

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Almond Tree Hulling Co.; Arakelian Farms;
Baugher Ranch; Beretta Property Management;
Campos Brothers Farms; Central California
Almond Association, Inc.; CF Koehen & Sons,
Inc.; Dairyland Hullers; Farmers Cooperative;
Harriet Baldwin; Harris-Woolf Almond Huller;
Hashem Naraghi; Hilltop Circle L. Ranch;
James M. Paiva; James R. Lewis Orchards Inc.;
John Wynn; Minturn Almond Huller Co-op, Inc.;
Pacific Almond Co.; Paramount Farms, Inc.;
Paramount Farming Company; Parreira Almond
Processing Co.; Peter D. Peterson; Stewart and
Jasper Orchards; South Valley Farms; Strain
Orchards; The Hulling Company, Inc.; TM Duche
Nut Co Inc.; Vernon Paddack; West Valley
Hulling/Barry Baker; Xcel Shelling, LLC,

Complainants,

vs.

Pacific Gas and Electric Company and DOES 1
through 100, inclusive,

Defendants.

Case 04-01-020
(Filed January 21, 2004)

**SCOPING MEMO AND RULING OF ASSIGNED
COMMISSIONER AND ADMINISTRATIVE LAW JUDGE**

This ruling confirms the category, need for hearing, scope, and schedule of this proceeding in accordance with Article 2.5 of the Commission's Rules of Practice and Procedure (Rules).

1. Background

Complainants are almond hullers, whose electricity charges are currently billed under Pacific Gas and Electric Company's (PG&E's) commercial electric rate schedules. The complaint alleges that on or around August to October 2003, Complainants asked PG&E to serve their almond hulling operations under PG&E's agricultural electric rate schedule, and that in approximately December 2003, PG&E denied their requests. Complainants therefore seek a Commission order requiring PG&E to serve their almond hulling operations under PG&E's agricultural rate schedule and to issue a refund for the difference between the amounts paid by Complainants pursuant to PG&E's commercial electric rate schedule and the lesser amounts that would have been charged under PG&E's agricultural rate schedule, for the period beginning on the date of Complainants' requests for service under an agricultural rate schedule and the date of the Commission's order. Complainants also seek pre- and post-judgment interest on the requested refund.

In its answer, PG&E contends that Complainants' almond hulling and shelling operations do not qualify for an agricultural rate under PG&E's tariffs and Commission decisions interpreting these tariffs. PG&E states that under Commission precedent, agricultural rates do not apply to operations in which a product is crushed or cut during processing, because the product undergoes a "change in form." PG&E contends that when almonds are hulled, the hulls are altered and crushed during their removal from the shell. In addition, PG&E claims that a viable wholesale and retail market exists for unshelled almonds,

unlike the situation addressed in *Air-Way Gins, Inc., et al. v. PG&E (Air-Way Gins)*, Decision (D.) 03-04-059, in which the Commission found that cotton ginning qualified for agricultural rates in part because there was no market for raw unginned cotton.¹

PG&E denies that an award of interest is appropriate if Complainants prevail in this case. According to PG&E, the Commission generally awards interest only when a utility has clearly erred or has been derelict in its duties, and PG&E previously asked for Commission guidance regarding whether almond hulling and shelling operations qualify for agricultural rates in its comments on the Presiding Officer's Decision in *Air-Way Gins*.

PG&E also asserts that to the extent that complainants seek recovery for a period beyond the three years preceding the filing of the complaint, their claims are time-barred.

In the answer, PG&E states that this proceeding should be categorized as ratesetting and asks the Commission to consider the broad rate impacts of changing almond hullers to an agricultural rate. Since agricultural rates are generally lower than commercial rates, PG&E contends that switching Complainants to an agricultural rate would cause PG&E to suffer a revenue shortfall, which would necessitate cost shifting to other customers and classes of customers in violation of Section 740.11. PG&E further asserts as an affirmative defense that Complainants' eligibility for electric service at an agricultural rate would be more appropriately decided in Phase II of PG&E's 2003 GRC. If the

¹ In *Air - Way Gins*, the Commission also found that cotton ginnerers were entitled to electric service at an agricultural rate because ginning did not result in a "change in form" of the cotton. (See D.03-04-059.)

Commission finds that almond hulling and/or shelling operations are eligible for agricultural rates, PG&E asks the Commission to support and implement an appropriate modification to the agricultural and general service revenue requirement allocations consistent with the results of this case.

