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Decision 92-02-025 February 5, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

HARRIS FARMS, INC. dba HARRIS FEEDING COMPANY, Complainant, vs. PACIFIC GAS AND ELECTRIC COMPANY, Defendant. (U 39 E)	Case 91-02-076 (Filed February 15, 1991)

Seyforth, Shaw, Fairweather & Geraldson, by Jeffery Anne Tatum and William Thomas, Attorneys at law, for Harris Farms, Inc., complainant.
Mark Huffman, Carmen Gonzales, and Harry W. Long, Jr., Attorneys at Law, for Pacific Gas and Electric Company, defendant.

O P I N I O N

Summary

This decision finds that Harris Farms, Inc.'s (Harris) feedmills in Coalinga and Lemoore, which provide feed to the Harris cattle-raising operations, qualify for agricultural rates. Pacific Gas and Electric Company (PG&E) is ordered to place the feedmills on agricultural tariffs, to refund the difference between the commercial rates charged and the appropriate agricultural rates, and to withdraw the backbilling request rendered for service since February 1990.

Background

Harris requests that the Commission order PG&E to place its two feedmills, served on Account No. TTF59 2620 located in Coalinga, and Account No. HTL 23 3635 located in Lemoore, on agricultural tariffs prospectively, and for all of 1990. When the Harris feedmills were placed on commercial tariffs, Harris was backbilled from February 1990 for the difference between the commercial tariff and the agricultural tariff previously charged, in the amount of $73,792.83 for the Coalinga account and $4,337.69 for the Lemoore account. Harris contends that PG&E is unreasonable and not in compliance with its tariffs in assigning these accounts commercial, rather than agricultural, tariffs. Harris maintains that the feedmills are not commercial enterprises; rather, they are an integral and necessary part of the lifestock-raising operation. All the output of the feedmills is used by Harris; none is packaged and sold. The size of the lifestock-raising operation necessitates that it have its own feedmills, since Harris could not obtain an adequate, reliable and economic supply from outside vendors. Any interruption of supply could not be tolerated. Purchases from outside vendors would be need to be weighed and packaged for commercial sale, with the contents of each ingredient specified, which would increase the price.

Harris purchases varying feedstocks depending heavily on availability and price, then blends the various components to achieve the nutrition and palatability needed for livestock. Although the feedmills roll, chop, and blend the various feed ingredients, Harris contends that the form of the product is not changed.

PG&E believes that the feedmills must be viewed as separate operations because they are served and metered separately; therefore whether they are a part of the livestock-raising operation is irrelevant. The applicable PG&E agricultural tariff language follows:

> "A customer will be served under this schedule if 70 percent or more of the energy use is for agricultural end-uses. Agricultural end-uses include growing crops, raising livestock, pumping water for agricultural irrigation, or other uses which involve production for sale, and which do not change the form of the agricultural product. This schedule is not applicable to service for which a residential or commercial/industrial schedule is applicable."

PG&E maintains that the feedmills change the form of the product through various processes. For example, the rolling changes the form of a grain kernel to a flake that appears similar to cereal flakes.

At the hearing on August 20, 1991 Harris presented the testimony of Don Devine, Monty Allen, John Braly, Steven Geringer, and Jeff Fabbri. PG&E presented the testimony of Michael Jennings, Lindley R.C. Fellender, and Grayson C. Heffner.

Devine, the chief financial officer of Harris, testified about the quantities of feed processed by the feedmill. Harris produces approximately 362,350 tons of feed annually for the Coalinga feedlot. The ingredients consisted of 15,098 truckloads, and resulted in approximately 1,000,000 sacks of feed.

Allen, superintendent of the Coalinga feedlot, testified that Harris does not produce feed for sale, and does not and cannot purchase feed commercially because of required volume, quality standards, and economics. Allen stated that the feedmill process does not grind, press, or pellet the ingredients. The only processing involves steaming and rolling ingredients such as barley, wheat and corn, and cutting hay into shorter lengths. Allen believes that the processing does not change the form of the product; rather, it performs a basic mixing function.

Braly is head of the California Cattlemen's Association, which oversees the California Feeder Council, a feedlot industry group. Braly testified that the Harris feedmills are not like

flour or oilseed mills; rather they batch, meter, and blend the various ingredients into the ration. The feedmills do not crush or grind the ingredients, but only crimp or roll them to increase their digestibility. The feedmills are an integral and inseparable part of the livestock-raising operation; without it Harris' operation could not function. The end product is finished cattle, not feed for sale. Without the feedmills, the operation would need to depend on commercial supplies, which cannot stock adequate quantities and cannot quickly change rations. By operating its own feedmills Harris is able to keep enough inventory of feed to assure adequate supplies in the event of a shutdown of the feedmills.

