

Decision 03-04-058 April 17, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Zacky & Sons Poultry Co., dba Zacky Farms,

Complainant,

vs.

Southern California Edison Company,

Defendant.

Case 00-01-021
(Filed January 20, 2000)

Ellison & Schneider, by Lynn M. Haug, Attorney at
Law, for Zacky & Sons Poultry Co., complainant.
Megan Scott-Kakures, Jennifer M. Tsao, and Jennifer R.
Hasbrouck, Attorneys at Law, for Southern
California Edison Company, defendant.

O P I N I O N

1. Summary

This decision involves a determination of whether Zacky & Sons Poultry Co. (Zacky) should be billed for electricity used at its chicken processing facility located at 6102 Sheila Street, Commerce, California (the Sheila Street facility) at an agricultural rate pursuant to Southern California Edison Company's (Edison) Tariff Schedule TOU-PA-5 (TOU-PA-5), rather than at a commercial rate. We find that TOU-PA-5 applies when a customer is engaged in the production, harvesting, and preparation for market of agricultural products on land owned

or operated by the customer, but does not apply when preparation for market occurs at a location other than the site of production or harvesting. Therefore, since Zacky does not produce poultry at the Sheila Street facility, Zacky is not entitled to receive electrical service for this facility at an agricultural rate.

2. Factual Background and Procedural History

Zacky owns five “grow-out ranches,” at which chickens are grown and cared for, in Edison’s territory. Edison bills Zacky for electricity used at the five “grow-out ranches” at an agricultural rate. Zacky also owns the Sheila Street facility. Zacky sends mature chickens to the Sheila Street facility for the final hours of food digestion and preparation for market. The mature chickens are ultimately slaughtered, plucked, chilled, and boxed at the Sheila Street facility. Edison bills Zacky for electricity used at the Sheila Street facility at a commercial rate.

Zacky filed this complaint against Edison stating four grounds on which Zacky is seeking relief from the Commission:

1. Edison’s refusal to place the Sheila Street facility on an agricultural rate results from an erroneous interpretation of TOU-PA-5 and Edison’s Rule 1 definition of agricultural power service;
2. Zacky is entitled to an agricultural rate for electricity used at the Sheila Street facility under Rule 1, because chickens are produced, by being kept alive for a period of time to clear their digestive systems before being slaughtered, as well as prepared for market at the Sheila Street facility;
3. Edison does not have a clear and consistent policy with regard to customer eligibility for service under its agricultural tariffs, as shown by the inconsistent interpretations of TOU-PA-5 by Edison employees, and therefore has applied its tariff rules and

agricultural schedules in an inconsistent and discriminatory manner in violation of Section 453;¹ and

4. If the Sheila Street facility is ineligible for an agricultural rate under TOU-PA-5 and Rule 1 because it is not located on or contiguous to other Zacky properties at which chickens are grown and raised, Rule 1 is facially invalid under Section 453 because identical poultry processing facilities could be billed for electricity at different rates based on their geographic location.

Zacky's complaint therefore requests a Commission order that Edison serve the Sheila Street facility at an agricultural rate and refund Zacky for the difference in cost between service previously billed at a commercial rate and the applicable agricultural rate for the three years preceding Zacky's first written request to Edison to be billed for service for the Sheila Street facility under TOU-PA-5.

Edison, in its answer, denied that Zacky is eligible to receive electrical service for the Sheila Street facility at an agricultural rate. The answer also denied that Edison had applied its tariffs in an inconsistent and discriminatory way between customers or that its Rule 1 definition of "agricultural power service" is discriminatory or facially invalid. Finally, the answer asserted various affirmative defenses.

Prehearing conferences were held on March 23 and May 10, 2000. The parties filed a joint case management statement and draft stipulation of facts on May 1, 2000, and a joint stipulation of facts (Stip.) on June 23, 2000. An evidentiary hearing was held on August 4, 2000.

¹ Except where otherwise indicated, citations to statutes are to the Public Utilities Code.

