Decision **(PROPOSED DECISION OF COMMISSIONER PEEVEY**
(Mailed 9/24/2008)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding Policies, Procedures and Rules for the California Solar Initiative, the Self-Generation Incentive Program and Other Distributed Generation Issues.	Rulemaking 08-03-008 (Filed March 13, 2008)

DECISION MODIFYING DECISION 07-11-045 REGARDING LOW-INCOME SINGLE-FAMILY SOLAR INCENTIVE PROGRAM

Summary

This decision grants a petition filed by GRID Alternatives requesting modification of Decision (D.) 07-11-045, which established a solar incentive program for low-income single-family homeowners as part of the California Solar Initiative. By today's order, D.07-11-045 is modified to lift the restriction that incentives may only be paid to the low-income homeowner. Low-income incentive recipients may now assign their incentive payments to third parties, as is the case in our general market solar incentive program.

Background and Procedural History

The California Solar Initiative (CSI), established by the Commission in collaboration with the California Energy Commission in D.06-01-024, D.06-08-028 and subsequent orders, provides rebates for the installation of qualifying solar energy systems for customers of Pacific Gas and Electric Company (PG&E),

Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E). Pub. Util. Code § 2852[1] requires that 10% of CSI funds, or $216.68 million, be used for incentives to low-income residential housing, as defined in that section.

In compliance with § 2852, the Commission issued D.07-11-045 to establish a Low-Income Single-Family (LISF) Program to provide rebates for installation of solar energy systems by low-income single-family homeowners. As part of its decision, the Commission expressed concern that third-party ownership arrangements of solar energy systems may not provide long-term benefits to low-income homeowners. Thus, the Commission concluded that the LISF program should not allow third-party ownership of solar energy systems, as occurs in the general market CSI program, until the Commission has more experience with and information about such arrangements. The Commission directed that the LISF Program manager may only pay LISF incentives to a qualifying low-income homeowner who is also the system owner and occupant of the home. (D.07-11-045, p. 39 and Conclusion of Law 17.)

On July 8, 2008, GRID Alternatives (GRID) filed a petition to modify D.07-11-045 to allow incentives payments to be made not only to homeowners, but also to third-parties who may have financed or installed the solar system. Comments in response to the petition were filed on August 7, 2008, by the California Center for Sustainable Energy (CCSE), the California Department of Community Services and Development (CSD), PG&E, and SCE. GRID responded on August 18, 2008. Following GRID's response, CSD requested

[1] All statutory references are to the Public Utilities Code, unless otherwise noted.

permission to file an additional round of comments, contending that GRID's August 18 filing contained new information. In response to this request, the Administrative Law Judge (ALJ) allowed one final round of comments on September 8, 2008.

Petition for Modification

In its petition, GRID requests modification of D.07-11-045 to allow assignment of LISF incentive payments to third-parties, as is currently permitted under the general market CSI program. GRID contends that restricting incentive payments solely to homeowners unnecessarily precludes homeowners from assigning their incentive payments to third parties, thereby limiting the options for financing solar energy systems for low-income families. GRID suggests this limitation could completely undermine the success of the LISF program.

According to GRID, the restriction in D.07-11-045 allows only two options for low-income homeowners to finance solar systems on their roofs, and both options are unworkable. Under the first option, homeowners could finance the full, before-rebate cost of the system and wait for the rebate to be paid for reimbursement. This option creates a significant barrier to homeowner participation in the LISF Program because it requires homeowners to take on significant liabilities that could materially affect their cash flow. Under the second option, a third party could provide up-front financing for the system, then collect reimbursement from the homeowner, after the rebate is paid. GRID maintains that this option requires a third party to assume an unacceptable degree of financial risk in waiting for the homeowner's reimbursement. Moreover, GRID contends it is unlikely that third parties will provide up-front financing without security, such as a lien against the client's home. As with the

first option, the prospect of such a lien will likely dissuade low-income homeowners from participating in the LISF program.

In the alternative, GRID suggests permitting assignment of incentives to third parties that provide solar equipment, installation, or financing to increase program penetration and flexibility for low-income homeowners and third parties. GRID contends that assignment of incentive payments involves a simple, short-term agreement and would not allow the assignee to obtain ownership of the solar energy system or an interest in the homeowner's home. The assignment transaction merely compensates the third-party directly for provision of the solar equipment and its installation on the homeowner's property. GRID further suggests the Program Manager could maintain a list of approved third parties that provide solar equipment, installation or financing, and only allow assignments to qualified third parties.

After this petition was filed, GRID was selected as the Program Manager by the Commission's Energy Division. As such, some parties raise conflict of interest questions about GRID acting in the dual role of Program Manager and installer, as discussed further below.