Geringer, Associate Counsel for the California Farm Bureau Federation, testified about the development of agricultural rates. A working group was formed around mid-1986 to address issues affecting agricultural rates. It consisted of representatives from the Commission, the Power Users Council, PG&E, and Geringer representing the California Farm Bureau Federation. The purpose of the working group was to address the definition of agricultural uses to eliminate customers who are not agricultural, and those commercial enterprises who process an agricultural product for commercial sale. The latter are usually stand-alone operations that purchase agricultural commodities and change their form, such as processors of tomato sauce, tomato paste, and tomato juice. The working group presented its recommendations to the Commission in the 1988 PG&E Energy Cost Adjustment Clause proceeding, concluding that the determination of whether an end-use is agricultural should be based on whether the agricultural product was changed in form for the purpose of commercial sale.

Geringer believes that the intent of the definition of agriculture was not to exclude any intermediate operation that is an integral part of the production of an agricultural commodity, demonstrated by the fact that raising of livestock was expressly included in the definition of agricultural uses. While the working

group contemplated that PG&E would look at separately metered accounts to determine whether the end-use was agricultural, in Geringer's view, it never contemplated that PG&E would isolate a particular function in the middle of the customer's overall operation where that function is a part of the customer's overall agricultural process. This is demonstrated by the fact that the working group used the term customer, instead of account or meter, in the definition of agricultural.

Fabbri, president of the Agricultural Energy Consumers Association, also participated in the working group. He testified that the intent of the working group was to define all electrical inputs to agricultural production as agricultural. He believes it is inappropriate and contrary to the intent to dissect an agricultural operation into its subcomponents in determining whether they are eligible for agricultural tariffs, when they are functions ancillary to a qualified agricultural end-use.

Jennings, a PG&E major account representative who deals with large agricultural customers, testified that the Harris feedmills are properly commercial customers, as are all other feedmill customers. PG&E reviews customers' uses on an account-by-account basis, consistent with D.88-12-031, Conclusion of Law 10, which refers to accounts rather than customers. Two questions are asked to determine whether the account is agricultural. First, is 70% or more of the energy used dedicated to agricultural production? If it is, the second question is asked: Is an agricultural product directly involved in the electrical process, and is the agricultural product's form changed by the process? If an agricultural product is involved and its form is unchanged, the account is eligible for an agricultural rate. If the form of the product is changed, the account is not eligible for an agricultural rate. For that reason, the Harris feedmills are not eligible since they cut, chop, roll, flatten and crush the product, thereby changing the form through making it more

digestible and nutritious to the cattle. The account-by-account treatment is provided by PG&E Rule 9.D, and accounts may not be combined for billing purposes. Even if PG&E were to aggregate the Harris accounts, the feedmills would not end up as agricultural since the non-feedmill accounts do not constitute 70% or more of the electrical usage; the feedmills use about half the total Harris usage.

In Jennings' view, Harris' proposal that all intermediate steps of an integrated agricultural operation be classified agricultural is contrary to D.88-12-031 and PG&E Rule 9.D. That rule requires each meter to be billed separately. In addition, Harris' proposal would result in different treatment for similar feedmills depending on whether they are integrated into agricultural production. All feedmills served by PG&E are presently classified and served on commercial tariffs. Jennings further believes that Harris' proposal would require the Commission to establish precise criteria defining an integrated agricultural operation, and would require ongoing policing by PG&E to determine the continuing eligibility of such agricultural customers.

Fellender is a marketing analyst responsible for the proper application and interpretation of PG&E's agricultural and small/medium commercial accounts. He was involved in the process of redefining the agricultural class, which culminated in D.88-12-031. This was done to address certain inequities in PG&E's tariffs. For example, "on the farm" uses were billed agricultural while the same activity performed "off the farm" was billed on a general service schedule. In other cases, agricultural activities with demands under 500 kilowatts (kW) were billed under agricultural tariffs while identical activities with demands of 500 kW or more were billed on commercial/industrial schedules. Further, some non-agricultural uses such as golf courses, cemeteries, parks and recreational facilities had been receiving agricultural rates.

The redefinition of the agricultural class resulted in approximately 4,100 customers being transferred into, and 1,500 out of, the agricultural class. Fellender explained how various uses would be classified; a farm office would be commercial since it can be used for a variety of business activities and lacks a direct and verifiable nexus to agricultural production. On the other hand, a farm shop would be classified agricultural since it services equipment directly involved in agricultural production and does not change or modify any agricultural product. Fellender believes that adopting Harris' definition would result in significant administrative expenses in reviewing each operation to determine whether it was part of an integrated agricultural operation.

