

DEPARTMENT OF INDUSTRIAL RELATIONS

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October 24, 2019

Howard Baum
Deputy General Counsel
Housing Authority of the City of Los Angeles
2600 Wilshire Boulevard
Los Angeles, California 90057

Re: Public Works Case No. 2019-012
Installation of Solar Photovoltaic Systems, Solar Watts Program
Housing Authority of the City of Los Angeles

Dear Mr. Baum:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced project under California's prevailing wage laws, and is made pursuant to Labor Code section 1773.5¹ and the California Code of Regulations, title 8, section 16001, subdivision (a). Based on my review of the facts of this case and an analysis of the applicable law, it is my determination that the installation of solar photovoltaic systems at single-family residences under the Solar Watts program is not subject to prevailing wage requirements.

Facts

A. Transformative Climate Communities Grant for the Watts Rising Plan.

Administered by the Strategic Growth Council² (SGC), the Transformative Climate Communities (TCC) Program funds development and infrastructure projects that provide local economic, environmental, and health benefits to California's most disadvantaged communities. (Pub. Resources Code, § 75240.) Disadvantaged communities are those "disproportionately affected by environmental pollution and other hazards that can lead to negative public health effects, exposure, or environmental degradation" and are located in

¹ Unless otherwise indicated, all further statutory references are to the Labor Code and all subdivision references are to the subdivisions of section 1720.

² SGC is a cabinet-level committee tasked with coordinating the activities of state agencies to: "improve air and water quality, improve natural resource protection, increase the availability of affordable housing, improve transportation, meet the goals of the California Global Warming Solutions Act of 2006 [], encourage sustainable land use planning, and revitalize urban and community centers in a sustainable manner." (Pub. Resources Code, § 75125, subd. (a).) SGC is also charged with the responsibility to "[m]anage and award grants and loans to support the planning and development of sustainable communities." (*Id.*, subd. (d).)

areas “with concentrations of people that are of low income, high unemployment, low levels of homeownership, high rent burden, sensitive populations, or low levels of educational attainment.” (Health & Saf. Code, § 39711, subds. (a)(1)-(2).) To alleviate those impacts and involve those communities in a meaningful way, SGC is directed to award TCC Program grants³ to those projects that incorporate comprehensive community engagement and outreach, “maximize climate, public health, environmental, workforce, and economic benefits,” and “demonstrate that it will achieve a reduction in emissions of greenhouse gases.” (Pub. Resources Code, § 75241, subds. (a), (c)-(d).)

On January 29, 2018, SGC awarded a \$33.25 million TCC Program grant to the Housing Authority of the City of Los Angeles for its Watts Rising Transformative Climate Communities Plan (Watts Rising Plan). Some of the goals of the Watts Rising Plan are to reduce local sources of air pollution, improve public health outcomes, and address health disparities in Watts, a neighborhood located in the southern portion of the City of Los Angeles that borders the cities of Lynwood and South Gate to the east. To achieve those goals, the Watts Rising Plan includes a low-income solar power installation program called Solar Watts, which will be overseen by the Housing Authority’s grant partner, Restore Neighborhoods Los Angeles (RN-LA). Solar Watts is one of many projects contemplated by the Watts Rising Plan.

B. The Solar Watts Program.

The Housing Authority claims in a letter that the Solar Watts program will “result in the installation of solar roof panels on as many as 150 single-family residences in the Watts community.” An attachment to the First Amended Memorandum of Understanding between the Housing Authority and its partners, however, states that Solar Watts “includes the installation of solar photovoltaic systems on approximately 48 single-family and small multi-family homes in the Project Area.” The disparity between these two statements has not been explained. Though billed as a program for low-income households, presumably in the Watts neighborhood, there has been no information provided about the selection criteria for participation in the Solar Watts program.

The Solar Watts work will be performed pursuant to contracts between RN-LA’s general contractor, GRID Alternatives (GRID), and individual homeowners. The budget for the entire Solar Watts program, including public outreach, design, permitting and installation activities, is \$1,553,440, but the estimated cost of the installation work at each home is under \$25,000 (inclusive of materials, labor and soft costs). GRID describes itself as a “nonprofit community-based organization whose mission is to provide energy cost savings to qualified homeowners through installation of solar electric systems and training in energy efficiency, while providing hands-on solar installation opportunities to job training organizations and volunteers.”