3. Positions of the Parties

Zacky argues that the Sheila Street facility qualifies for an agricultural rate because the slaughtering of chickens at the Sheila Street facility constitutes the production and preparation of poultry for market on land owned by Zacky for this purpose. Zacky contends that to view the slaughtering of poultry as part of production is the more logical and consistent interpretation of the Rule 1 definition of “agricultural power service” and is consistent with the legislative and regulatory intent behind the creation of agricultural rates for electricity.

Zacky also contends that the Rule 1 definition of “agricultural power service” is not clearly drafted and contains inconsistent terms, and that under previous Commission decisions, ambiguities in the tariff language should be construed against Edison. In addition, Zacky argues that Edison has applied TOU-PA-5 and Rule 1 inconsistently and has violated Section 453 by refusing to provide electricity to the Sheila Street facility at an agricultural rate solely because it is not located on or adjacent to a hatchery or grow-out ranch at which chickens are grown and raised.

Edison argues that the slaughtering and packaging of poultry at the Sheila Street facility constitutes the preparation for market, rather than the production of, poultry, and that under TOU-PA-5 and the Rule 1 definition of “agricultural power service,” customers are entitled to an agricultural rate for electricity used in preparing an agricultural product for market only if this activity occurs on the same land as the production of the product. Further, the Rule 1 definition of “agricultural power service” distinguishes between (1) production, (2) harvesting, and (3) preparation for market as three separate activities, and the Commission has previously stated that Edison’s agricultural tariffs apply only to the “growing of food and field crops and animals, and to the processing of such products on the premises where grown.” Therefore, Zacky is not entitled to an

agricultural rate despite its claims of being a “vertically integrated operation.” Edison further contends that Edison has consistently applied its tariffs and the Rule 1 definition of “agricultural power service” and that the adoption of Zacky’s interpretation would expand the class of businesses eligible for agricultural rates, thereby impacting other non-agricultural ratepayers.

4. Discussion

A. The Tariff and the Rule 1 Definition of “Agricultural Power Service”

TOU-PA-5 applies where Edison determines that “70% or more of the customer’s electrical usage is for general agricultural purposes” TOU-PA-5 does not define “general agricultural purposes.” However, for many years, Edison has interpreted eligibility for an agricultural rate under TOU-PA-5 based on the definition of “agricultural power service” stated in Rule 1,² as follows:

Agricultural power service is that portion of electric energy and service used by a person in connection with the production, harvesting, and preparation for market of agricultural and horticultural products, including poultry and livestock, on land owned and/or operated by such person for the production of agricultural products, but does not apply to the processing of products raised by others. (Emphasis added.)

Rule 1 provides definitions for terms used in Edison’s tariff schedules, including “agricultural power service.” As discussed below, Edison’s tariffs, including Rule 1, should be interpreted together as a whole, in a manner that

² Edison had the same tariff rule definition for “Agricultural Power Service” prior to 1951, and the language of Edison’s eligibility requirements for TOU-PA-5 has remained the same since the inception of this tariff in 1988. Stip., paras. 32 and 33. Edison has applied the Rule 1 definition of “agricultural power service” to determine which customers are eligible for service under TOU-PA-5 since 1988. Exh. 200, p. 4.

harmonizes different sections of the tariffs. Since the definition of “agricultural power service” is the only provision of Rule 1 that attempts to define when electricity is used in connection with agriculture, this definition appears to apply to TOU-PA-5.

B. Principles for the Interpretation of Tariffs

Tariffs filed with the Commission are administrative regulations, and are subject to the same rules that govern the interpretation of statutes.³ To interpret a tariff, the Commission must look first at its language, giving the words their ordinary meaning and avoiding interpretations which make any language surplus. The Commission must interpret the words of a tariff in context and in a reasonable, common-sense way. If the language of the tariff is clear, the Commission need not look further to interpret the tariff.⁴

C. Zacky’s Eligibility for Electrical Service for the Sheila Street Facility at an Agricultural Rate

The key to determining whether Zacky should be billed for electricity used at the Sheila Street facility at an agricultural rate is whether Zacky is there engaged in the production, harvesting, and preparation for market of poultry on land owned or operated by Zacky for these purposes.

