

Decision 09-03-034 March 26, 2009

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
WITHIN THE CALIFORNIA SOLAR INITIATIVE**

Summary

In Decision (D.) 07-11-045, the Commission established within the California Solar Initiative (CSI) a solar incentive program for single family low-income homeowners. The program will be known as the Single Family Affordable Solar Housing (SASH) Program. The SASH Program will offer incentives to qualifying low-income homeowners which are higher than the incentives offered to general market participants in the CSI.

This decision resolves two petitions for modification of D.07-11-045. A petition by Pacific Gas and Electric Company (PG&E) is granted to allow PG&E, Southern California Edison Company, and San Diego Gas and Electric Company to request cost recovery through an advice letter process for costs incurred, pursuant to D.07-11-045, to support the SASH Program. A petition by the State of California's Department of Community Services and Development requesting modification of D.07-11-045 to allow third-party ownership of solar energy systems installed under the SASH Program is denied.

PG&E's Petition

On November 13, 2008, PG&E filed a petition to modify D.07-11-045 to allow the investor-owned utilities (IOUs) to seek rate recovery for utility expenses associated with the SASH Program. Although D.07-11-045 ordered the IOUs to perform certain administrative tasks¹ to support the SASH Program and its Program Manager, the decision found there was not enough information to grant cost recovery to the IOUs for these administrative tasks. PG&E contends the decision is inconsistent with D.07-09-042, wherein the Commission allowed the IOUs an advice letter process for cost recovery for similar administrative tasks in the CSI Research, Development, Deployment and Demonstration (RD&D) program. Therefore, PG&E requests the decision be modified to allow the IOUs to file advice letters to receive reasonable compensation for expenses related to the tasks identified in D.07-11-045 for the SASH program.

Comments on PG&E's petition were filed by the Commission Division of Ratepayer Advocates (DRA), GRID Alternatives (GRID), Southern California Edison Company (SCE), and San Diego Gas and Electric Company (SDG&E). SCE and SDG&E support PG&E's petition. SCE maintains it has incurred or will incur administrative costs issuing the request for proposal for a Program Manager, contracting with and paying Grid Alternatives for Program Manager services, and contracting with a program evaluator for SASH. DRA supports the concept of cost recovery through a Tier 3 advice letter process, which requires a Commission resolution. In addition, DRA offers several recommendations to

¹ These administrative tasks include issuing incentive payments to SASH Program participants, providing data on potential customer sites, and managing the contract for the SASH Program Manager.

ensure IOUs recover only just and reasonable administrative costs. DRA proposes alternate language to ensure payments to IOUs do not increase the SASH Program budget over the \$108.34 million authorized in D.07-11-045. Further, DRA contends any payments to IOUs should be taken from the 10% authorized for SASH administration, and that Energy Division should perform an annual review of program costs, including IOU claims.

GRID, which the Commission selected as SASH Program Manager in July 2008, opposes PG&E's petition, claiming that the IOUs have not identified specific actual or expected costs. Further, GRID claims that allowing IOUs to recover administrative costs will place an unpredictable financial burden on the SASH administrative budget. This, in turn, could cause the Program Manager to have to cut SASH Program costs in other areas. According to GRID, PG&E has not substantiated its claim that IOUs will incur significant administrative expenses such as extra personnel or equipment. GRID believes the IOUs have already received funding to develop the overall CSI infrastructure which can accommodate the costs they will incur for responsibilities under the SASH Program.

In response to GRID, PG&E defends the petition's lack of specific actual or expected costs because PG&E is merely seeking a mechanism to recover costs. Moreover, PG&E does not believe IOUs are permitted to use general CSI administrative funds for SASH activities. In response to DRA's Tier 3 advice letter proposal, PG&E requests a Tier 2 advice letter process, with review and approval from Energy Division rather than the Commission.

Discussion

The parties do not dispute that D.07-11-045 requires the IOUs to perform certain administrative tasks related to the SASH Program. No one disputes that

in D.07-09-042, the Commission established an advice letter process for the IOUs to request recovery for expenses incurred for administrative tasks related to the CSI RD&D program. Therefore, we find it reasonable to modify D.07-11-045 and grant the IOUs an advice letter process wherein they can request recovery of expenses related to the tasks enumerated in D.07-11-045 for the SASH Program. We emphasize that this decision does not guarantee IOUs recovery of the requested expenses. We will direct that the IOUs file Tier 2 advice letters, to allow the advice letters to be approved by Commission staff unless protested, or suspended by Commission staff for further review.