³ Proceeds from California’s cap-and-trade program are deposited in the Greenhouse Gas Reduction Fund, which provides funding for TCC Program grants. (See Health & Saf. Code, §§ 39710, et seq.)

C. The Solar Installation Agreement between GRID and Individual Homeowners.

A sample “Solar Installation Agreement for Homeowner Owned Solar Systems” (Solar Agreement) between GRID and an individual homeowner conspicuously states that the solar photovoltaic system is installed at no cost whatsoever to the homeowner. Under the Solar Agreement, GRID or a subcontractor will install a high-performance kW DC⁴ solar photovoltaic system that consists of solar panels, inverters, and any other parts necessary to install the system in compliance with applicable building codes. GRID will also provide no-cost repair and service of any issues caused by the photovoltaic system for 10 years after installation. The Solar Agreement, however, does require that the homeowner assign to GRID all rights to receive rebates or other incentive payments for the installation of solar system from any source, such as the California Energy Commission, California Public Utilities Commission, or a local utility. Language in the Solar Agreement suggests that the photovoltaic system will be installed on the roof of the home. GRID or a subcontractor will inspect the home to ensure that necessary carbon monoxide and smoke detectors or other devices are installed, and if those devices are not present, install them as required by relevant building codes, again at no cost to the homeowner.

Discussion

All workers employed on public works projects must be paid at least the prevailing wage rates applicable to their work. (§ 1771.) Section 1720, subdivision (a)(1), defines “public works” to mean, *inter alia*, construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds. The work to be performed under the Solar Watts program constitutes public works, as it indisputably involves construction or installation done under contract by GRID or one of its subcontractors and paid for out of public funds in the form of TCC Program grant money.

The Housing Authority agrees with this conclusion, but argues that an exception to prevailing wage requirements applies because the TCC Program funds are being provided to households to rehabilitate their privately-owned, single-family homes. Subdivision (c)(5)(C) of Section 1720 provides:

(c) Notwithstanding subdivision (b):

...

Unless otherwise required by a public funding program, the construction or rehabilitation of privately owned residential projects is not subject to the requirements of this chapter if one or more of the following conditions are met:

...

(C) Assistance is provided to a household as either mortgage assistance, downpayment assistance, or for the rehabilitation of a single-family home.

⁴ kW DC is an abbreviation for “kilowatt direct current.”

Prevailing wage requirements in this case are not “otherwise required by a public funding program.” (§ 1720, subd. (c)(5)(C).) Nothing in the TCC or Greenhouse Gas Reduction Fund legislation speaks specifically about prevailing wage requirements, and there is no indication SGC mandates prevailing wage requirements in circumstances where an exception is applicable. The sole issue that must be resolved then is whether the TCC funding qualifies as assistance that is “provided . . . for the rehabilitation of a single-family home.” (*Ibid.*)

A. Solar Photovoltaic Systems Reduce Energy Costs and Raise Property Values.

The Housing Authority contends that installation of the photovoltaic system at single-family residences constitutes rehabilitation, as the photovoltaic system will help residents save money on energy bills and stabilize the value of their homes. No support is provided for these contentions, but it is commonly understood that a solar photovoltaic system is a renewable energy system, as a residential photovoltaic system’s “primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating.” (Civ. Code, § 801.5, subd. (a)(1).) The same statute, which describes land burdens or “servitudes upon land,” also declares that a person has the “right to receive sunlight across real property of another for any solar energy system.” (Civ. Code, § 801.5, subd. (a).) These statutory provisions support the Housing Authority’s assertion that a photovoltaic system would typically lower a homeowner’s energy costs, because it harvests solar power, which is a free resource.

An energy system that harvests a free, renewable, and essentially unlimited resource is considered an asset to a home, especially one located in a disadvantaged community. The importance of harnessing this renewable energy is such that it is the express “policy of the state to promote and encourage the use of solar energy systems and to limit obstacles to their use.” (Gov. Code, § 65850.5, subd. (a).) In accordance with that policy, the 2019 Building Energy Efficiency Standards mandate that, effective 2020, all new construction of “low-rise residential buildings shall have a photovoltaic (PV) system” meeting specified minimum technical requirements. (Cal. Code Regs., tit. 24, part 6, § 150.1, subd. (c)(14).)