A prehearing conference was held on March 4, 2004, at the Commission Courtroom in San Francisco.

2. Category of Proceeding/Ex Parte Communications

Pursuant to Rule 6(c)(1),² the Commission preliminarily categorized this proceeding as adjudicatory. Although PG&E's answer asserts that this case should be categorized as ratesetting, PG&E failed to timely file an appeal of the initial categorization as required by Rule 6.4. Moreover, even if PG&E had filed a timely appeal, it is clear that this proceeding is properly categorized as adjudicatory. The issue in this proceeding does not concern the reasonableness of any PG&E rate schedule (see Public Utilities Code Section 1702); the fundamental issue, rather, is which PG&E rate schedule properly applies to the electric service rendered to the Complainants. Therefore, PG&E's request for recategorization of this matter as ratesetting is denied. The categorization of this proceeding as adjudicatory is now final.

Ex parte communications are prohibited in adjudicatory proceedings pursuant to Public Utilities Code Section 1701.2(b) and Rule 7(b).

² Rule citations are to the Commission Rules of Practice and Procedure unless otherwise specified.

3. Need for Hearing

Unless the parties are able to stipulate to all of the relevant facts in this proceeding, a hearing is necessary and shall be held according to the schedule stated in this ruling.

4. Scoping

The issues to be decided in this proceeding are as follows:³

- Is 70% or more of Complainants' electricity used for "agricultural end purposes"?
- Do Complainants' hulling operations qualify as an agricultural end use?
- Does the hulling of almonds involve the production of an agricultural product for sale?
- Does the hulling of the almonds change the form of the agricultural product?

³ PG&E's agricultural tariffs define customer eligibility for electric service at an agricultural tariff as follows:

A customer will be served under this schedule if 70% 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, or to customers with a maximum demand of 500 kW or more. (*PG&E Schedule A-5-Large Time of Use Agricultural Power.*)

At the PHC, counsel for Complainants clarified that Complainants are seeking to receive electric service at an agricultural rate under PG&E Schedule A-5C. PG&E's other agricultural tariffs contain essentially the same language as above.

- Does Complainants' shelling of almonds qualify as an agricultural end use?
 - Does the shelling of the almonds involve the production of an agricultural product for sale?
 - Does the shelling of the almonds change the form of the agricultural product?
- Is there a viable market for unhulled or unshelled almonds?
- Does a commercial or industrial rate schedule under PG&E's tariffs more appropriately apply to Complainants' almond hulling and shelling operations?
- Are Complainants entitled to a refund for the difference between the amounts previously paid for electricity at a commercial rate and the lower amount that would have been paid applying an agricultural rate?
- If yes, does a three-year statute of limitations apply to claims for these refunds?
- What is the amount of the refund to which each Complainant is entitled?
- Are Complainants entitled to pre- or post-judgment interest on the refund?⁴

⁴ This proceeding involves a determination of the eligibility of these particular Complainants for electric service under a PG&E agricultural tariff, rather than a commercial tariff. We therefore need not address broad issues regarding the ratemaking impacts of switching Complainants from a commercial to an agricultural rate here. Moreover, pursuant to the assigned ALJ's February 3, 2004 ruling, the parties met and conferred and filed a joint case management statement, which identified issues to be determined in this proceeding, before the PHC. The parties did not include the broader ratemaking impacts of switching Complainants to an agricultural rate as an issue for determination in the joint case management statement.

Pursuant to Public Utilities Code Section 1701.2(d), this proceeding must be resolved within 12 months of initiation.

5. Schedule

The schedule for this proceeding shall be as follows:

April 2, 2004	Deadline for completion of discovery
April 23, 2004	Deadline for filing of stipulation and written confirmation of request for hearing (if any)
April 23, 2004	Deadline for service of prepared direct testimony and transmittal to assigned ALJ by facsimile at (415) 703-1723 or e-mail addressed to: tom@cpuc.ca.gov
May 10, 2004	Deadline for service of prepared rebuttal testimony, filing and service of exhibit list and schedule of witnesses, and transmittal to assigned ALJ by facsimile at (415) 703-1723 or e-mail addressed to: tom@cpuc.ca.gov
May 18 and 19, 2004	Evidentiary hearing at Commission Courtroom, State Office Building, San Francisco, CA, beginning at 10:00 a.m.
June 2, 2004 or as otherwise ruled by ALJ if evidentiary hearings become unnecessary.	Deadline for filing and service of concurrent opening briefs and transmittal to assigned ALJ by facsimile at (415) 703-1723 or e-mail addressed to: tom@cpuc.ca.gov
June 11, 2004 or as otherwise ruled by ALJ if evidentiary hearings become unnecessary.	Deadline for filing and service of concurrent reply briefs and transmission to assigned ALJ by facsimile at (415) 703-1723 or e-mail addressed to: tom@cpuc.ca.gov. Case submission.
Within 60 days after submission date	Presiding Officer's decision issued for for review and comment by parties

