

Decision 99-09-062 September 16, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Nurseryman's Power Cooperative, Inc.,

Complainant,

vs.

Southern California Gas Company,

Defendant.

Case 99-03-005
(Filed March 4, 1999)

OPINION DENYING COMPLAINT

1. Summary

We conclude that Nurseryman's Power Cooperative, Inc. (Nurseryman's) does not meet the single premises requirement for gas transportation service under the Southern California Gas Company (SoCalGas) tariff Schedule GT-F, Section 30. Accordingly, we deny the complaint.

2. Procedural Background

Nurseryman's filed this complaint against SoCalGas on March 4, 1999. The instructions to answer, dated March 15, categorized the complaint as an adjudicatory proceeding. On April 14, SoCalGas timely filed an answer. The categorization has not been appealed. Both parties have stated that evidentiary hearings are not necessary, as their dispute concerns a legal issue, i.e., interpretation of utility tariffs.

3. The Dispute

Nurseryman's complains that the utility has refused to provide firm intrastate transmission of natural gas (gas transportation) under the appropriate utility tariff, Section 30 of Rate Schedule GT-F, and that as a result, Nurseryman's has been overcharged. During the time period July 10, 1997 to February 11, 1999 (the date the complaint was signed and verified), Nurseryman's estimates the alleged overcharge at \$380,000.

Section 30 of Schedule GT-F provides:

"For commercial and industrial customers served under this schedule through multiple meters on a *single premises*, as defined in Rule No.1, the Utility shall combine all such meters, excluding meters serving cogeneration equipment, for billing purposes in accordance with the provisions of Rule No. 17. Where such a customer receives service from more than one type of service facilities (medium pressure distribution, high pressure distribution, or transmission facilities), the Utility shall assign the customer to the rate classification that provides the lowest applicable GT-F3 transmission charge under this schedule for the customer's combined usage." (Emphasis added.)

SoCalGas argues Nurseryman's is ineligible for Section 30 of Schedule GT-F because it does not meet the single premises requirement. SoCalGas' tariff Rule 1 defines "premises" to mean "[a]ll of the real property and apparatus employed in a single enterprise on an 'integral parcel of land ...".¹

¹ We note that the tariff language could be more precise. While Section 30, Schedule GT-F refers to a "single premises," the definitional language in tariff Rule 1 is subtitled "premises," and itself refers to a "single enterprise," which is undefined. Nonetheless, as we discuss in the text below, the concept is sufficiently clear.

SoCalGas also notes that Nurseryman's proposal would result in a revenue loss that ultimately would be allocated to other customers.

The material facts are undisputed. Nurseryman's is an agricultural nonprofit cooperative association of 17 flower growers who operate separate businesses on adjacent properties in the Carpinteria area of Ventura County.² The articles of incorporation, which reference the authority of Chapter 1 of Division 20 of the Food and Agricultural Code, were filed with the Secretary of State on July 10, 1997. While Nurseryman's main business has been the purchase of energy supplies and services for its members, the articles of incorporation provide additional purposes including: production, marketing, or selling of members' products; harvesting, handling, or shipping of members' products; supplying machinery, equipment, or supplies to members; and financing any of these activities. Currently, SoCalGas bills the individual flower growers for gas transportation to their greenhouses under 23 separate accounts. One account is for transmission level service. Though Nurseryman's is not the customer of record on these accounts, its General Manager pays these bills as well as the bill for service to Nurseryman's office in San Juan Capistrano.

4. Discussion

The sole question before us is whether or not Nurseryman's meets the requirements for gas transportation service under Section 30 of Schedule GT-F. A customer is entitled to utility service under the most advantageous tariff for

² In correspondence attached to this complaint regarding the preliminary, informal complaint raised with the Commission's Consumer Services Division, SoCalGas conceded Nurseryman's members' businesses are adjacent to one another. In its answer, however, SoCalGas suggests that fact has not been proved. In light of our conclusion in this case, this issue is not critical and we do not need to pursue it.

which it qualifies. The fact that a revenue loss – later reallocated to other customers – may result from correcting an erroneous tariff assignment is no ground for refusing to correct such an error. Has an error occurred in this case?

Under Section 30 of Schedule GT-F, to obtain the financial benefits which accrue from combining numerous meters and billing their transportation service at the lowest transportation rate, a customer's meters must be located on a single premises. Is Nurseryman's a customer whose multiple meters are located on a single premises? We conclude it is not.

Nurseryman's admits that its members continue to own and operate their greenhouses as individual businesses and that these businesses retain legal identities separate from that of the agricultural cooperative. Though Nurseryman's may make collective natural gas commodity purchases for these businesses (and could undertake various other merchant functions for them), the gas is transported to the businesses through separately metered distribution and transmission pipelines, depending upon the infrastructure required to meet their individual transportation needs. While each business may use its greenhouses to grow flowers, and thus all 17 businesses are engaged in the same kind of enterprise, the businesses, collectively, do not constitute a "single enterprise," as a plain reading of the tariff Rule 1 definition would require. Webster's variously defines the adjective "single" as "unaccompanied by others; consisting of one as opposed to or in contrast with many; consisting of a separate unique whole." (Webster's Ninth New Collegiate Dict. (1990) p. 1100.) Furthermore, though the greenhouses of all the businesses may be in close proximity to one another, they are "employed" by the individual growers on their own tracts. Nurseryman's does not own or lease these tracts and cannot be said to employ the greenhouses "on an integral parcel" of undivided land.

