

Decision 12-01-019 January 12, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Pacific Home Remodeling,

Complainant,

vs.

California Center for Sustainable Energy,

Defendant.

Case 11-03-009
(Filed March 15, 2011)

Steven Levstik, Attorney at Law, for Complainant.

Tom Jurgensen, Robert Robinson, Attorneys at Law,
for defendant.

**MODIFIED PRESIDING OFFICER'S DECISION
DENYING COMPLAINT OF PACIFIC HOME REMODELING**

1. Summary

The complaint of Pacific Home Remodeling (PHR) against the California Center for Sustainable Energy (CCSE) is denied. The decision finds that:

1) CCSE reasonably concluded that PHR submitted forged documents to CCSE; 2) CCSE applied California Solar Initiative (CSI) Program rules reasonably in disqualifying PHR from the CSI Program; and 3) CCSE has not violated any statute, rule or order of the Commission in disqualifying PHR from the CSI Program. PHR's request for reinstatement in the CSI Program is denied. This proceeding is closed.

2. Background

On March 15, 2011,¹ Pacific Home Remodeling (PHR, or Complainant) filed the above-captioned complaint against the California Center for Sustainable Energy (CCSE, or Defendant). Complainant is a solar contractor and installer that participated in the California Solar Initiative (CSI) Program, primarily in the San Diego and Los Angeles regions. Defendant, CCSE, is the Program Administrator for the CSI Program in the service territory of San Diego Gas & Electric Company (SDG&E).

Complainant contends it was improperly permanently disqualified from the CSI Program and requests that the Commission require CCSE to reinstate PHR in the CSI Program and to retract any statements that CCSE made that were detrimental to PHR's business.

On April 28, Defendant filed its answer to the complaint, alleging that Complainant forged the signature of its customer on CSI Program paperwork. Defendant maintains that PHR was, therefore, properly disqualified from participation in the CSI Program under Section 4.10.1 of the CSI Program Handbook by decision of all CSI Program Administrators. Defendant denies that Complainant is entitled to the relief sought and requests the Commission dismiss the complaint with prejudice.

3. Burden of Proof

Under Pub. Util. Code Section 1702, a complainant must prove an alleged violation of a specific standard contained in a statute, rule, or order of the Commission, or a tariff which has been approved by the Commission. The

¹ All dates are 2011 unless otherwise noted.

standard of proof has been well settled and is by a preponderance of the evidence.²

4. Procedural Issues

A prehearing conference was held on May 23 and a Scoping Memo issued on June 2. The scope of the proceeding was determined to be:

- Whether Complainant forged the signature of its solar installation customer on CSI application documents;
- Whether Defendant, in coordination with the other CSI Program Administrators, reasonably applied CSI Program requirements; and
- Whether Complainant should be reinstated as an installer in the CSI Program.

An evidentiary hearing in this matter was held in San Diego, California, on August 9. Briefs were filed on September 16 and reply briefs on September 23, at which time this proceeding was submitted.

A presiding officer's decision (POD) was mailed to the parties on November 4. Complainant filed an appeal of the POD on December 1, and Defendant filed opposition to the appeal on December 9.

5. Non-Disputed Facts

On August 2, 2010, PHR entered into a written contract with Gary and Dawn Vettese for the sale and installation of a seven module photovoltaic (PV) system to be installed at the Vettese residence in San Diego. The system was installed by PHR's subcontractor, McWire Electric, Inc. (MEI), a licensed California contractor, which was also responsible for collection and submission

² See, e.g., Decision (D.) 01-08-067; D.97-05-089.

of the documents required by CCSE in order to pay a CSI rebate for the Vettese installation. On September 13, 2010, installation of the PV system on the Vettese home was completed, as indicated by the signature of Dawn Vettese on a project completion certificate signed on that date. (Reporter's Transcript (RT) 46: 21-24; Exhibit (Exh.) 154 at 33.) On September 17, 2010, the Vetteses authorized final credit card payment of \$16,900 to PHR for their installation. (Exh. 154 at 9.) Per the CSI application, the Vetteses were the host customers and PHR was the seller/payee that would ultimately receive the CSI incentive payment for the Vetteses' solar energy system. (Exh. 108 at 2.)