Neither TOU-PA-5 nor Rule 1 defines “production.” However, while the interpretation of similar words in other statutes related to agriculture is not

³ Lusardi Construction Company v. California Occupational Safety and Health Appeals Board, 1 Cal. App. 4th 639 (1991) (Lusardi).

⁴ If an ambiguity exists, the Commission may rely on sources beyond the plain language of the tariff, such as the regulatory history and the principles of statutory construction, to interpret the tariff. An ambiguity exists if language in a tariff may reasonably be interpreted in more than one way. The Commission has discretion to determine whether an interpretation of a tariff sought by a party is reasonable.

controlling, these interpretations are helpful in construing TOU-PA-5 and Rule 1.⁵

Food and Agriculture Code Sections 25412 and 24953⁶ both define producer as:

Any person engaged in the business of growing any poultry, which is marketed as poultry meat, for a period of 3 weeks or more for the purpose of increasing the size and weight of such poultry. (Emphasis added.)

Food and Agriculture Code Section 24953 defines “growing poultry” as “feeding and caring for poultry.”⁷

Although neither TOU-PA-5 nor Rule 1 defines “preparation for market,” Food and Agriculture Code Section 18674 defines “prepared” as follows: “slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed.” (Emphasis added.)

The activities at the Sheila Street facility do not include the feeding and growing of chickens for the purpose of increasing their size or weight.⁸ Once chickens are transported from the grow-out farms to the Sheila Street facility, they are not given food or water for a period of seven to twenty-four hours (the

⁵ Gleason v. City of Santa Monica, 207 Cal. App. 2d 458, 461 (1962).

⁶ Food and Agriculture Code Section 25412 is part of the definitions that apply to Division 12, Part 2 of that code related to classification of poultry and rabbit meat. Food and Agriculture Code Section 24961 is part of the definitions that apply to Division 12, Part 1, Chapter 3 of that code, related to the inspection of poultry meat for wholesomeness.

⁷ Food and Agriculture Code Section 18674 is part of the definitions contained in the California Meat and Poultry Inspection Act.

⁸ Stip., para. 12.

“holding period”) to clear their digestive systems before slaughter.⁹ The activities undertaken at the Sheila Street facility include: “the last seven hour wait, shackling and slaughter, removal of feathers, removal of feet on an evisceration line, breaking of the neck, removal of the oil glands, removal of the intestines and other organs, removal of the giblets, chilling of the product to 36 degrees, packing the product on ice, and cutting some of the product into smaller pieces.”¹⁰ These activities clearly do not fall within the definition of the growing or production of poultry, but relate to the preparation of the poultry for market. Therefore, under the plain language of Rule 1, and giving its language a reasonable, common-sense interpretation, Zacky is not entitled to be billed for electricity used at the Sheila Street facility at an agricultural rate, because the preparation of the chickens for market at the Sheila Street facility does not occur on the same premises at which the chickens are grown.

This interpretation is consistent with the Commission’s previous statement in Decision (D.) 82-12-094 that Edison’s definition of an agricultural customer in its tariffs “. . . applies only to the growing of food and field crops and animals, and to the processing of such products on the premises where grown.” (Emphasis added.)

Zacky’s argument that it is entitled to an agricultural rate for the Sheila Street facility because it is a “vertically integrated” poultry operation¹¹ is also

⁹ See testimony of Richard Zacky, Reporter’s Transcript (August 4, 2000) (RT) 31:19-23.

¹⁰ Stip., para. 11.

¹¹ At the evidentiary hearing, Michael Boccadoro, Executive Director of the Agricultural Energy Consumers Association, testified on behalf of Zacky Farms that a “vertically integrated” agricultural operation is one which engages in all of the following activities:

Footnote continued on next page

without merit. This interpretation would contradict the plain language of Rule 1, and would make surplus the phrase in Rule 1 which defines agricultural power service to apply only when the production, harvesting, and preparation for market of agricultural products occur on the land owned or operated by the same person for the production of agricultural products.¹²

The previous Commission decisions cited by Zacky do not support its argument. Both Harris Farms, Inc. v. Pacific Gas and Electric Company, D.92-02-025 (Harris Farms) and Producers Dairy Farms, Inc. v. Pacific Gas and Electric Company (Producers Dairy), D.97-09-043, dealt with the interpretation of a PG&E tariff for agricultural customers, which has substantially different language from TOU-PA-5 and Rule 1.¹³ Therefore, these decisions are not relevant to the interpretation of TOU-PA-5 and Rule 1.

the production, harvesting, and preparation for market of agricultural and horticultural products. (RT: 18:24-28, 19:1-4.)