Parties' Comments

CCSE and PG&E support the petition. In voicing its support, PG&E notes that assignment of incentives is allowed in the general market CSI program, without restriction. Thus, PG&E urges that assignment be allowed without restriction to a list of approved third parties, as suggested by GRID.

CSD expresses support for the petition as well, but urges the Commission to clarify, if the petition is granted, that any assignment of incentive payments must be to third parties providing equipment or installation services, and not to the Program Manager. CSD contends that assignment of incentives to the

Program Manager creates a conflict between the financial interests of the equipment or installation provider and the Program Manager role, namely to administer LISF in compliance with Commission rules. According to CSD, the Program Manager cannot do its job of ensuring the adequacy and integrity of the program if it also receives assignments of incentive payments under the program.

SCE does not support the petition, and claims there is no new evidence demonstrating the need for assignment of incentive payments. According to SCE, it is premature to make modifications to the LISF program design. Instead, SCE suggests a workshop within a year, after the Commission has some experience with the LISF program, to determine the necessity for the petition. Moreover, SCE claims that assignment of payments could bring many of the same problems and concerns related to third-party ownership of solar installations that were discussed in D.07-11-045.

In response to these comments, GRID acknowledges it was selected as the Program Manager by the Commission's Energy Division after this petition was filed. GRID contends that prohibiting assignment of incentive payments to the Program Manager is unnecessary and excessive because it believes the Program Manager should have the flexibility to play a variety of roles, including solar system installer. GRID supplies a declaration by its Executive Director, Erica Mackie, stating that GRID is able to install solar energy systems at a significantly lower cost per watt due to its non-profit business model based on volunteer labor and discounted solar equipment. (GRID Reply, 8/18/08, Declaration of Erica Mackie, p. 3.) Therefore, GRID suggests the Commission address conflict of interest concerns raised by CSD by requiring GRID, as the LISF Program Manager, to implement appropriate safeguards, such as third-party monitoring

of incentive payments and random spot checks to verify payments. Such safeguards could be incorporated into GRID's Program Manager contract.

In response to SCE's claim there is no evidence supporting the petition, Mackie states that based on her experience with incentive assignment in the general market CSI program, the petition is necessary to overcome barriers to low-income families' financing of solar systems. (Id., p. 3.) The option of assigning incentive payments in the CSI program has been an effective means of reducing the up-front debt or capital needed to purchase a solar system. GRID further contends that SCE's concerns over third-party ownership are not applicable to the more narrow issue of assigning an incentive payment to an installer. With assignment, the system ownership remains with the low-income homeowner. Thus, GRID suggests that SCE's concerns about third-party ownership are misplaced.

In the final round of pleadings, CSD and SCE reject GRID's suggestions that independent monitoring and oversight can overcome the conflict of interest arising from the GRID playing the dual roles of Program Manager and system installer. CSD and SCE allege that independent monitoring and oversight of the Program Manager will increase administrative costs for the program, will create the potential for misuse of program funds, and they question whether a third-party monitoring the Program Manager will be truly independent of the Program Manager. SCE recommends that each utility, in its respective service territory, perform the function of verifying proper installation before making incentive payments.

Discussion

We find that GRID's petition should be granted for several reasons. We agree with GRID that the restriction in D.07-11-045, while well intentioned, only

allows payment of incentives to homeowners, and does not allow incentive assignment to entities other than the homeowner, in an attempt to prevent third-party ownership arrangements. If we modify the decision and allow incentive recipients under the LISF Program to assign their incentive payments to a third party for solar system installation, we can overcome the potential barriers to program participation that GRID points out. We agree with GRID that allowing homeowners to assign their incentive payments is not the same as transferring ownership of the system third parties. Thus, while we retain the restriction in D.07-11-045 to not allow third-party ownership arrangements in the LISF program at this time, we will modify the original order to allow assignment of incentive payments, as long as system ownership remains with the low-income homeowner. We will not require the Program Manager to maintain a list of approved third parties that provide solar equipment, installation or financing. We agree with PG&E that maintaining such a list is an unnecessary administrative burden given that there are no similar restrictions in the general market CSI program.

We disagree with SCE's suggestion that we wait to gather more information before considering this petition. GRID has provided sufficient justification, based on its experience in the general market CSI program, that the language in D.07-11-045 precluding incentive assignment could impede the successful operation of our LISF Program. To maximize the success of the LISF Program, we will act now.