The definition of the agricultural class was developed by a PG&E task force consisting of PG&E regional coordinators and general office staff. PG&E's Tariff Application Guide, developed to assist PG&E personnel in interpreting tariffs, states with regard to form, "If the product is different in form, texture or appearance after the process is complete, then the form of the product has changed."

PG&E witness Heffner testified that the purpose of the working group was to develop rate options such as time-of-use rates for the agricultural class. The working group also considered uneconomic bypass by diesel water pumping, intraclass cost-of-service variations, differences in the operating requirements of agricultural irrigators, and conflicting price signals sent to irrigation water agencies and their agricultural customers. The redefinition of the agricultural class was not addressed in detail by the working group, but rather was developed by PG&E after the working group was disbanded.

Discussion

In addressing the issue of whether Harris qualifies for an agricultural rate, we consider the two main issues of controversy.

1. Is the feedmill an agricultural use because it is an integral part of raising livestock?

2. Is whether a feedmill changes the form of the product relevant? If so, do the Harris feedmills change the form?

Regarding the first question, Harris emphasizes that the feedmills are an integral part of the livestock-raising operation, that the feedmills' product is not sold, that they do not have commercial weighing and packaging capability, and that the feedlot could not function without the feedmills. By having its own feedmills, Harris is not subject to outside disruptions, and can better maintain control over supply, inventory, quality, and price. Harris maintains that outside feedmills cannot provide the product reliably and economically.

PG&E counters that since the feedmills are served separately, they are not a part of the livestock-raising operation, and must be evaluated on their own merits. PG&E also stresses that all other feedmills are classified commercial, and with Harris' feedmills now classified commercial, all are treated the same. However, the main thrust of PG&E's argument is that the feedmills change the form of the product; that is the subject of the second main issue.

We note that the feedmills are not a separate commercial enterprise since they do not sell a product. Not just 70%, but all of the product is used in the livestock-raising operation. PG&E argues that a feedmill must be considered as a separate operation; yet PG&E allows a farm shop operation an agricultural tariff as long as 70% or more of the energy used maintains the agricultural equipment. We agree with Harris that its feedmills are an integral part of its livestock-raising operations.

The second main issue deals with the relevance, if any, of changes to the form of the product. This issue arises from

the language of PG&E's tariff, which in turn derives from D.88-12-031.

Conclusion of Law 10 in D.88-12-031, 30 CPUC 2d 44, 56, states: "...all agricultural accounts must meet the condition that 70 percent or more of the energy usage on the account be dedicated to agricultural end-uses, defined to include growing crops, raising livestock, pumping water for irrigation and other uses involving production for sale which do not change the form of the agricultural product." PG&E subsequently incorporated this language in its several tariff schedules for agricultural power.

We believe the intent of D.88-12-031 is clear. The modifier "...that do not change the form of the agricultural product" adds a limitation to the immediately prior phrase "...other uses that involve production for sale." It would therefore not apply to a feedmill that is part of a livestock-raising operation and is not selling the product. PG&E argues that the limitation applies to all prior categories, which would also mean that it would apply to growing crops, raising livestock, and pumping water for agricultural irrigation. PG&E's interpretation is contrary to both the grammar and the intent of this passage.

Harris' feedmills qualify for agricultural tariffs because they are dedicated and integral to a defined agricultural end-use, raising livestock. The question whether the form of the product is changed is thus not relevant. PG&E's treatment of farm shops is consistent with this approach. As Harris points out, PG&E does not look at whether the farm shop changes the form of the product. Certain farm shop operations such as welding, metal forming and machining appear to change the form of the raw product, yet PG&E does not consider such changes in allowing agricultural rates. We fail to see a distinction between the farm shop and the feedmills with regard to change of form. The Harris feedmills are as essential a part of cattle raising as the farm shop, and clearly satisfy the minimum 70% energy requirement.

We conclude for the reasons discussed above that whether the Harris feedmills change the form of the feed is not relevant to Harris' eligibility for agricultural rates.

We now consider whether classifying Harris' feedmills as agricultural is consistent with the intent of agricultural rates. Raising livestock is a specifically defined agricultural end-use. As we discussed above, pumping water for that purpose qualifies, as does a farm shop that repairs agricultural equipment, so long as 70% or more of the energy is used for agricultural end-use. The farm shop may repair other equipment if that effort consumes less than 30% of the energy.

Classifying feedmills whose output is used 70% or more for cattle raising as an agricultural account appears consistent with the intent of agricultural tariffs. Not allowing agricultural rates for an operation whose only purpose is to support a defined agricultural end-use defies the intent of the agricultural tariffs.