¹² Boccadoro also testified that the legislative intent behind the adoption of Section 744 was to assist vertically integrated agricultural operations, such as Zacky. Boccadoro's opinion, however, does not establish the intent of the Legislature in this matter. Boccadoro testified that as a staff person to former Assembly Member Bronson, he drafted the legislation which resulted in the passage of Section 744(a). However, even the statements of a legislator who authors a bill regarding his/her understanding of the legislative intent is not determinative of legislative intent. (California Teachers Association v. San Diego Community College District, 28 Cal.3d 692 (1981).)

¹³ The language of the PG&E tariff at issue in Harris Farms stated:

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.

Footnote continued on next page

Zacky also argues that several Edison employees, who were subsequently reversed by Edison management, and a PG&E regulatory attorney have previously interpreted TOU-PA-5 and Rule 1 to apply to agricultural uses such as the Sheila Street facility. However, such interpretations are not controlling here, because the applicability of TOU-PA-5 and Rule 1 to the Sheila Street facility is a question of law for the Commission to decide.¹⁴

D. Alleged Violation of Public Utilities Code Section 453

Zacky argues that Edison's refusal to provide service to the Sheila Street facility at an agricultural rate solely because it is not located on or next to a

In Harris Farms, the Commission found that Harris' feedmills, which provided feed for Harris' cattleraising operations, qualified for PG&E's agricultural tariff, because the feedmills were integral to an agricultural end-use, e.g., raising livestock. However, here, Zacky's Sheila Street facility does not provide goods or services which contribute to the raising of poultry, but is the location at which the poultry are slaughtered and prepared for market. TOU-PA-5 and Rule 1 also do not contain language which extends agricultural rates to "agricultural end uses."

In Producer's Dairy, the Commission found that Producers Dairy qualified for service under the PG&E tariff for the site at which the milk was prepared for market by being pasteurized, homogenized, vitaminized, and having its fat content standardized. The Commission reasoned that the milk was an agricultural product and that these processes did not change the form of the milk. However, here, the eligibility of the Sheila Street facility for electrical service under TOU-PA-5 depends not on whether the form of the poultry is changed at the Sheila Street facility, but on whether electricity is used at the Sheila Street facility in connection with the production, harvesting, and preparation for market of poultry, on land owned by Zacky for the production of poultry. Further, the form of the chickens is changed at the Sheila Street facility because the chickens are killed, plucked, have body parts removed, and are placed on ice at this location.

¹⁴ See Ruth v. Kizer, 8 Cal.App.4th 380, 387 (1992).

Zacky grow-out ranch or hatchery discriminates both against Zacky individually and against vertically integrated poultry processors as a group in violation of Section 453, which states in pertinent part:

- (a) No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage.

* * *

- (c) No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

The fundamental purpose of Section 453 is to prevent undue discrimination. The party claiming to be the victim of discrimination under Section 453 must establish that it has suffered prejudice or disadvantage in relation to a comparable situation.¹⁵ Moreover, in order to violate Section 453, the claimed “preference or prejudice must be unjust or undue.”¹⁶

Here, Edison’s decision not to apply TOU-PA-5 to the Sheila Street facility does not unlawfully discriminate against Zacky. Zacky has produced no evidence to show that it has suffered prejudice or disadvantage in comparison to any other similarly situated agricultural business. The Sheila Street facility is very different from any agricultural operations at which chickens are slaughtered on the farm on which they are grown. The Sheila Street facility is located in a

¹⁵ Sunland Refining Corporation, 80 CPUC 806 (1976).