At the same time, we agree with CSD that clarification is required regarding the potential for the Program Manager to act as installer, and thus receive assignment of incentives. We agree with CSD and SCE that this situation could create a conflict of interest between the Program Manager's interest in

recovering installation costs and its role in ensuring responsible use of program funds. We will not adopt the strict solution suggested by CSD and SCE, namely that we prohibit the assignment of incentives to the Program Manager. The broad restriction they suggest could inhibit innovative organizational models designed to bring solar energy to low-income families. As Mackie from GRID attests in her declaration, GRID's non-profit business model, which uses volunteer labor combined with solar manufacturer discounts, has enabled it to install solar energy systems at a lower cost per watt than other entities.

We conclude that the potential benefits of GRID's non-profit model, which facilitate the provision of solar energy systems to low-income homeowners and help fulfill the goals of our LISF program, warrant a deviation from the Program Manager model we use in the general market CSI program. In the general market CSI program, we do not allow the Program Administrators to perform system installation or receive incentives through assignment. Despite that restriction, we find that we can make an exception for the LISF program and allow the LISF Program Manager to perform the dual function of installer and Program Manager because the $108 million LISF program is a small subset of the total $2.16 billion CSI program, and the Program Manager will be subject to the monitoring and oversight set forth below.

We will allow the dual role only for the LISF program and only as long as all the guidelines we previously adopted in D.07-11-045 are met and the Program Manager's contract contains provisions for third-party monitoring and oversight. In D.07-11-045 we established strict guidelines for the LISF program, namely that "incentives shall be paid only after the Program Manager verifies that system installation is complete and the solar energy system is operable." (D.07-11-045, Appendix A, p. 2.) We now clarify that because the Program Manager may

perform the dual role of installer, a third party must perform this verification function. This ensures the Program Manager does not verify its own installations. Energy Division should ensure the Program Manager coordinates with the CSI program administrators to consider using existing arrangements for verification and inspection services. Any third-party monitoring work should be compensated from the LISF budget, whether it is performed by the utilities or other entities.

In D.07-11-045, we further required the Program Manager to "submit to an annual audit of program expenditures … to ensure program funds are paid to legitimate and verified installations of solar energy systems on qualifying homes and that administrative funds are spent in a reasonable and appropriate manner." (Id., p. 9.) We now clarify that this audit must be performed by an independent entity. As long as these conditions are met and adequately reflected in the Program Manager's contract, we are satisfied that we can allow GRID, as Program Manager, to receive assignment of incentives.

We disagree with SCE and CSD that third party monitoring and oversight of incentive payments will increase program administration costs. The requirements we set forth in D.07-11-045 were already stricter than those in the general market CSI program, and monitoring and oversight of incentive payments was already contemplated when we adopted this program. The fact that the auditing and verification must now be done by a third party as opposed to the Program Manager does not necessarily increase costs, as the function would have been performed either way.

Therefore, to mitigate potential conflicts in the Program Manager's role, we direct the Commission's Energy Division to ensure that the contract with the Program Manager fulfills the requirements in D.07-11-045 for independent

auditing and verification and provides for third-party monitoring and oversight of incentive payments.

In conclusion, D.07-11-045 should be modified as follows (new text is underlined):

> Conclusion of Law (COL) 15: Energy Division should ensure the Program Manager's contract includes an agreement to submit to an annual <u>independent</u> audit of program expenditures.
>
> COL 17: The Program Manager may only pay low-income incentives to a qualifying low-income homeowner who is also the system owner and occupant of the home, <u>but a qualifying homeowner may assign his or her right to receive the incentive payment to a third party that provides the solar equipment, installation, or financing for such equipment or installation costs, as long as the homeowner continues to own the solar energy system.</u>
>
> COL 18: Incentives shall only be paid <u>after third-party verification of</u> system installation and operability.

Comments on Proposed Decision

The proposed decision of President Michael R. Peevey in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on October 14, 2008, by the Commission's Division of Ratepayer Advocates (DRA), GRID, PG&E and SCE. Reply comments were filed on October 20, 2008, by GRID and SCE. The comments generally support the proposed decision, but request minor clarifications or changes.

GRID comments that the decision's requirement that incentives only be paid after third-party verification of system installation and operability implies that every solar system installed under the LISF program must be reviewed by a third party monitor. GRID requests the decision be revised to permit the Energy

Division to determine the appropriate level of third-party verification and inspection, which could include random spot-checks of a sample of installations. We will not alter the decision as GRID requests. The decision discusses the inherent conflict of interest in a single entity performing installations and acting as Program Manager and paying incentives. For this reason, this decision heightens the verification requirement to require it be performed by an independent entity other than the Program Manager. Given the inherent conflict in the Program Manager performing the dual role of installer, we will not modify the requirement set forth in D.07-11-045 that all systems receive verification before incentive funds are paid under LISF. The Commission may consider future petitions to scale back this verification process after there is some experience with successful program operation.