PG&E argues at length about the extreme difficulty of administering the agricultural tariffs if any feedmills are allowed agricultural tariffs. Among its stated reasons PG&E offers that while Harris may not have the capability to produce feed for commercial sale, there is nothing to prevent it from acquiring such capability in the future. Therefore, PG&E would have to police such customers on an ongoing basis to assure that the product is not sold commercially. This is a hollow argument; the same policing would be required for any other agricultural operation. For example, if a farm shop that was performing outside work which consumed less than 30% of its energy took in more outside work so that less than 70% of its energy use related to agriculture, that service would no longer be eligible for an agricultural rate. Seemingly, PG&E would also have to determine this through policing. The same would be true for water pumping if a portion went to other non-agricultural uses. We don't see that administering

agricultural tariffs is necessarily different than administering other tariffs.

PG&E appears overly concerned with administrative convenience. We don't see that there will be an unusual burden to identify those feedmills that qualify for agricultural tariffs. At present, apparently only Harris' feedmills so qualify. The number of feedmills is probably not very large, and PG&E can determine eligibility by a combination of questionnaires, phone calls, and site visits, as it deems appropriate. Administrative burden is not a sufficient reason to deny a qualifying operation an agricultural rate to which it is entitled.

PG&E argues that it alone understands the definition of agricultural uses, since the working group did not develop the details; rather, PG&E did so after the working group disbanded. Nevertheless, PG&E's task was clearly to develop a definition consistent with the recommendations of the working group and with D.88-12-031, Conclusion of Law 10. We believe that PG&E further interpreted the decision erroneously, and in doing so circumvented the decision's intent by applying the "change of form" to all uses.

We conclude that the Harris feedmills are qualified for agricultural tariffs. Their product has no purpose other than to feed cattle in the livestock-raising operation, which is a specified agricultural end-use. The feed is not commercially packaged, weighed, or sold; Harris does not have that capability, and indicates no such intent.

We will order PG&E to reclassify Harris' Coalinga and Lemoore feedmills as agricultural, to refund the additional charges resulting from application of commercial tariffs, and to withdraw the backbills from February 1990.

Findings of Fact

1. Harris filed a complaint requesting that the Commission order PG&E to place its two feedmills at Coalinga and Lemoore on agricultural tariffs.

2. PG&E changed Harris' feedmills from agricultural to commercial tariffs, and backbilled Harris for the difference in tariff charges for February through September 1990 at Coalinga and for February through October 1990 at Lemoore.

3. PG&E changed its definition of agricultural end-uses effective January 1, 1990.

4. The Harris feedmills solely supply cattle-feeding operations; the feedmill product is not packaged or sold commercially.

5. The Harris feedmills roll, chop, and blend the various ingredients to make the feed more palatable, nutritious, and digestible.

6. Seventy percent or more of the energy consumed at the feedmills is used for producing feed.

7. A working group, consisting of representatives from the Commission, the Power Users Council, PG&E, and the California Farm Bureau Federation, was formed in 1986 to address the definition of agricultural uses, and to eliminate agricultural rates for customers who are not agricultural or who process an agricultural product for commercial sale. The working group presented its recommendations to the Commission in the 1988 PG&E Annual ECAC proceeding.

8. All other feedmills served by PG&E are classified and served on commercial tariffs.

9. PG&E classifies farm shops as agricultural if 70 percent or more of the energy is used to maintain farm equipment.

10. Raising livestock is a defined agricultural end-use.

11. Under D.88-12-031, changing the form of the product is relevant only to other agricultural uses that involve production for sale.

Conclusions of Law

1. Harris' feedmills in Coalinga and Lemoore qualify for agricultural tariffs.

2. PG&E should be ordered to refund the additional charges resulting from application of commercial rates to Harris' feedmills, to apply agricultural tariffs prospectively, and to withdraw the 1990 backbilling.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) shall reclassify Harris Farms, Inc.'s (Harris) Account No. TTF59 2620 in Coalinga and Account No. HTL 23 3635 in Lemoore to the applicable agricultural tariffs.

2. PG&E shall withdraw the backbills to Harris for 1990 in the amounts of $73,792.83 at Coalinga and $4,337.69 at Lemoore.

3. PG&E shall refund to Harris the additional charges resulting from application of commercial tariffs instead of agricultural tariffs from October 1990 at Coalinga and from November 1990 at Lemoore.

This order becomes effective 30 days from today.

Dated February 5, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President
JOHN B. OHANIAN
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners

I CERTIFY THAT THIS DECISION WAS APPROVED BY THE ABOVE COMMISSIONERS TODAY

NEAL J. SHULMAN, Executive Director