¹⁶ California Portland Cement Company v. Union Pacific Railroad, 54 CPUC 539, 542 (1955).

highly commercial, industrial area, and is zoned for manufacturing and industrial uses, not for agriculture.¹⁷ The chickens are trucked approximately one hundred miles from the grow-out ranch to the Sheila Street facility for slaughter and preparation for market.¹⁸ Even if the Commission were to view the “holding period,” during which the chickens are kept alive in the holding shed in order to clear their digestive systems, as the “production” of poultry, the holding shed is located next to the processing plant and occupies only 3.9 percent of the square footage of the plant.¹⁹ Zacky has also admitted in testimony that it is unaware of any other poultry processing plant located on the same land on which the chickens are raised,²⁰ because poultry processing plants require the increased water and sewer services which are generally available in urban areas.²¹

In short, neither the physical characteristics of the Sheila Street facility nor the functions performed at the facility suggest an agricultural use. Rather, they support an inference that the electricity consumed at the facility is predominately not for “general agricultural purposes.” In order to qualify for an agricultural rate under TOU-PA-5, Zacky must show that at least 70 percent of its usage at the Sheila Street facility is for “general agricultural purposes.” Zacky

¹⁷ Stip., paras. 3, 4, and 5.

¹⁸ RT, 27:20-28, 28:1-18.

¹⁹ Stip., para. 9.

²⁰ RT, 14:21-23.

²¹ RT, 27:20-28, 28:1-18.

has not made this showing. Zacky has therefore failed to meet its burden of proof under Section 453.

In addition, Zacky has failed to establish that Edison's interpretation of TOU-PA-5 and Rule 1 discriminates against vertically integrated poultry producers as a group. The purpose of TOU-PA-5 and Rule 1 is to provide reduced electrical rates for agricultural customers. In approving a tariff, the Commission has discretion to establish rate classifications based on broad economic considerations.²² Although rate classifications must be based on reasonable differentiations, rate classifications are not unreasonable or discriminatory because they are not drawn with mathematical precision or result in some inequality.²³ In view of the differences between poultry processing plants, such as the Sheila Street facility, and other agricultural operations at which chickens are slaughtered on the premises at which they were grown, we find that Edison's interpretation of TOU-PA-5 and Rule 1 does not discriminate against vertically integrated agricultural producers in violation of Section 453.²⁴

Based on the above analysis, Zacky is not entitled to be billed for electricity used at the Sheila Street facility at an agricultural rate pursuant to

²² Wood v. Public Utilities Commission, 4 Cal.3d 288, 294-95, (1971).

²³ United States Steel Corporation v. Public Utilities Commission, 29 Cal. 3d 603, 613-14, (1981), quoting Lindsley v. Natural Carbonic Gas Company, 220 U.S. 61, 78 (1911).

²⁴ We note that the State Legislature has drawn a similar distinction in exempting the operators of poultry processing plants, at which chickens are slaughtered, dressed, or drawn, from a license requirement if the chickens are slaughtered on the same property on which the chickens were grown, provided that the chickens are sold in particular ways. Food and Agriculture Code Section 24713. See also Food and Agriculture Code Sections 24742, 24659.

TOU-PA-5, and is not entitled to retroactive adjustment of its bill. We therefore need not address other issues raised by the parties.

5. Appeal/Request for Review of Presiding Officer's Decision (POD)

On September 4, 2001, Zacky filed an appeal of the POD. Edison filed a response to Zacky's appeal on September 19, 2001.

We have carefully considered the appeal and find Zacky's arguments without merit. We also note that most of the issues raised by Zacky on appeal do not address errors of law or fact and are not a basis for appeal.²⁵

However, in order to clarify our decision, we shall address Zacky's arguments below.²⁶ Zacky states on appeal that:

- *The POD fails to consider alternatives to Edison's tariff interpretation.* However, the POD did consider and analyze possible interpretations of the tariff raised by both parties,²⁷ but concludes that under the plain language of Rule 1,²⁸ the Sheila Street facility does not qualify for an agricultural rate.

²⁵ Rule 8.2(e) permits an appeal of a POD only if the appellant believes the POD to be unlawful or erroneous. The purpose of an appeal is to alert the Commission to a potential error so that the error may be corrected, rather than to reiterate arguments that were already considered in the POD.