Because certain new residences will now generally be required to have solar photovoltaic systems installed, existing homes without such systems may lose some of their value. By contrast, an existing home that does have a solar photovoltaic system installed would conceivably see its value at least stabilize – as the Housing Authority puts it – if not outright appreciate.

B. The ARRA-CEC Coverage Determination is Persuasive.

Although the term “rehabilitation” is not defined in the prevailing wage law or its regulations, there is guidance on the issue in prior determinations issued by the Director. In PW 2011-004, *American Recovery and Reinvestment Act Funded Contract for Installation of Residential Energy Efficient Retrofits on Single-Family Homes - California Energy Commission* (Mar. 10, 2011) (ARRA-CEC), the California Energy Commission provided American Recovery and Reinvestment Act funds to rural low-to-moderate

income California homeowners for comprehensive energy efficient retrofits, including the installation of photovoltaic systems. The *ARRA-CEC* coverage determination found that the “work involved in these energy efficient retrofit programs qualifies as rehabilitation because it is intended to make a single family home more energy efficient and sustainable.” (*Id.* at p. 3.) The determination relied on Section 203(k) of the National Housing Act and implementing federal regulations that “specifically describe the work to be performed under the terms of this program to be rehabilitation of a single family home including rehabilitation of existing structures to improve the thermal efficiency of the homes and *installation of photovoltaic systems.*” (*Ibid.*, italics added.)

In this case, concluding that rehabilitation includes installation of solar photovoltaic systems for single-family residences under the Solar Watts program is consistent with the Director’s prior determination in *ARRA-CEC*.

C. The National Housing Act Defines Rehabilitation Broadly.

A fresh review of the current version of the federal statutes and regulations considered in *ARRA-CEC* also compels the conclusion that the work at issue in this matter is appropriately considered rehabilitation. Under the National Housing Act, the Department of Housing and Urban Development’s Federal Housing Administration may insure loans made for rehabilitation to certain residential properties under its Section 203(k) program. The Section 203(k) program was first established by the Housing and Community Development Amendments of 1978, Public Law 95-557 (10/31/78). Since its establishment, the Section 203(k) program has been the primary federally-backed assistance program for rehabilitation of homes. (*U.S. v. Boccagna* (2d Cir. 2006) 450 F.3d 107, 109.)

Section 203(k) defines “rehabilitation” as “the improvement (including improvements designed to meet cost-effective energy conservation standards prescribed by the Secretary) or repair of a structure, or facilities in connection with a structure” (National Housing Act, § 203(k)(2)(B), 12 U.S.C. § 1709(k)(2)(B); 24 C.F.R. § 203.50.) The “improvement . . . of a structure” encompasses the installation of a solar photovoltaic system, since the system must be installed onto the roof of a home and connected to the home’s wiring system. Further, federal regulations provide that a solar photovoltaic system is a type of improvement eligible for increased mortgage assistance under the Section 203(k) program. (See 24 C.F.R. § 203.18a(a) [the maximum mortgage amount “may be increased by up to 20 percent if such an increase is necessary to account for the increased cost of the residence due to the *installation of a solar energy system,*” italics added.]) As a solar photovoltaic system serves to “reduce the energy requirements of that structure from other energy sources,” such an improvement is “designed to meet cost-effective energy conservation standards,” falling squarely within Section 203(k)’s definition of “rehabilitation.” (12. U.S.C. §§ 1701z-13(b)(2), 1709(k)(2)(B).)

Senate Bill 972 (2002) created the exception under Labor Code section 1720, subdivision (c)(5)(C), for “mortgage assistance, downpayment assistance, or for the rehabilitation of a single-family home.” When the Legislature enacted S.B. 972 in 2002, it was presumed to have been aware of the Section 203(k) program, established 24 years earlier. (See *Mississippi ex rel. Hood v. AU Optonics Corp.* (2014) 571 U.S. 161, 169 [a

legislature is presumed to be “aware of existing law when it passes legislation.”) As Section 203(k)’s basic definition of “rehabilitation” has remained unchanged since 1978, it is reasonable to presume the Legislature contemplated that the term “rehabilitation” in subdivision (c)(5)(E) would be consistent with the Section 203(k) program. And to be consistent, the term “rehabilitation” as used in section 1720 should include, as Section 203(k) does, the “installation of a solar energy system.” (24 C.F.R. § 203.18a(a).)