The parties shall continue to meet and confer and attempt to resolve or narrow the factual issues that necessitate a hearing. As indicated above, the parties shall file any stipulation reached regarding factual issues and confirm the request for an evidentiary hearing in writing by no later than April 23, 2004.

As required by Public Utilities Code Section 1701.2(d), this proceeding shall be resolved within 12 months of the date of the filing of the complaint.

6. Electronic Service of Documents

All appearances in this proceeding that have an e-mail address shall serve documents in this proceeding by e-mail and accept service by e-mail, in lieu of service by paper mail. Any appearance that has not provided an electronic mail address shall serve and take service by paper mail, pursuant to Rule 2.3(a).

All appearances shall serve the Commission, including the assigned ALJ and Commissioner, by both e-mail and paper-mail.

All parties shall follow the electronic service protocols and shall access up-to-date electronic mail addresses as specified in the ALJ's Ruling Setting a Prehearing Conference, Ordering the Parties to Meet and Confer and Commence Discovery, and Requiring the Filing of a Joint Case Management Statement and Stipulation, filed on February 3, 2004.

7. Exhibits

The parties shall comply with the requirements set forth in Rules 69, 70, and 71 and Appendix A to this ruling regarding exhibits.

8. Presiding Officer

ALJ Myra J. Prestidge is designated as the presiding officer in this proceeding. All documents filed and served in this proceeding must also be transmitted to the Presiding Officer by facsimile at (415) 703-1723 or e-mail addressed to tom@cpuc.ca.gov.

9. Official Service List

The official service list as of this date is attached to this ruling as Appendix B.

IT IS SO RULED.

Dated March 17, 2004, at San Francisco, California.

/s/ LORETTA LYNCH

Loretta Lynch
Assigned Commissioner

/s/ MYRA J. PRESTIDGE

Myra J. Prestidge
Administrative Law Judge

APPENDIX A

EXHIBITS

Service of Prepared Written Testimony

All prepared written testimony shall be served on all appearances and state service on the service list, as well as on the Assigned Commissioner's office and on the Assigned ALJ. Prepared written testimony shall NOT be filed with the Commission's Docket Office.

Identification of Exhibits in the Hearing Room

Each party sponsoring an exhibit shall, in the hearing room, provide **two copies to the ALJ and one to the court reporter**, and have at least three copies available for distribution to parties present in the hearing room. **The upper right hand corner of the exhibit cover sheet shall be blank for the ALJ's exhibit stamp.** Please note that this directive applies to cross-examination exhibits as well. If there is not sufficient room in the upper right hand corner for an exhibit stamp, please prepare a cover sheet for the cross-examination exhibit.

Cross-Examination With Exhibits

As a general rule, if a party intends to introduce an exhibit in the course of cross-examination, the party shall provide a copy of the exhibit to the witness and the witness' counsel before the witness takes the stand on the day the exhibit is to be introduced. Generally, a party is not required to give the witness an advance copy of the document if it is to be used for purposes of impeachment or to obtain the witness' spontaneous reaction. An exception might exist if parties have otherwise agreed to prior disclosure, such as in the case of confidential documents.

Corrections to Exhibits

Generally, corrections to an exhibit shall be made in advance and not orally from the witness stand. Corrections should be made in a timely manner by providing new exhibit pages on which corrections appear. The original text to be deleted shall be lined out with the substitute or added text shown above or inserted. Each correction page shall be marked with the word "revised" and the revision date.

Exhibit corrections shall receive the same number as the original exhibit plus a letter to identify the correction. Corrections of exhibits with multiple sponsors will also be identified by chapter number. For example, Exhibit 5-3-B is the second correction made to Chapter 3 of Exhibit 5.

(END OF APPENDIX A)

**APPENDIX B
Service List**

******* APPEARANCES *******

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******* STATE EMPLOYEE *******

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(END OF APPENDIX B)

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge on all parties of record in this proceeding or their attorneys of record.

Dated March 17, 2004, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TTY# 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.