PG&E and SCE both comment that given their expertise with CSI program administration, they could each perform the function of third-party monitor as required by this decision. PG&E requests it be assigned that duty, and allowed to recover its costs for performing this function. SCE suggests the Commission require the LISF Program Manager to work with the CSI program administrators to leverage existing auditing and verification services already available for CSI. We agree that the utilities may be well-positioned to perform or coordinate third-party monitoring and it may be wise to use existing monitoring and verification services. The order has been revised to direct Energy Division to ensure the Program Manager coordinates with the CSI program administrators to consider using existing arrangements for these services, although the Program Manager is not required to use the utilities. Any third-party monitoring work should be compensated from the LISF budget, whether it is performed by the utilities or other entities.

DRA requests the decision be revised to define the process for selecting both an independent auditor and third-party monitors. DRA also suggests the addition of two specific criteria to assess the Program Manager's performance in the dual role of program administrator and system installer. We decline to make the changes DRA requests. The decision already delegates to Energy Division to ensure that the contract with the Program Manager contains adequate selection of an independent auditor and third-party monitors. As for assessment of the Program Manager's performance, the Commission can, at any time, revisit the decision to allow the Program Manager to perform solar installations if any problems arise in administration of the program, either operational or budgetary. Moreover, other solar installers are not precluded from participating in the program. We will not adopt the specific criteria DRA suggests.

Assignment of Proceeding

President Michael R. Peevey is the assigned Commissioner and Dorothy J. Duda is the assigned ALJ for this portion of the proceeding.

Findings of Fact

1. In D.07-11-045, the Commission directed that solar incentives paid through the LISF program may only go to qualifying low-income homeowners who are also the system owners and occupants of the home.

2. Barriers to program participation exist if a low-income homeowner must finance the full, before rebate cost of the system and wait for the solar rebate.

3. In D.07-11-045, the Commission required that the Program Manager verify system installation is complete and the solar energy system is operable before incentives are paid through the LISF program.

4. The LISF Program Manager must submit to an annual independent audit of program expenditures to ensure program funds are paid to legitimate and verified installations.

5. GRID's non-profit business model is based on volunteer labor and solar manufacturer discounts.

6. Allowing homeowners to assign their incentive payments to third parties is not the same as transferring system ownership to third parties.

Conclusions of Law

1. The language in D.07-11-045 restricting solar incentive payments to low-income homeowners is unnecessarily restrictive.

2. Allowing incentive recipients to assign incentives to third parties can overcome potential barriers to program participation.

3. GRID's non-profit model can help fulfill the goals of our LISF program.

4. The Commission should modify D.07-11-045 to allow assignment of incentive payments, as long as system ownership remains with the low-income homeowner.

5. A conflict of interest exists if the LISF Program Manager that pays out incentives also receives assignment of incentives.

6. The Commission should allow the LISF Program Manager to receive incentive assignments if the Program Manager's contract contains provisions for third party monitoring and oversight of incentive payments and adequately reflects the independent audit and verification requirements in D.07-11-045, as modified herein.

7. A third party must perform verification of system installation and operability.

8. Incentive recipients should be allowed the option to assign incentives to either the Program Manager or alternate solar installers or financing entities.

9. Energy Division should ensure the Program Manager coordinates with existing CSI program administrators to consider using existing arrangements for verification and inspection services.

10. Any third-party monitoring work should be compensated from the LISF budget, whether it is performed by the utilities or other entities.

O R D E R

IT IS ORDERED that:

1. The petition for modification of Decision (D.) 07-11-045 filed by GRID Alternatives is granted as set forth herein.

2. D.07-11-045 should be modified as follows (new text is underlined):

> Conclusion of Law (COL) 15: Energy Division should ensure the Program Manager's contract includes an agreement to submit to an annual <u>independent</u> audit of program expenditures.
>
> COL 17: The Program Manager may only pay low-income incentives to a qualifying low-income homeowner who is also the system owner and occupant of the home, <u>but a qualifying homeowner may assign his or her right to receive the incentive payment to a third party that provides the solar equipment, installation, or financing for such equipment or installation costs, as long as the homeowner continues to own the solar energy system.</u>
>
> COL 18: Incentives shall only be paid after <u>third-party verification of</u> system installation and operability.

3. The Commission's Energy Division shall ensure the Low-Income Single-Family Program Manager's contract adequately reflects the independent audit and verification requirements in D.07-11-045, as modified herein, and includes third-party monitoring and oversight of incentive payments if the

Program Manager provides equipment, installation or financing to program applicants and receives incentive assignments.

4. Rulemaking 08-03-008 remains open.

   This order is effective today.

   Dated _____, at San Francisco, California.