²⁶ We have italicized Zacky's arguments on appeal for ease in reference.

²⁷ For example, see POD at pp. 4, 8.

²⁸ In addition, the Assigned Commissioner filed a request for review of the POD on similar grounds on August 24, 2001. The request for review expressed concern that the POD "fails to consider that Rule 1 may solely address precluding [billing of an agricultural processing plant on an agricultural tariff] if the owner/operation of the preparation site is not the same as the owner of the growing facility." However, the POD addresses this issue at pages 8 and 9 by stating that application of an agricultural rate to the Sheila Street facility because Zacky is a "vertically integrated poultry operation" would contradict the plain language of Rule 1, and would make surplus the phrase "on land owned and/or operated by such person." Rule 1 clearly indicates that

Footnote continued on next page

- *The POD ignores all evidence of legislative and regulatory intent in interpreting Rule 1.* However, under the principles of statutory construction, the Commission must first interpret Rule 1 according to its plain language. Since we found that the plain language of Rule 1 indicates an agricultural rate applies only when the electricity is used in connection with the production, harvesting, and preparation for market of agricultural and horticultural products, including poultry and livestock, on land owned by the person for the production of agricultural products, the Commission is not required to consider further evidence of legislative and regulatory intent.

Further, the POD did consider both the testimony of Michael Boccadoro regarding the legislative intent behind the adoption of Section 744 and previous Commission decisions regarding a PG&E agricultural tariff, Harris Farms and Producer's Dairy, cited by Zacky. We correctly determined that under California law, Mr. Boccadoro's testimony is not determinative of the Legislature's intent in enacting Section 744 and therefore was not entitled to great weight in our decision. Moreover, Section 744(a) relates to interruptible service tariffs and does not address whether Rule 1 would apply to a poultry processing plant that is not located on the same property at which the chickens are grown.

We also correctly determined that Harris Farms and Producer's Dairy do not apply here, because these decisions interpret a PG&E agricultural tariff which has significantly different language from Edison's Rule 1.

- *The POD relies on isolated statutory definitions from the California Food and Agriculture Code in reaching its outcome.* However, while the POD discussed a few Food and Agriculture Code definitions of terms similar to those used in Rule 1, the POD specifically

for an agricultural rate to apply, the preparation for market activities must occur on land that is (1) used for the production of the agricultural product, and (2) owned or operated by the same person or business producing the agricultural product.

noted that these sections are not binding on the Commission. The outcome of the POD is not based on these statutory definitions, but on the plain language of the tariff and a reasonable, common-sense construction of the tariff in view of the activities conducted at the Sheila Street facility.²⁹ Further, the additional Food and Agriculture Code definitions discussed by Zacky on appeal were, with one exception, not previously addressed by Zacky and do not appear to apply to this case.

- *The POD did not include Section 740.9 in its consideration of statutes that include terms similar to Rule 1.* However, Section 740.9 did not become effective until April 12, 2001, well after this case was submitted, and Zacky did not ask the Commission to take official notice of this new statute in the POD. Section 740.9 defines “agricultural processors” solely in relation to permitting them to participate in optional binding curtailment programs and therefore does not apply here. Zacky’s argument that Section 740.9 represents a more expansive legislative intent to include processors within the scope of agricultural tariffs is entirely without merit.
- *The POD misrepresents the Commission’s position in D.82-12-094.* However, the POD does not rely on D.82-12-094 in determining whether Zacky is entitled to an agricultural rate for the Sheila Street facility, but merely notes that our interpretation of Rule 1 in the POD is consistent with the Commission’s previous statement in D.82-12-094. The outcome of the POD is based on a thorough and totally independent analysis of Rule 1.
- *The POD bases its conclusion that denying Zacky an agricultural rate for its Sheila Street facilities does not violate Section 453 on facts not in evidence.* This statement is inaccurate. In order to establish a violation of Section 453, Zacky was required to present evidence that it had suffered prejudice or disadvantage in comparison to other similarly situated agricultural businesses. Zacky did not present such evidence and therefore failed to meet its burden of

²⁹ POD at p. 8.

proof. Zacky's statement on appeal that there are no agricultural businesses at which chickens are slaughtered on the same property at which they were raised supports the POD's determination that Zacky has not suffered prejudice as a "vertically integrated agricultural operation" based on the geographic location at which the preparation for market activities occur. The POD reasonably concluded based on evidence in the record that an urban facility at which chickens are not grown but are slaughtered and prepared for market is a different type of operation than a farm at which chickens are only grown and raised. The application of different rates to these two types of operations is not unlawful discrimination under Section 453 because they are not similarly situated.