D. Other Provisions of California Law Also Provide Guidance.

Aside from federal law, several California residential rehabilitation schemes⁵ also contain definitions that can offer guidance in interpreting the meaning of rehabilitation for the purposes of the Labor Code section 1720, subdivision (c)(5)(C), exception. The California Department of Housing and Community Development (HCD) is charged with administering several state financing programs specifically for the rehabilitation of homes and promulgating regulations to implement those programs. At the time Senate Bill 972 was passed, rehabilitation programs in place included the CalHome Program and the Deferred-Payment Rehabilitation Loans Program. Both those programs, as well as other rehabilitation programs, offer their own definition of “rehabilitation” through regulations.

Central to each of the various definitions of “rehabilitation” scattered throughout the Health and Safety Code and HCD’s regulations is that rehabilitation is work done to a substandard residence with obsolete features to bring it up to current building or housing standards. (See, e.g., Cal. Code Regs., tit. 25, §§ 7716, subd. (II) [“Rehabilitation includes reconstruction. Rehabilitation also includes room additions to prevent overcrowding. Rehabilitation also means repairs and improvements which are necessary to meet any locally-adopted standards used in local rehabilitation programs” under the CalHome Program]; 7402 [rehabilitation “means repairs and improvements to a substandard structure necessary to make it meet rehabilitation standards” under the Deferred-Payment Rehabilitation Loans Program.])

As discussed, new residences will be required under current building energy efficiency standards to have photovoltaic systems. (Cal. Code Regs., tit. 24, part 6, § 150.1, subd. (c)(14).) Installing a solar photovoltaic system will bring an existing home in a disadvantaged community to current standards, and curb “obsolescence.” (See Health & Saf. Code, § 37912, subd. (i)(1).) Updating homes to current building standards will increase property values in Watts, which will have beneficial ripple effects throughout the entire community, thus confirming that the project work constitutes “rehabilitation.”

⁵ The Community Development Law (Health & Saf. Code, § 33700 et seq.), the Marks-Foran Residential Rehabilitation Act of 1973 (Health & Saf. Code, § 37910 et seq.), the Zenovich-Moscone-Chacon Housing and Home Finance Act (Health & Saf. Code, § 50090 et seq.), and the Multifamily Housing Program (Health & Saf. Code, § 50765 et seq.) all have independent but related statutory definitions of “rehabilitation” or “residential rehabilitation.” All definitions focus on repairs, renovations, or improvements that make a substandard residential structure meet applicable state or local building or housing standards. (See Health & Saf. Code, §§ 33753, subd. (h); 37912, subd. (i)(1); 50096-50097; 50765.2, subd. (e).)

The TCC Program was designed specifically to provide development funding for disadvantaged communities, which are “disproportionately affected by environmental pollution and other hazards that can lead to negative public health effects, exposure, or environmental degradation” and are located in areas “with concentrations of people that are of low income, high unemployment, low levels of homeownership, high rent burden, sensitive populations, or low levels of educational attainment.” (Health & Saf. Code, § 39711, subs. (a)(1)-(2).) In awarding the grant to Housing Authority for its Watts Rising Plan, SGC has necessarily found Watts to be a “disadvantaged community,” a particularly appropriate target for residential rehabilitation.

Given that installation of the photovoltaic systems will bring homes to current building energy efficiency standards, coupled with the TCC Program’s focus on uplifting disadvantaged communities, the work to install solar photovoltaic systems on single-family residences under the Solar Watts program constitutes rehabilitation. Accordingly, the work in this specific factual situation is not subject to prevailing wage requirements, pursuant to the exception set forth in section 1720, subdivision (c)(5)(C).

Conclusion

For the foregoing reasons, based on the specific facts of this case, the installation of solar photovoltaic systems at single-family residences under the Solar Watts program is not subject to prevailing wage requirements, due to the statutory exception in Labor Code section 1720, subdivision (c)(5)(C).

I hope this determination satisfactorily answers your inquiry.

Sincerely,

--SIGNED --

Victoria Hassid
Chief Deputy Director⁶

⁶ See Gov. Code, §§ 7, 11200.4.