GRID and DRA raise reasonable objections that allowing a mechanism for IOUs to request cost recovery could strain the SASH administrative budget. We agree with GRID that the IOUs have already received funding to develop infrastructure to carry out administrative roles under CSI, and this infrastructure could support the activities required to support SASH. Therefore, we clarify herein that if, through the advice letter process, the Commission allows cost recovery for IOU expenses related to SASH, those expenses will be recovered from the CSI general administrative funds. The \$108.34 million budget authorized for SASH shall be reserved for incentives, Program Manager administrative activities, and program evaluation as set forth in D.07-11-045. Any funds needed by the IOUs to perform activities to support SASH shall be derived from the 10% of total CSI funds reserved for general market CSI administration, and shall not be taken from the \$108.34 million set aside for SASH. Because Pub. Util. Code § 2851(e) limits total CSI program expenditures to \$2.16 billion, any money spent by the IOUs must derive from either the SASH budget or the general market CSI budget. We herein clarify that any funds needed by the IOUs to support SASH shall come from the general market CSI

administrative budget, because we expect that the order of magnitude for these funds will be extremely small. Therefore, the IOUs shall identify each task to be performed with administrative funds with specificity, and the Commission will only approve funding that the IOU has properly justified as essential to the SASH program. An advice letter process will allow Commission staff to perform oversight of these funds.

In summary, D.07-11-045 should be modified as set forth in detail in the attached Appendix A.

CSD's Petition

On October 30, 2008, the State of California's Department of Community Services and Development (CSD) filed a petition requesting modification of D.07-11-045 to allow third-party ownership of solar energy systems installed under the SASH Program and assignment of SASH incentives to such third-party owners. In establishing the SASH program, the Commission stated that it would not allow third-party ownership arrangements in the SASH Program "until we have further experience with solar incentives to low-income homeowners or more information concerning third-party ownership arrangements..."

(D.07-11-045, p. 40.) The Commission noted it would consider modifying this limitation if presented with a proposal that adequately protects and benefits low-income homeowners in third-party ownership arrangements. (*Id.*, p. 41.)

According to CSD, it has developed an innovative proposal that addresses the Commission's concerns regarding protecting consumers and ensuring long-term benefits through third-party ownership. CSD has entered into a public-

private partnership with a financial partner² who will assume the initial financial risk and cover the up-front investment costs necessary for acquisition and installation of solar energy systems for low-income homeowners. The low-income homeowner would receive installation and all electricity generated by the system for free, while CSD's financial partner would retain system ownership, receive assignment of SASH incentive payments, and be entitled to any renewable energy credits (RECs) generated by such systems.

CSD contends the proposal eliminates the need for low-income homeowners to obtain loans for system acquisition or installation, thereby creating the potential for increased participation in the SASH Program. Moreover, CSD states it intends to work with the California Solar Energy Industry Association to create "green jobs" by training community based organizations and other members of the low-income community to install solar energy systems. In a secondary aspect of CSD's petition, it requests that if its third-party ownership proposal is granted, the Commission require either the applicable utility or the SASH Program Manager to process incentive payments to third-party owners expeditiously.

Comments on CSD's petition were filed by the California Center for Sustainable Energy (CCSE), DRA, GRID, PG&E, SCE, and SDG&E. The comments generally argue that the proposal lacks sufficient details and the Commission should obtain further information about the proposal before granting it. Most of the commenting parties recommend rejection of the petition at this time, while a few suggest workshops to explore the proposal.

² In its December 23, 2008 reply, CSD identifies the financial partner as Morgan Stanley Solar Solutions Corp., a subsidiary of Morgan Stanley & Co. Inc.

Specifically, DRA maintains that the proposal lacks an explanation of protections for ratepayers or SASH participants. As DRA notes, the details of CSD's proposal are not contained in the petition, but were provided to Energy Division on June 9, 2008, and remain confidential. Without access to the actual proposal, DRA is unable to evaluate the proposal's specifics. SCE echoes these comments and expresses concern that the petition contains no details regarding the financial partner or its ongoing relationship with either the low-income homeowner or CSD. SCE suggests the proposal needs scrutiny on behalf of ratepayers and low-income homeowners to ensure that SASH incentives paid to CSD's financial partner, plus the value of REC ownership and tax credits, do not merely fund profits for the financial partner.

GRID, the entity chosen as Program Manager for the SASH Program, asserts that risks associated with third-party ownership are not adequately addressed in the petition. For example, GRID questions how necessary home improvements, such as roofing or electrical system upgrades, will be financed under the proposal. It also questions how the proposal for third-party ownership would work within the SASH Program's sliding incentive scale, which ties the incentive amount to the homeowner's tax liability. Among other concerns, GRID recommends further scrutiny of warranty provisions and who will pay for ongoing system maintenance and repair to ensure long-term system benefits to the homeowner. GRID notes that since the SASH Program already offers full subsidies to certain qualifying low-income homeowners, CSD's proposal to provide solar at no cost to the homeowner is not unique.

SDG&E raises concern over the petition's lack of information concerning the credentials of CSD's financial partner and its vulnerability to the current worldwide financial crisis. In addition, SDG&E wonders how CSD's proposal

can be aligned and successfully interface with the SASH Program that is being implemented by GRID. Finally, SDG&E questions whether the proposal for third-party ownership could create confusion among potential program participants due to two separate and unequal programs.

