city "does not want to get into the business of direct sales of solar hardware and, in fact, if a customer should decide to exercise the purchase option, we would have to proceed under the provisions of Santa Clara City Charter Section 714, which governs the sale of 'surplus' municipal property. Any property exceeding \$500 in value has to be first advertised in an official newspaper and sold at a public meeting to the highest bidder. It has been our intent, and the customers', to continue the leases for at least 15 years. City's lease rates are based on a 15-year amortization of the net installation costs. Although the total costs are reduced by the service connection fee which covers the 'purchased portion' of the solar system, repayment to City comes from the lease payments over a 15-year period." Santa Clara further stated that "discussion included in D.83-01-006 effectively eliminated the possibility of participation in the rebate program by a municipal solar utility lease program such as Santa Clara's."

From the outset, this Commission has endeavored to assure that the OII 42 program complement local efforts. We stated, in D.92251, that "each of the utilities subject to this order should cooperate with those municipal utilities and municipal solar utilities which are developing programs that could have an effect on the programs ordered within." Further, in concurrence with D.82-06-107, Commissioners Bryson and Grimes stated, "it seems to us that, with lessors such as the Cities of Oceanside and Santa Clara, such leases (which do not include purchase options) protect the ratepayer's interest in long-term well-maintained systems at least as well as the five-year lease-purchases approved in this order."

Santa Clara has demonstrated that the lease-purchase restriction will have a detrimental effect on the city's municipal solar program during the remaining months of the OII 42 program. We are convinced that the agreements providing a lease renewal option should be made eligible for rebates. In facilitating the eligibility of a Santa Clara-type lease arrangement, we see no reason not to allow others involved in a renewable lease arrangement to also participate. We agree with Santa Clara that this arrangement will provide ratepayers the same protection as the existing requirement for system replacement.

We, however, will not adopt Santa Clara's proposal to reduce our 20-year requirement to 15 years. We see no compelling reason to take this action particularly since the OII 42 program was established on the basis of an estimated system life of 20 years. Furthermore, it appears that a 20-year requirement will not obstruct Santa Clara's efforts. After 15 years of use under a leasing arrangement, a system's value should be less than \$500 thereby exempting the system from the competitive bid requirements.

As stated above, the staff expressed concern that the lessor would maintain the upper hand in any lease renegotiation. The fear is that the lessee might be forced to accept an exorbitant lease rate in order to avoid refunding the rebate money with interest. Santa Clara suggests that the Commission could "limit the escalation rate of the lease fees to, say, the rate of inflation or the CPI or to 7% per year, or whatever staff feels is 'fair' in this case. In any event, a maximum exposure figure for the lessee customer could be mandated."

We see no need to expressly control the negotiation process between the lessor and lessee. Instead, we will require that qualifying lease agreements contain full disclosure of the terms, payments or charges for renewal, the method to be employed

in determining at the time of renewal those terms, payments, or charges, or state that these provisions will be renegotiated in the future. In addition, since private lessors are not subject to competitive bid requirements, we will require that these agreements continue to offer an option to purchase in addition to an option to renew. These requirements will limit the possibility of any undue advantage at the time of renegotiation.

This decision applies to agreements signed after the effective date set forth below. Nothing in this order mandates or prevents a utility from modifying existing rebate repayment contracts with any of its customers in conformance with the provisions of this order. We note that participation in the OII 42 program under lease/purchase or microutility agreements is limited to multi-family dwellings. Rebates are not available under such agreements for single family residences.

Findings of Fact

1. Present requirements for program participation for solar systems installed under lease-purchase or micro-utility agreements are overly restrictive.
2. The modifications adopted here will facilitate the installation of solar systems under such agreements.
3. The modifications provide safeguards which reasonably protect both utility ratepayers and potential lessees.

Conclusions of Law

1. D.82-06-107 should be modified as indicated herein.
2. This decision should be effective today.

IT IS ORDERED that:

1. The petition of the City of Santa Clara for modification and clarification of D.82-06-107 is granted as set forth below.

2. Ordering Paragraph 2.d and 2.e., and Ordering Paragraph 3 of D.82-06-107 are modified to read as follows:

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 every term of the agreement, and shall include an option to the lessee/customer to renew the lease/micro-utility agreement at the end of every term which expires before 20 years after installation. Where a lessor is a municipality or other public agency subject to a competitive bid requirement, the agreement need only include one of these two options.

e. Shall disclose (1) the terms for renewal of the lease/micro-utility agreement including the amount of any payments or charges on renewal or (2) the method by which such terms, payments, or charges will be established or (3) that the terms, payments, or charges for renewal will be established through future negotiations between the parties.

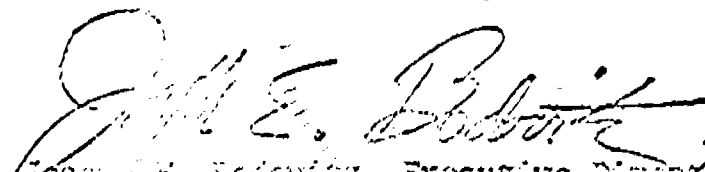
3. Before issuing rebates, the utility shall obtain from the lessee/customer an agreement that the lessee/customer shall pay back the rebates to the utility with 16% interest compounded annually if (a) the solar water heating system is removed within 20 years of installation and not replaced within 180 days of such removal with a comparable system; or (b) the lessee/customer does not provide to the utility proof of ownership or renewal of the contract at the conclusion of a lease term of less than 20 years.

This order becomes effective 30 days from today.