Nurseryman's claims that the tariff interpretation it seeks is already enjoyed by other agricultural cooperatives. SoCalGas responds that it does bill certain dairy and citrus cooperatives for gas transportation service under Section 30 of Schedule GT-F. However, SoCalGas distinguishes these cooperatives from Nurseryman's because they use natural gas to operate a single facility for processing members' milk or oranges; the cooperative is not the "customer" for purposes of gas transportation service to members' dairies or citrus groves. This distinction appears valid, as it focuses on whether or not the customer meets the single premises requirement of tariff Rule 1. The fact that the customer happens to be an agricultural cooperative is not the determinative factor in this assessment.

We conclude that that Nurseryman's has not established its eligibility for service under Section 30 of Schedule GT-F. We do not suggest Nurseryman's efforts to secure lower gas transportation costs for its members by urging a broad reading of the disputed tariff language is frivolous, however. Rather, we merely conclude that a plain reading of the tariff language, which is necessary to its even-handed application, does not permit the result Nurseryman's seeks. We examine gas transportation allocation policy and proposals for revisions in generic biennial cost allocation proceedings (BCAPs) and we direct SoCalGas to raise the issues which are the subject of Nurseryman's complaint in its next BCAP filing or in any other appropriate proceeding which it may file before that time. We urge Nurseryman's to participate in such a proceeding and advocate in that forum for a policy change and a tariff revision advantageous to its members.

5. No Hearing is Necessary

After review of the pleadings, we conclude that the material facts are not in dispute. Accordingly, we change the determination, in the instructions to

answer, that this proceeding required a hearing and conclude that no hearing is necessary, in compliance with Rule 6.6 of the Commission's Rules of Practice and Procedure. We deem this proceeding to stand submitted as of August 3, 1999, the date the draft decision was mailed.

6. Comments on Draft Decision

The draft decision of ALJ Jean Vieth in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g) and Rule 77.1 of the Commission's Rules of Practice and Procedure (Rules). We received comments from Nurseryman's, a reply from SoCalGas, and an additional response from Nurseryman's. Though responses to replies are not expressly allowed by our Rules, the ALJ authorized the Docket Office to accept that filing and we have considered it. Nurseryman's arguments do not persuade us that the draft decision is wrong but we have made some minor revisions to clarify our analysis.

Findings of Fact

1. Nurseryman's is an agricultural nonprofit cooperative association of 17 flower growers who operate separate businesses under separate legal identities, in the Carpinteria area of Ventura County.
2. Nurseryman's main business has been the purchase of energy supplies and services for its members but its articles of incorporation provide additional purposes including: production, marketing, or selling of members' products; harvesting, handling, or shipping of members' products; supplying machinery, equipment, or supplies to members; and financing any of these activities.
3. Currently, SoCalGas bills the individual flower growers for gas transportation to their greenhouses under 23 separate accounts, one of which is for transmission level service.

4. Nurseryman's is not the customer of record on these accounts, but its General Manager pays these bills as well as the bill for service to Nurseryman's office in San Juan Capistrano.

5. The sole issue is whether or not Nurseryman's meets the requirements for gas transportation service under Section 30 of SoCalGas' Schedule GT-F.

6. Though we deny Nurseryman's complaint, we do not suggest its efforts to secure lower gas transportation costs for its members is frivolous.

Conclusions of Law

1. The gas transportation billing options available under Section 30 of SoCalGas' Schedule GT-F require that an industrial or commercial customer's multiple meters are located on a single premises.

2. Nurseryman's does not meet the single premises definition in SoCalGas' tariff Rule 1 because its members independently employ their land and greenhouses, where the gas is consumed.

3. Nurseryman's does not meet the single premises definition in SoCalGas' tariff Rule 1 because while its 17 members are engaged in the same kind of enterprise – growing flowers – they are not engaged in a single enterprise.

4. The complaint should be denied.

5. In denying the complaint, we make a final determination that no hearing is necessary in accordance with Rule 6.6 the Rules of Practice and Procedure.

6. In order to resolve this dispute expeditiously and provide certainty to the parties in their business dealings, this decision should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The complaint of Nurseryman's Power Cooperative, Inc. is denied.
2. Southern California Gas Company shall raise the issues which are the subject of this complaint in its next biennial cost allocation proceeding filing or in any other appropriate proceeding which it may file before that time.
3. This proceeding is closed.

This order is effective today.

Dated September 16, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
JOEL Z. HYATT
CARL W. WOOD
Commissioners