In response to these comments, CSD reiterates its expertise in serving California's low-income community and its desire to benefit low-income households by providing access to solar energy without having to pay out-of-pocket or incur debt. According to CSD, its proposal will save ratepayer funds because its financial partner may be able to complete installations for less than the incentive payment amount, and will therefore only charge for eligible project costs actually incurred. In return, the financial partner will benefit from both accelerated depreciation for tax purposes and REC ownership. In response to consumer protection concerns, CSD contends that system warranties and maintenance will be addressed through contracts that its financial partner will negotiate. CSD contends its proposal is the fastest way for the Commission to achieve its goal of 1000 systems installed by 2010.

Discussion

Although we are impressed by CSD's creativity and its strong commitment to serving low-income Californians, we agree with the numerous parties who comment that there are simply too many unanswered questions in the proposal to allow us to grant it at this time. These questions include, but are not limited to, who will bear ongoing system maintenance and repair costs, how will homeowners fund unforeseen installation costs such as roofing and electrical upgrades, and what happens if CSD's financial partner fails or otherwise withdraws from the program?

Another concern is whether it is reasonable for a third-party system owner to receive the same incentives intended for a low-income homeowner. Our SASH Program involves higher incentives than the general market CSI program. The higher incentives levels are based on the tax status of homeowner. In other words, the lower a homeowner's tax liability and ability to take the federal tax credit, the higher our SASH Program incentives. The petition does not explain why we should grant these higher incentives to a financial partner that will own the system, be able to take the 30% tax credit, and potentially obtain value from REC ownership. Third parties, such as CSD's financial partner, have the ability under the currently structured general market CSI program to offer third-party ownership arrangements to any homeowner right now, low income or not.

Moreover, we agree with PG&E that we should allow GRID, the current SASH Program Manager, adequate time to implement the program we adopted in D.07-11-045 before we set up what may be a competing model for provisioning solar energy to low-income homeowners. If, during this time, CSD wishes to further develop its proposal in response to the questions raised by parties, it is free to do so, hopefully in cooperation with those interested parties.

Given the lack of information in the petition regarding homeowner and ratepayer protections at this time, and our desire to focus on implementing the program described in D.07-11-045 now, we will deny CSD's petition to allow third-party ownership within the SASH Program.

Comments on Proposed Decision

The proposed decision of the ALJ 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. Timely comments and reply comments were filed on the proposed decision. We

make one nonsubstantive change suggested in DRA's reply comments to clarify the information that the utilities should include in their advice letter filing.

Assignment of Proceeding

President Michael R. Peevey is the assigned Commissioner and Dorothy Duda is the assigned Administrative Law Judge (ALJ) in this proceeding.

Findings of Fact

1. In D.07-11-045, the Commission ordered the IOUs to perform certain administrative tasks to support the SASH Program requiring minor expenditures.

2. In D.07-09-042 on RD&D, the Commission allowed the IOUs to request cost recovery for administrative expenses through an advice letter process.

3. Pub. Util. Code § 2851(e) limits total CSI program expenditures to \$2.16 billion.

Conclusions of Law

1. It is reasonable to establish an advice letter process to allow the IOUs to request cost recovery for expenses related to the administrative tasks required by D.07-11-045 in support of the SASH Program.

2. If the Commission allows cost recovery following an advice letter, the IOU expenses related to SASH should be recovered from the CSI general administrative funds.

3. In any advice letter filing made pursuant to this decision, the IOUs should identify each task to be performed with administrative funds with specificity and justify such tasks as essential to the SASH program.

O R D E R

IT IS ORDERED that:

1. The petition to modify Decision (D.) 07-11-045 filed by Pacific Gas and Electric Company is granted.
2. D.07-11-045 shall be modified as set forth in Appendix A.
3. The petition to modify D.07-11-045 filed by the Department of Community Services and Development is denied.
4. Rulemaking 08-03-008 remains open.

This order is effective today.

Dated March 26, 2009, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners

APPENDIX A

Decision 07-11-045 should be modified as follows:

(Additions are underlined, deletions in strikethrough.)

Text on pg. 30 [**check paging on PDF version**] modified:

We anticipate a small number of qualified applicants to this program and ~~we find it unlikely that the utilities~~ we are unsure whether the utilities will need additional staff or equipment to handle paying incentives. *[footnote unaltered]* Thus, ~~we conclude there will be no significant costs borne by the utility as a result of this program~~ we will establish an advice letter process to allow the utilities to request cost recovery from the general market CSI administrative budget for their reasonable expenses associated with incentive payments.

~~Strike FOF 6. It is unlikely the utilities will need additional staff or equipment to handle paying incentives to qualifying low income solar applicants.~~

Modify COL 19: ~~The program authorized in this decision is unlikely to result in significant costs to PG&E, SCE or SDG&E~~ PG&E, SDG&E, and SCE may file Tier 2 Advice Letters to request recovery from the general market CSI administrative budget for reasonable expenses associated with the paying incentives to program participants, managing the Program Manager's contract, and providing information to the Program Manager on potential customer sites. In this advice letter filing, PG&E, SDG&E and SCE shall identify each task to be performed with administrative funds with specificity and justify such tasks as essential to the Single Family Affordable Solar Housing Program.

(END OF APPENDIX A)