- *The POD takes inconsistent positions on the meaning and relevance of the term "general agricultural purposes" by discussing both the plain language of Rule 1 and other evidence related to the characteristics of the Sheila Street facility, such as its location and zoning.* However, the POD clearly indicates that the interpretation of Rule 1 depends on its plain language but also properly considers evidence regarding the characteristics and function of the Sheila Street facility to determine whether Zacky is engaged in the "production" or the "preparation for market" of chickens at the facility. However, to clarify this issue, we have amended the first sentence of the second paragraph on page 12 which read: "In short, neither the physical characteristics of the Sheila Street facility itself, nor the zoning and infrastructure of the facility's location, suggest an agricultural use," to read: "In short, neither the physical characteristics of the Sheila Street facility itself, nor the functions performed at the facility, suggest an agricultural use."

Zacky's appeal is denied.

Assignment of Proceeding

Loretta Lynch is the Assigned Commissioner and Myra Prestidge is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The Sheila Street facility is located in Commerce, California, in an urban, industrial area that is zoned for manufacturing and industrial uses, not for agriculture.

2. Zacky transports mature chickens, which are raised at Zacky's grow-out ranches, to the Sheila Street facility to be slaughtered and prepared for market.

3. Edison bills Zacky for electricity used at the Sheila Street facility at a commercial rate.

4. Edison bills Zacky for electricity used at the grow-out ranches at an agricultural rate.

5. At the Sheila Street facility, chickens are kept alive in a holding shed for approximately seven to twenty-four hours and are deprived of food and water during this period so that their digestive systems will be clear before slaughter. The chickens are then slaughtered, plucked, chilled, and boxed at the Sheila Street facility.

6. Zacky does not grow chickens for the purpose of increasing their size and weight at the Sheila Street facility.

7. Edison's Tariff Schedule TOU-PA-5 states that it applies when 70 percent or more of the customer's electrical usage is for general agricultural usage.

8. TOU-PA-5 does not define "agriculture" or "general agricultural usage".

9. Edison has determined eligibility for an agricultural rate under TOU-PA-5 by reference to its tariff Rule 1 definition of "agricultural power service" for many years.

10. Edison had the same Rule 1 definition of agricultural power service prior to 1951, and the language of Edison's eligibility requirements for service under TOU-PA-5 has remained the same since the inception of this tariff in 1988.

11. Rule 1 defines "agricultural power service" as follows:

Agricultural power service is that portion of electric energy and service used by a person in connection with the production, harvesting, and preparation for market of agricultural and horticultural products, including poultry and livestock, on land owned and/or operated by such person for the production of agricultural products, but does not apply to the processing of products raised by others.

12. The Sheila Street facility is different from other agricultural operations at which chickens are slaughtered on the same premises at which they were grown because the Sheila Street facility is located in a highly commercial, industrial area and is zoned for manufacturing and industrial uses, not agriculture.

13. Zacky transports mature chickens approximately one hundred miles from its grow-out ranches to the Sheila Street facility for slaughter.

14. The holding shed at the Sheila Street facility is adjacent to the processing facility and occupies only 3.9 percent of the plant at the Sheila Street facility.

15. Zacky admitted that it is unaware of any poultry processing plant located on the same land on which the chickens were raised.

Conclusions of Law

1. Like other administrative regulations, tariffs filed with the Commission are subject to the rules of statutory interpretation.

2. To interpret a tariff, the Commission should look first at its language, giving words their ordinary meaning and avoiding interpretations which make any language surplus.