Dated April 6, 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. Dolovitz, Executive Director

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Santa Clara requests that the Commission modify D.82-06-107 to allow the customer/lessee to retain any rebate so long as the agreement is renewed, the solar system remains in place and operational for a minimum of 15 years, and otherwise complies

with all the terms and conditions of the decisions issued under OII 42. Santa Clara states that while it is interested in developing a municipal solar lease program, it does not want to get into the business of selling solar hardware since the City Charter prohibits it from doing so except by public auction. Santa Clara maintains that the modifications sought will provide reasonable protection to utility ratepayers since renewal of the agreement has the same effect as replacement of the system.

SS DISCUSSION

Santa Clara's request for modification is substantially similar to one presented by SolarSmith, which was rejected in D. 83-01-006. In denying the SolarSmith request, this Commission focused on two issues:

1. SolarSmith's major concern was that the mandatory purchase option would make the lessor or micro-utility ineligible for certain tax benefits needed to make the transaction attractive. The Commission found this argument to be "far from compelling."

2. The staff was concerned about the unfair leverage a lessor or micro-utility might have in any renegotiations of the lease under the option to renew.

In its petition, Santa Clara has both offered a compelling reason for allowing extended leases to qualify for rebates and suggested a method to resolve the staff's concern related to lessor advantage during lease renegotiation.

SS Santa Clara stated that the city "does not want to get into the business of direct sales of solar hardware and, in fact, if a customer should decide to exercise the purchase option, we would have to proceed under the provisions of Santa Clara City Charter Section 714, which governs the sale of "surplus" municipal property. Any property exceeding \$500 in value has to be first advertised in an official newspaper and sold at a public meeting to the highest bidder. It has been our intent, and the customers', to continue the leases for at least 15 years. City's lease rates are based on a 15-year amortization of the net installation costs. Although the total costs are reduced by the service connection fee SS which covers the "purchased portion" of the solar system, repayment SS to City comes from the lease payments over a 15-year period." Santa Clara further stated that "discussion included in D.83-01-006 effectively eliminated the possibility of participation in the rebate program by a municipal solar utility lease program such as Santa Clara's."

From the outset, this Commission has endeavored to assure that the OII 42 program complement local efforts. We stated, in D.92251, that "each of the utilities subject to this order should cooperate with those municipal utilities and municipal solar utilities which are developing programs that could have an effect on the programs ordered within." Further, in concurrence with D.82-06-107, Commissioners Bryson and Grimes stated, "it seems to us that, with lessors such as the Cities of Oceanside and Santa Clara, such leases (which do not include purchase options) protect the ratepayer's interest in long-term well-maintained systems at least as well as the five-year lease-purchases approved in this order."

Santa Clara has demonstrated that the lease-purchase restriction will have a detrimental effect on the city's municipal solar program during the remaining months of the OII 42 program. We are convinced that the agreements providing a lease renewal option should be made eligible for rebates. In facilitating the eligibility of a Santa Clara-type lease arrangement, we see no reason not to allow others involved in a renewable lease arrangement to participate also. We agree with Santa Clara that this arrangement will provide ratepayers the same protection as the existing requirement for system replacement.

We, however, will not adopt Santa Clara's proposal to reduce our 20-year requirement to 15 years. We see no compelling reason to take this action particularly since the OII 42 program was established on the basis of an estimated system life of 20 years. Furthermore, it appears that a 20-year requirement will not obstruct Santa Clara's efforts. After 15 years of use under a leasing arrangement, a system's value should be less than \$500 thereby exempting the system from the competitive bid requirements.

As stated above, the staff expressed concern that the lessor would maintain the upper hand in any lease renegotiation. The fear is that the lessee might be forced to accept an exorbitant lease rate in order to avoid refunding the rebate money with interest. Santa Clara suggests that the Commission could "limit the escalation rate of the lease fees to, say, the rate of inflation of the CPI or to 7% per year, or whatever staff feels is 'fair'" in this case. In any event, a maximum exposure figure for the lessee customer could be mandated."

We see no need to expressly control the negotiation process between the lessor and lessee. Instead, we will require that qualifying lease agreements contain full disclosure of the terms, payments or charges for renewal, the method to be employed

in determining at the time of renewal those terms, payments, or charges, or state that these provisions will be renegotiated in the future. This requirement will limit the possibility of any undue advantage at the time of renegotiation.

Findings of Fact

1. Present requirements for program participation for solar systems installed under lease-purchase or micro-utility agreements are overly restrictive.

2. The modifications adopted here will facilitate the installation of solar systems under such agreements.

3. The modifications provide safeguards which reasonably protect both utility ratepayers and potential lessees.

Conclusions of Law

1. D.82-06-107 should be modified as indicated herein.

2. This decision should be effective today.

IT IS ORDERED that:

1. The petition of the City of Santa Clara for modification and clarification of D.82-06-107 is granted as set forth below.

2. Ordering Paragraph 2.d and 2.e., and Ordering Paragraph 3 of D.82-06-107 are modified to read as follows:

59 *indent* 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.
- e. Shall disclose (1) the terms for renewal of the lease/micro-utility agreement including the amount of any payments or charges on renewal or (2) the method by which such terms, payments, or charges will be established or (3) that the terms, payments, or charges for renewal will be established through future negotiations between the parties.

SS 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 (a) the solar water heating system is removed within 15 years of installation and not replaced within 180 days of such removal with a comparable system; or (b) the lessee/customer does not provide to the utility proof of ownership or renewal of the contract at the conclusion of a lease term of less than 15 years. X

This order becomes effective 30 days from today.

Dated APR 6 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President

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