On October 7, 2010, Sarah Smith, a Program Assistant for CCSE, reviewed the incentive application for the Vettese project, which was prepared and submitted by MEI for PHR. (Exh. 145 at 1.) Smith suspended the application on that same date because the incentive application lacked the full documentation required by the CSI Handbook, namely an energy efficiency audit, an executed 10-year warranty, and inverter and PV module specifications. (*Id.* at 2.) Smith also sought clarification because MEI was listed as the Applicant for the CSI incentive payment, but the contract in the application was between the Vetteses and PHR. (*Ibid.*) Smith sent MEI an e-mail on October 7, 2010 concerning suspension of the application, with a copy to Vettese, requesting a response by October 27, 2010. (Exh. 110.) Diane Gordon of MEI acknowledged receipt of Smith's e-mail on October 7, 2010. (Exh. 111.) When an application is suspended because it is incomplete or needs clarification, an applicant has 20 calendar days to respond or the application will be cancelled, per CSI Handbook Section 4.3.1.1. (Exh. 140.)

On October 12, 2010, CCSE publicly announced that the CSI Program in the SDG&E service area was approaching the end of Step 7 and would transition

to Step 8, which meant that CSI incentives would be reduced from \$0.65 per watt to \$0.35 per watt. (Exh. 112.)

Over the next few weeks, Smith exchanged e-mails with Gordon at MEI regarding the documents required to clear the suspension of the Vettese application. (Exhs. 113-115.) On October 26, 2010, Smith sent an e-mail to Gordon reminding her that the application would be cancelled if there was no response by the October 27, 2010 deadline. (Exh. 116.) On the deadline, Gordon at MEI sent Smith at CCSE an addendum to contract and a registration of warranty. (Exh. 145 at 3; Exhs. 104 and 105.)

Smith reviewed the newly submitted documents and found the signatures on the contract addendum and warranty registration did not match Gary Vettese's signature on earlier documents in the application. Smith consulted her supervisor, Benjamin Airth, regarding her concern that the signatures on documents in the Vettese application did not match. Airth directed Smith to investigate by contacting Vettese. (Exh. 145 at 3.) Section 4.10.1 of the CSI Handbook states that forged paperwork is grounds for immediate disqualification from the CSI Program. (Exh. 140.)

On November 4, 2010, Smith contacted Vettese by phone and e-mail. (Exh. 145 at 3; Exh. 119.) According to Smith, Vettese told her by phone that he had not signed any documents presented by MEI or PHR for about two months. (Exh. 145 at 4.) In an e-mail later that same day, Vettese told Smith that he had not received anything from the installer to sign since the solar panels were installed back in September 2010, and that it was not his handwriting on the contract addendum and registration of warranty in question. (Exh. 120.)

CCSE's Smith consulted Airth regarding her investigation of the Vettese application. Airth concluded that based on the conversations and e-mails with

Vettese, Vettese had not signed the documents or authorized PHR or MEI to sign for him. (Exh. 146 at 4.) Airth brought his concerns regarding PHR and the forged paperwork to a meeting of all CSI Program Administrators (PAs)³ on November 18, 2010. At that meeting, Airth recommended that pursuant to CSI Handbook Section 4.10.1, PHR be immediately disqualified from participating in the CSI Program. All CSI PAs agreed to disqualify PHR. (*Ibid.*)

On November 30, 2010, Airth sent a letter to PHR notifying PHR of its permanent disqualification from the CSI Program and providing instructions on how to appeal. (Exh. 126.) On December 1, 2010, pursuant to Section 4.10.3.2 of the CSI Handbook, CCSE sent a letter to customers of PHR with CSI incentive applications notifying them of PHR's disqualification from CSI. (Exh. 127.)

In November 2010, Vettese contacted PHR because he had some concerns with the sales, installation and functioning of his new solar energy system. (Exh. 128 at 4.) Vettese met with representatives of PHR and MEI on November 24, 2010. (*Ibid.*; RT 70: 10-12.) Vettese sent a follow-up e-mail to David Sias of PHR on November 29, 2010, in which Vettese stated he had "serious concerns that the solar system installed is undersized for my home." (Ex. 128 at 4.)

In early December 2010, PHR/MEI installed three additional solar panels at the Vettese residence at no cost. (RT 52: 5-8; RT 136: 11-17.) Vettese signed a new contract addendum and registration of warranty on December 9, 2010. (Exhs. 106 and 107.)

³ The CSI Program Administrators are Pacific Gas and Electric Company, Southern California Edison Company, and CCSE.

On December 6, 2010, PHR corresponded with Airth at CCSE to appeal PHR's disqualification from the CSI Program. (Exh. 128.)

On December 10, 2010, Gary Vettese signed a letter addressed "To whom it may concern" which stated:

I retract any questioning of the signatures on the contract addendum and warranty documents, and have clarified this by providing newly signed documents with current dates. (Exh. 129 at 2.)

PHR submitted Vettese's retraction letter to Airth at CCSE on December 13, 2010 as part of PHR's appeal of disqualification, which also included the submittal of new contract addendum and warranty registration documents signed by Vettese on December 9, 2010. (*Id.*)

6. Discussion

6.1 Whether the Customer's Signature was Forged on CSI Forms

The threshold question in this matter is whether Complainant, PHR, forged the signature of its customer, Gary Vettese, on CSI incentive application paperwork.

The testimony provided by Vettese, the homeowner involved, is relevant and informative on this question. In a written declaration and at the hearing, Vettese provided credible testimony that he did not sign the two documents submitted by MEI on behalf of PHR to CCSE on October 27, 2010, namely the contract addendum dated October 26, 2010 and the accompanying registration of warranty. According to Vettese, when Smith of CCSE asked Vettese on November 4, 2010 whether he had signed these documents less than 10 days earlier on October 26, 2010, Vettese told her that he had not signed either document. (Exh. 144 at 2-3; RT 133: 20-28; RT 134: 6-26.) Vettese also stated he

did not authorize any party to sign the contract addendum or registration of warranty on his behalf. (Exh. 144 at 3.)

Vettese reiterated these statements at the hearing when examined by the Administrative Law Judge. Vettese stated he did not recall anyone from PHR or MEI coming to his home in October 2010 requesting he sign a warranty and contract addendum. (RT 143: 11-16.) He also stated that no one from PHR or MEI visited his home after he signed off on the completion of the work⁴ until a visit from PHR/MEI representatives on November 24, 2010 following contact from Vettese regarding concerns that his system was potentially undersized. (RT 144: 12 – 145: 5.) The testimony of MEI's McGuire supports Vettese's recollection that no one from MEI visited the Vettese home after the system was installed in September until late November 2010. (RT 97: 7-11; RT 100: 16-27.) Bolin of PHR also testified that MEI was responsible for all CSI incentive paperwork and that he himself never communicated with Vettese. (RT 39: 13-24; RT 55: 10-17.)

Further support for the forgery claim was provided by CCSE's expert witness Sandra Homewood, a certified Forensic Document Examiner, with over 35 years of experience examining questioned documents for the San Diego Police Department Crime Laboratory, the Arizona Department of Public Safety, and District and U.S. Attorney's offices throughout California and the western United States. Homewood compared signatures on seven documents known to be signed by Gary Vettese with the signatures on the two allegedly forged documents.

⁴ Vettese's wife signed the PHR Solar Completion Certificate on September 13, 2010. (Exh. 154 at 33.)

At the hearing, Homewood provided Exhibit 143-A containing her comparative handwriting analysis. Her analysis indicates that differences in the slant and angularity of the handwriting, the formation of the capital letters, letter height, signature ending, and pen strokes lead to her conclusion that the signatures on the questioned documents were not written by Gary Vettese. (RT 13: 14 – 15: 23.) Homewood testified that these numerous differences in the known and questioned signatures lead to her expert opinion that the questioned signatures are “very probably not” the genuine signature of Gary Vettese, but are attempts to simulate his writing habits by someone in possession of his true signature. (Exh. 143 at 3.) According to Homewood, the American Society for Testing and Materials, which develops common standards for the examination of questioned documents, defines “very probably not” as “virtually certain.” (*Ibid.*) Homewood also testified that if this were a criminal case, her opinion of “very probably not” would equate to “beyond a reasonable doubt.” (RT 16: 18-25.)

PHR’s arguments in defense of the forgery claim are less credible than the testimony of Vettese and Homewood. First, PHR claims a forgery is not proven because Vettese retracted his allegation of forgery in his December 10, 2010 letter. However, Vettese’s “retraction” is unclear because it does not state that Vettese himself signed the documents in question on October 26, 2010. This would be a clear retraction. Instead, Vettese’s letter is carefully worded to state he no longer questions the prior signature because he has signed new documents. (Exh. 133 at 1; RT 134: 1-5 and 135: 6-10.) Moreover, the retraction letter is clouded by the less than clear circumstances surrounding the deal Vettese and PHR forged for three free additional solar panels on the Vettese home. It is unclear who suggested the additional panels, but clearly, both parties stood to gain from the arrangement. Vettese received additional panels and more solar production to

offset his electric bill, while PHR got a carefully worded “retraction” from Vettese. The record also indicates that MEI drafted a retraction letter that Vettese refused to sign.⁵ Instead, Vettese stated he prepared his own letter, which he considered more “factual in terms of the situation.” (RT 132: 21- 133: 4.)

Second, PHR maintains that CCSE failed to provide evidence that anyone at PHR or MEI forged Vettese’s signature. PHR’s witness Bolin claims that in discussing the alleged forgery with PHR employees and the subcontractor MEI, he could find no evidence of forgery. (Exh. 6 at 2.) Two MEI employees claim that they saw Vettese sign everything related to the project. However, the first statement refers to paperwork signed in December 2010, and is silent on the questioned documents of October 2010. (Exh. 134.) The second statement indicates an MEI employee witnessed Vettese signing all paperwork for completion of his solar project, but it does not provide any dates when this might have occurred. (Exh. 135.) Neither statement answers the question whether MEI obtained Vettese’s signature on the questionable documents on October 26, 2010.

Overall, the testimony of both Bolin and McGuire provides little information about their investigation of the alleged forgery. Neither Bolin nor McGuire appear to know who handled the specific October 2010 documents at issue in this case. PHR cannot produce an employee of either PHR or MEI who admits to obtaining Vettese’s signature in October 2010. The suspicious contract addendum was signed by a “company representative” in addition to Vettese, but both Bolin and McGuire testify they do not know who signed on the company representative line. (RT 62: 7-9; RT 108: 20 – 109: 6.) Bolin stated he never

⁵ Neither party produced a copy of this letter on the record.

inquired who might have signed for the company, assuming it was someone from MEI since MEI turned in all the documents. (RT 62: 28 – 63: 7.) McGuire explained that it was “the sole responsibility of [MEI] to get documents signed and sent in to the CSI organization” on the Vettese project. (Exh. 128 at 3.) McGuire stated he had no contact with Vettese from September 2010 to November 2010. (RT 97: 7-11; RT 100: 16-27.) It further lacks credibility to suggest Vettese signed the documents in October 2010 when no one from MEI or PHR can identify who might have gone to the Vettese home in that time period.

While Gordon at MEI directly corresponded with Smith at CCSE regarding the suspended application and provided the suspicious documents on the deadline date, Bolin and McGuire are silent on what they asked Gordon about these documents. As CCSE points out, there is no need to determine who actually committed the forgery. The evidence is substantial that Vettese did not sign the questioned documents.

Third, PHR contends that it is possible that Vettese himself signed the questioned documents on October 26, 2010, while purposely modifying his “genuine signature” so as to make it appear someone else had forged the documents. In other words, PHR implies that Vettese has lied repeatedly when he stated that it is not his signature on the questioned documents, and that Vettese plotted to extort free solar panels from PHR. (PHR Reply Brief, 9/23/11 at 3.) PHR’s argument is not credible and the facts do not support it. CCSE initiated the call to Vettese regarding the suspicious signatures, and not vice versa. According to the record, Vettese had not yet raised any dissatisfaction with his PV system at the time CCSE called him. (RT 142: 4-14.) The first evidence of Vettese contacting PHR or MEI with concerns about his system is late

November 2010, after CCSE called him to investigate the alleged forgery.
(Exh. 128 at 4.)

Vettese is credible when he testifies that the first time he saw the warranty and contract addendum documents was when CCSE e-mailed them to him on November 4, 2010. (RT 143: 11-144: 16.) We do not agree with PHR that Vettese's actions constitute extortion. CCSE initiated action against PHR, not Vettese. The record reflects that Vettese was a dissatisfied customer who, by chance, was given evidence by CCSE that someone at either PHR or MEI had forged his signature on contract and warranty documents. He used this information as leverage to improve his solar installation in exchange for a letter saying he was now satisfied.

Finally, circumstances suggest a strong motivation for an employee at either PHR or MEI to forge Vettese's signature. The deadline for submitting the missing paperwork required by CCSE was October 27, 2010. The documents were sent to CCSE on the deadline date, with signatures dated the day prior. Failure to submit these documents would have resulted in cancellation of the application and a requirement to resubmit it. Based on public announcements, CCSE was about to lower CSI incentives from \$0.65 per watt to \$0.35 per watt. If the application had to be resubmitted, it would no doubt only qualify for the lower incentive. This would have been a loss to PHR, not Vettese, since the arrangement between Vettese and PHR involved payment of the CSI incentive to PHR directly.⁶ It is highly plausible that someone at PHR or MEI found it easier

⁶ The Vetteses presumably received a discounted price for their solar energy system in exchange for allowing PHR to collect the CSI incentive, although the contract does not estimate the CSI incentive amount. (RT 30: 5-10.)

to forge the documents rather than delay to obtain an actual signature from the customer, Vettese, and risk PHR losing the \$0.65 per watt incentive rate.

Therefore, the Commission finds that CCSE reasonably concluded that the October 26, 2010 contract addendum and registration of warranty for the Vettese application were forged.

6.2 Whether CCSE Acted Reasonably in Disqualifying PHR from CSI

The second key question in this matter is whether CCSE improperly disqualified PHR from the CSI Program. As noted previously, the CSI Handbook states that forged paperwork is grounds for immediate disqualification from the CSI Program. (*See* CSI Handbook Section 4.10.1.) The Commission finds in Section 6.1 above that CCSE reasonably concluded that documents submitted by PHR regarding the Vettese incentive application were forged. Given this finding, the Commission now turns to the question of whether CCSE acted reasonably in the process it used to disqualify PHR.

PHR claims that it received no notice or opportunity to be heard regarding its disqualification from CSI prior to receiving Airth's November 30, 2010 letter on behalf of the CSI Program Administrators. (Exh. 6 at 2.) CCSE responds that the CSI Handbook allows immediate disqualification for forgery and does not require prior notice or an opportunity to be heard. In addition, the rule does not require there be multiple instances of forged paperwork for disqualification to occur.

CCSE's Airth provided testimony regarding his handling of subsequent appeals by PHR. PHR and MEI corresponded with CCSE on December 6, 13 and 16, 2010. (*See* Exhibits 128, 129 and 131.) Airth responded to PHR's appeal on December 17, 2010, and again on December 22, 2010, providing information on

how PHR could appeal its disqualification to the Commission. (Exhs. 138 and 139.) Airth testified that as part of reviewing the appeal, he spoke to the Vetteses again by phone and e-mail to discuss the retraction letter.⁷ It was only after speaking to the Vetteses in December 2010 that CCSE learned of the three additional panels installed at no cost on the Vettese home by PHR/MEI. Airth explains this led him to conclude that the only reason Vettese had provided the retraction letter was in order to receive these additional panels. Airth concluded there was no reason to change CCSE's prior conclusion that application documents submitted by MEI for PHR had been forged.

In addition, PHR claims that Airth of CCSE is biased against PHR based on an article that appeared in a San Diego area newspaper, the *North County Times*, on February 5, 2011. (Exh. 4.) According to PHR, Airth repeatedly denigrated PHR and two other contractors for what Airth perceived were bad business practices, namely charging customers too much money. (Exh. 6 at 2.)

The *North County Times* article questioned by PHR states "Airth and other industry professional said [PHR] also used pressure sales tactics." (Exh. 4 at 4.) In the article, Airth describes sales tactics of two solar installers, and he states that PHR and another installer are the subject of numerous complaints. The article quotes Airth as follows:

They'll (Sungate and [PHR]) sell you six to 10 panels, they'll tell you these are the highest-producing modules on the market, and that's it,...[c]ustomers will hardly notice the difference on their electric bill. (*Ibid.*)

⁷ Airth spoke to Mrs. Vettese on December 13, 2010 and e-mailed Mr. Vettese on December 17, 2010. (Exhs. 130 and 132.) Vettese responded on December 20, 2010. (Exh. 133.)

In response to the bias claim, Airth responds that any statements he has made about PHR are based on information he has obtained about PHR's own conduct from customer complaints and an analysis of CSI data. Airth provided copies of correspondence he received from a PHR customer with a complaint about an undersized system that was not cost-effective. (Exhs. 173, 174, and 176.) Further, Airth provided an analysis of CSI data he performed comparing PHR projects to data for all CSI projects statewide, and all CSI projects within CCSE's jurisdiction. (Exhs. 136 and 137.) Airth's analysis indicates that cost per watt for PHR systems is substantially higher, \$14.03 per watt, compared to other statewide CSI contractors' costs of \$8.82 per watt. (Exh. 146 at 8; Exhs. 136 and 137.) Moreover, Airth's analysis indicates the average percentage of energy consumption offset by PHR systems is substantially lower, only 46.38%, when compared to the 70.83% of consumption offset by systems installed by all other contractors in the SDG&E service territory administered by CCSE. (*Ibid.*)

The Commission concludes that CCSE's actions regarding disqualification of PHR were reasonable. PHR presented no evidence that the investigation by CCSE or its handling of the subsequent appeal by PHR was unreasonable. CCSE responded to PHR's appeal inquiries in a timely fashion and provided information to PHR on how to pursue a complaint with the Commission. PHR questions the letter CCSE sent to PHR's customers notifying them of PHR's disqualification. (Exh. 127.) CCSE's letter to PHR customers was specifically required by CSI Handbook Section 4.10.3.2 and properly notified PHR customers that their incentive applications would be suspended. The letter described the actions customers could take to still receive a CSI incentive and does not accuse

PHR of forgery or any wrongdoing. The Commission finds that CCSE's letter to PHR customers was appropriate.

Further, there is little credibility to the claim that Airth is biased against PHR. Airth's analysis shows that PHR systems are small and generally less cost-effective for customers than other systems tracked in the CSI database, both in the SDG&E territory and statewide. This results in less saving for the consumer in comparison to the cost of the solar energy system. Airth's statements regarding sales tactics and PHR's business practices are also supported by information CCSE had obtained regarding customer complaints, system cost and system performance. (*See Exhibits 173, 174, 176, and 136, 137.*)

6.3 Whether PHR Should be Reinstated to CSI

PHR has not met its burden of proof that CCSE violated the CSI Handbook and improperly disqualified PHR from the CSI Program. Therefore, there is no reason to require CCSE or the other CSI PAs to reinstate PHR in the CSI Program.

The Commission agrees with the statement of CCSE in its brief:

When initially confronted with the facts, [PHR] made no effort to investigate. Instead, it unsuccessfully attempted to induce the victim to change his testimony. When that failed, PHR made the spurious claim that Mr. Airth of CCSE, who diligently investigated the facts and acted as the CSI Program Handbook prescribes, was biased and resentful. To this day, it refuses to admit that any wrongdoing even occurred. (CCSE Opening Brief, 9/16/11 at 19.)

Moreover, PHR's witness Bolin showed a lack of understanding of CSI Program rules and policies, had poor recall of events, and provided many evasive

answers.⁸ As CCSE noted in its brief, due diligence and quality control by the CSI PAs stimulates the solar industry to maintain a high standard of excellence for its contractors. A large pool of skilled, reliable and honest contractors encourages customers to purchase solar energy systems and facilitates the establishment of a self-sufficient solar industry. The Commission agrees with CCSE that violations of CSI Program rules should be treated seriously.

7. Conclusion

In conclusion, the Commission finds that CCSE reasonably concluded that the CSI incentive application submitted by PHR for Gary Vettese contained forged documents. Further, CCSE applied CSI Program rules reasonably in disqualifying PHR from the CSI Program. Finally, PHR has not shown that CCSE violated any statute, rule or order of the Commission in disqualifying PHR from the CSI Program.

8. Assignment of Proceeding

Catherine J. Sandoval is the assigned Commissioner and Dorothy Duda is the assigned Administrative Law Judge and Presiding Officer in this proceeding.

9. Appeal of the Presiding Officer's Decision (POD)

On December 1, PHR filed an appeal of the POD, alleging two errors in the decision. First, PHR claims that Rule 4.10.1 of the CSI Handbook, which allows disqualification from the CSI Program for forged paperwork, is vague and

⁸ See for example, RT 43: 22-44: 3 (Bolin never looked at the CSI Handbook); RT 39: 8-24 (Bolin is not familiar with CSI incentive paperwork); RT 30: 5-10 and Exh. 154 at 5-8 (the Vettese solar installation contract did not show the estimated CSI incentive amount); and RT 61: 19-63: 25 (Bolin is evasive regarding who signed the contract addendum for the company).

unreasonable. PHR contends the rule is vague because it does not delineate between a forged document prepared and submitted by an applicant and a document forged by others and unknowingly submitted by an applicant. According to PHR, this vagueness creates ambiguity and the possibility of disqualification where the applicant has no knowledge of a forgery. Moreover, PHR asserts that this vague and ambiguous rule violates PHR's state and federal due process rights.

Second, PHR maintains the POD is unsupported by the facts in the record because the record contains no evidence that anyone from PHR or MEI forged these documents. Although testimony by a forensic examiner supports that it is "virtually certain" that the documents were forged, PHR asserts that this testimony does not support a finding that someone at PHR or MEI forged the documents.

In response, CCSE claims the appeal has no merit. CCSE notes that PHR's due process claim was not set forth in its complaint, was not argued at the hearing or in briefs, and was not included in the scoping memo for the proceeding. Moreover, CCSE asserts that Rule 4.10.1 correctly imposes the burden on the applicant to assure that documents are not forged. With regard to PHR's claim that evidence does not support that anyone at PHR or MEI committed the forgery, CCSE notes that the burden of proof in the case was on PHR. According to CCSE, the evidence was overwhelming that application documents submitted by PHR and MEI were forged.

After reviewing the appeal and response to the appeal, the presiding officer declined to make any changes to the order originally mailed on November 4. The appeal of the POD does not have merit. The due process claim against Rule 4.10.1 was not raised during the course of the proceeding.

Moreover, all applicable due process requirements have been met with regard to this matter. PHR had adequate notice of the CSI rules, it voluntarily chose to participate in the CSI program, it was notified of its disqualification and appeal rights, and all due process requirements were followed during the course of this complaint. Finally, the evidence set forth in detail in this POD adequately supports the finding that CCSE reasonably concluded that PHR submitted forged documents and CCSE acted reasonably in disqualifying PHR from the CSI Program.

Findings of Fact

1. In early October 2010, CCSE suspended an incentive application submitted by MEI on behalf of PHR for a project on the Vettese home in San Diego because the incentive application lacked the full documentation required.

2. On the suspension deadline of October 27, 2010, an MEI employee sent to CCSE a contract addendum and registration of warranty allegedly signed on October 26, 2010 by the homeowner Vettese.

3. On November 4, 2010, Vettese told CCSE representatives by phone and e-mail that he had not signed any contract addendum or registration of warranty documents and that he had not received anything from the installer to sign since solar panels were installed in September 2010.

4. Vettese stated that no one from PHR or MEI visited his home after he signed off on the completion of the solar installation in September 2010 until representatives visited him in late November 2010.

5. After viewing the documents in question, Vettese told CCSE that it was not his handwriting on the contract addendum and registration of warranty.

6. Section 4.10.1 of the CSI Program Handbook states that forged paperwork is grounds for immediate disqualification from the CSI Program.

7. The CSI PAs agreed with CCSE that PHR should be disqualified from CSI because it had submitted forged documents.

8. Section 4.10.3.2 of the CSI Handbook states that if a solar contractor or installer is disqualified from the CSI Program, all projects under review from that contractor or installer will be suspended and all parties identified with the application will be notified.

9. In early December 2010, Vettese signed a contract addendum and registration of warranty after PHR and MEI installed three additional solar panels on the Vettese home.

10. Sandra Homewood, a forensic document examiner, testified that she was virtually certain the signature of Gary Vettese on the questioned documents was not the genuine signature of Gary Vettese based on numerous differences in the genuine and questioned signatures.

11. Vettese's retraction letter states he no longer questioned the signature on the October 26, 2010 contract addendum and warranty registration because he had signed new documents.

12. The October 26, 2010 contract addendum is signed by a "company representative" but PHR and MEI witnesses could not identify who signed the document.

13. PHR arranged with MEI to handle all documents for CSI incentive applications.

14. The witnesses of PHR and MEI cannot identify anyone from either company who visited Vettese to obtain his signature on the October 26, 2010 contract addendum and warranty registration.

15. CCSE initiated inquiries with Vettese regarding the suspicious documents before Vettese contacted PHR regarding dissatisfaction with his PV system.

16. CCSE representatives responded in a timely fashion to PHR's appeal of its disqualification.

17. A CCSE analysis of CSI data indicates cost per watt for PHR systems is substantially higher than costs for other CSI installers and that PHR systems offset less energy consumption compared to systems installed by other contractors.

Conclusions of Law

1. Vettese provided credible testimony that Vettese did not sign the October 26, 2010 contract addendum and warranty registration documents.

2. It was reasonable for CCSE to conclude the October 26, 2010 documents in the Vettese application were forged.

3. CCSE and the CSI PAs acted reasonably in disqualifying PHR from the CSI Program.

4. CCSE reasonably handled PHR's appeal of its disqualification.

5. CCSE properly notified PHR customers that PHR had been disqualified from the CSI Program.

6. Statements by Airth of CCSE to news publications regarding PHR business practices are supported by Airth's analysis of PHR installations and customer complaints.

7. PHR has not met its burden of proof that CCSE violated any statute, rule or order, or the CSI Handbook when it, together with the CSI PAs, disqualified PHR from the CSI Program.

O R D E R

IT IS ORDERED that:

1. Case 11-03-009 filed by Pacific Home Remodeling is denied.
2. Case 11-03-009 is closed.

This order is effective today.

Dated January 12, 2012, at San Francisco, California.

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK J. FERRON

Commissioners