3. The words in a tariff should be interpreted in context and in a reasonable, common-sense manner.

4. If the language of a tariff is clear, the Commission need not look further to interpret its meaning.

5. If the language of a tariff contains an ambiguity, the Commission may then look to sources beyond the tariff language, such as the regulatory history, and the principles of statutory construction, to interpret the tariff.

6. An ambiguity exists if the language in a tariff may reasonably be interpreted in more than one way.

7. If an ambiguity exists in a tariff, the tariff must be construed in favor of the customer.

8. The Commission has discretion to determine whether an interpretation of a tariff sought by a party is reasonable.

9. The plain language of Rule 1, as regards poultry, provides that agricultural power service refers to electricity used by a person in connection with the production, harvesting, and preparation for market of poultry, on land owned and/or operated by such person for the production of poultry.

10. Neither TOU-PA-5 nor Rule 1 defines “production.”

11. The interpretation of similar words in other statutes related to agriculture is helpful in construing TOU-PA-5 and Rule 1.

12. Food and Agriculture Code Sections 25412 and 24953 both define “producer” as: Any person engaged in the business of growing any poultry, which is marketed as poultry meat, for a period of three weeks or more for the purpose of increasing the size and weight of such poultry.

13. Food and Agriculture Code Section 24953 defines “growing poultry” as “feeding and caring for poultry.”

14. Food and Agriculture Code Section 18675 defines “prepared” as follows: “slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed.”

15. Applying the above definitions and interpreting the plain language of Rule 1 in a reasonable, common-sense way, Zacky is not engaged in the production of poultry at the Sheila Street facility.

16. Under the plain language of Rule 1, Zacky is not entitled to be billed for electrical service used at the Sheila Street facility at an agricultural rate because the preparation of the poultry for market at the facility does not occur on property owned or operated by Zacky, on which the chickens were grown.

17. Zacky's argument that it is entitled to be billed for electricity used at the Sheila Street facility at an agricultural rate because it is a vertically integrated poultry operation is without merit, because this interpretation would contradict Rule 1.

18. The testimony of Michael Boccadoro that the legislative intent behind the adoption of Section 744 was to assist vertically integrated agricultural operations, such as Zacky, is not determinative of legislative intent.

19. The previous Commission decisions cited by Zacky do not apply in this case because they involve interpretations of a PG&E tariff which has substantially different language from TOU-PA-5 and Rule 1 and substantially different factual situations.

20. The interpretation of a tariff is a question of law for the Commission to decide.

21. Section 453 prohibits undue discrimination by public utilities as to rates, charges, service, facilities, or in any other respect, as between different persons or corporations or different localities or classes of service. A party claiming discrimination under Public Utilities Code Section 453 must establish that it has suffered prejudice or disadvantage in relation to a comparable situation.

22. Zacky's claim that Edison's failure to apply TOU-PA-5 to the Sheila Street facility discriminates against Zacky in violation of Section 453 is without merit

because Zacky has presented no evidence that it has suffered prejudice or disadvantage in relation to any other similarly situated agricultural business.

23. Although rate classifications in a tariff must be based on reasonable differentiations, rate classifications are not unreasonable or discriminatory because they are not drawn with mathematical precision or result in some inequality.

24. In view of the differences between the Sheila Street facility and other agricultural operations at which chickens are slaughtered on the premises at which the chickens were grown, Edison's interpretation of TOU-PA-5 and Rule 1 does not discriminate against vertically integrated agricultural producers in violation of Public Utilities Code Section 453.

25. Zacky is not entitled to be billed for electricity used at the Sheila Street facility at an agricultural rate pursuant to TOU-PA-5 and Rule 1 and is not entitled to retroactive adjustment of its electric bill.

26. Zacky's appeal of the POD is without merit and should be denied. Similarly, the request for review should be denied.

27. In order to remove uncertainty created by this litigation regarding eligibility for an agricultural rate under Edison's TOU-PA-5, this order should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. This complaint is denied.
2. The appeal of Zacky & Sons Poultry Co. and the request for review are denied.
3. This proceeding is closed.

This order is effective today.

Dated April 17, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners