- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Petition of Granger Energy of South Jordan for a Declaratory Order	)))	DOCKET NO. 04-2447-01 DECLARATORY ORDER

Summary: By this Order, the Commission determines that Granger Energy of South Jordan, LLC, is not a public utility providing public utility service under the circumstances described in the Petition for Declaratory Order.

ISSUED: April 22, 2005

By the Commission:

On December 9, 2004, Granger Energy of South Jordan, LLC (Granger Energy or Granger) filed a Petition for a Declaratory Order. Granger Energy seeks a determination that it is not a public utility under the circumstances described in the Petition concerning the operations of the Trans-Jordan Landfill gas to Energy Project (Project). On March 22, 2005, the Division of Public Utilities (Division) filed its Memorandum describing its analysis and recommendations concerning the Petition. The Division recommends that the Commission find Granger's contemplated operations to not be public utility operations.

Factual Setting and Project Description

The Project, located in South Jordan, Utah, is a renewable energy project in the South & West Jordan areas of Salt Lake County, Utah. Granger is based in Lansing, Michigan. Granger is a privately owned company with experience developing landfill gas to energy projects. Granger has developed a total of 11 landfill gas to energy projects in Michigan, Indiana, Ohio, and Alabama. At this time, Granger is in the process of developing two projects in Pennsylvania in addition to the Project in South Jordan.

Granger is working with the Trans-Jordan Cities Landfill to develop a direct-use project, whereby landfill gas will be voluntarily collected, processed, and transported via pipeline to a single customer where the gas will be utilized as an alternative renewable fuel by Interstate Brick. Landfill gas is a byproduct of the process of solid waste decomposition in a landfill. This gas consists of approximately 50 percent methane (CH_4), approximately 45 percent carbon dioxide (CO_2), approximately 4 percent nitrogen, less than 1 percent oxygen, and trace levels of other organic compounds. At this time Granger and Interstate Brick are negotiating a Landfill Gas Sales Agreement. It is Interstate Brick's intention to burn landfill gas in its tunnel furnaces. Interstate Brick is located approximately 2.5-miles away from the landfill. The land between the Trans-Jordan Landfill and Interstate Brick is owned by Kennecott Utah Copper Land. Granger has two options to secure a pipeline route to Interstate Brick in order to transport the landfill gas. The first is alongside U-111 and Old Bingham Highway. The second option is to traverse through Kennecott's property. Granger proposes the following technical design, construction and operational aspects for the proposed pipeline: Construction of pipeline is anticipated to begin Spring 2006. The pipeline will be constructed of SDR 21 high density polyethylene (HDPE) 10 inch diameter pipeline used, buried approximately 4 - 6 feet deep. Granger will follow Federal Department of Transportation pipeline safety regulations. The pipeline will be operated at less than 25 PSIG which is a very low pressure relative to natural gas pipelines and distribution systems.

Declaratory Order Issue

Granger seeks a declaratory order that it is not a public utility, subject to this

Commission's jurisdiction, if it operates consistent with the representations made in the Petition. We agree with Granger's argument that it does not sell or furnish a public utility commodity, namely natural gas, and thus it is not a public utility under Utah law.

A "Public Utility" is defined under Utah Code Section 54-2-1(15)(a) as:

> Includes ... gas corporation ... where the service is performed for or the commodity delivered to, the public generally, or in the case of a gas corporation or electrical corporation where the gas or electricity is sold or furnished to any member or consumers within the state for domestic, commercial, or industrial use.

In addition, Section 54-2-1(15)(b)(i) provides that: "If any ... gas corporation ... performs a service for or delivers a commodity to the public, it is considered to be a public utility, subject to the jurisdiction and regulation of the commission and this title." Section (15)(b)(ii) continues: "If a gas corporation ... sells or furnishes gas or electricity to any member or consumers within the state, for domestic, commercial, or industrial use, for which any compensation or payment is received, it is considered to be a public utility, subject to the jurisdiction and regulation of the commission and this title." A "Gas Corporation" is defined in Section 54-2-1(9) as an entity "owning, controlling, operating, or managing any gas plant for public service within this state or for the selling or furnishing of natural gas to any consumer or consumers within the state for domestic, commercial, or industrial use [with limited exceptions]." Section 54-2-2(10)'s definition of "Gas plant" includes facilities used in connection with the "production, generation, transmission, delivery, or furnishing of gas, natural or manufactured, for light, heat or power." One will note that there is no consistency, within these definitions, relative to the language regarding the commodity furnished: 54-2-1(15) refers simply to "gas," 54-2-1(9) refers to "natural gas," and 54-2-1(10) refers to "gas, natural or manufactured."

Granger's Argument and Division Recommendation
Distinguishing Landfill Gas from Natural Gas

Granger argues that it does not sell or furnish "natural gas." Granger maintains that landfill gas is not "natural gas" as that term is defined in the industry, nor the type of commodity contemplated by the varying terms used in the Utah Code. Granges argues that "natural gas" and "artificial gas" are industry terms of art because they have acquired a peculiar and appropriate meaning in the energy industry which does not regard them as including landfill gas. The Division agrees with Granger's position and concludes that landfill gas is not the type of gas commodity which is contemplated in Title 54 of the Utah Code.

Natural gas is commonly understood in the energy industry to be a product formed over millions of years and existing, under pressure, within the earth's crust, by a natural process acting on natural materials in a natural environment, none of which are in any way attributable to the efforts or activities of mankind. Sources of natural gas include wetlands, gas hydrates and permafrost, termites, oceans, freshwater bodies, non-wetland soils, and other sources such as wildfires. Natural gas is a thermogenic gas and is produced from such types of organic material that was buried millions of years ago. Natural gas is produced directly from wells drilled for that purpose, or in conjunction with the production of petroleum. Natural gas and petroleum are formed in the same manner, and although from certain deposits only natural gas is recovered, the two are most found together.

Consistent with Granger's position, distinguishing landfill gas from natural gas, the U. S. Court of Appeals for the Tenth Circuit has said:

> "The term "natural gas" has various definitions within the industry. Natural gas: gas issuing from the earth's crust through natural openings or bored wells; esp.: any of various combustible gaseous mixtures. Natural gas is defined as a naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in the porous geologic formations beneath the earth's surface, often in association with petroleum. Natural gas contains only the lightest and most volatile of the hydrocarbons. In association with these hydrocarbons there may be varying quantities of carbon dioxide (CO2), carbon monoxide (CO), hydrogen sulphide (H2S), hydrogen, oxygen and nitrogen." Exxon Corp. v. Lujan, 970 F.2d 757, (1992)

Granger further argues that the term "artificial gas" or "manufactured gas" has generally been considered an industry term of art referring to methane-based gases that can be interchanged or substituted for natural gas. Artificial gas, such as propane, is commonly understood to be a synthesized or manufactured product chemically similar in most respects to natural gas, resulting from the conversion or reforming of petroleum hydrocarbons that may easily be substituted for or interchanged with pipeline-quality natural gas.

Granger notes that a critical difference between landfill gas and these other gases is that the life of gas production from a landfill is both unpredictable and short-term, usually ranging from 10 to 20 years. Unlike natural gas, landfill gas must be burned (known as "flaring") if it is not consumed for productive purposes. A further distinction is that the lower heating value of landfill gas also makes it more suitable for non-heating and non-peaking applications, whereas natural gas is primarily utilized as a heating fuel and is ideal for peaking situations because of its higher heating value. "Natural gas" refers to a high-BTU source of energy issuing from the earth's crust through natural openings or bored wells and formed through natural processes

acting on natural materials in a natural environment over millions of years. "Artificial gas" is a product chemically similar in most respects to natural gas and which may easily be substituted for or interchanged with pipeline-quality natural gas. Utilizing this definition requires an understanding of "chemical similarity", conditions of substitutability, and "pipeline quality natural gas."

With respect to chemical similarity, Granger states the key distinction between natural and artificial gas and landfill gas is that natural and artificial gas has a BTU content that is almost twice that of landfill gas. Specifically, the chemical similarity between natural gas and artificial gas exists, to a substantial extent, in BTU (methane per cubic foot) content. Natural and artificial gas, as used today, tend to have a heating value of between 95% to 98% methane and gas appliances are typically designed to be utilized at this higher methane content. In contrast, landfill gas consists of about 50% methane and about 50% carbon dioxide and a small amount of non-methane organic compounds. Whereas natural gas has a heating value of nearly 1000 BTU, landfill gas has a heating value of only 500 BTU per cubic foot.

Granger argues that these distinctions between natural and artificial gas and landfill gas are reinforced by the tariffs of natural gas transportation pipelines and natural gas distribution companies. Granger considers that these companies' tariffs show that artificial gas is now expected to be of the same quality as natural gas, with a BTU content of at least 967 BTU per cubic foot. Some of these tariffs make it evident that, regardless of whether artificial gas is used, the overall mixture of the gas supplied must become indistinguishable when compared to the quality and character produced by nature in the petroleum, oil and gas fields. Granger argues that

landfill gas can not be interchangeable with these gases, a distinction which is recognized by industry tariffs and, by extension, which should be recognized by our interpretation of the relevant Utah statutory provisions.

Conclusion

We agree with the arguments and reasoning presented by Granger and the Division concerning the distinguishing nature of landfill gas. We consider landfill gas to be distinguishable from the type of gas which we construe the Utah statutes were intended to reach. We conclude that landfill gas is not "natural gas," "gas," or "gas, natural or manufactured" as those terms are used in Section 54-2-1. As such, we conclude that Granger's collection, delivery and sale of landfill gas, as described in its Petition, would not constitute activities which would make Granger a "public utility" as that term is used in Section 54-2-1. We will grant Granger's request to issue a declaratory order that it is not a public utility if it engages in the activities described in the Petition.

Order

Wherefore, based upon our discussion made herein and our agreement with the arguments made by Granger, we issue this Declaratory Order finding and concluding that Granger Energy of South Jordan, LLC, is not a public utility if it engages in the activities described in its Petition relative to the collection, transport and delivery of landfill gas to Interstate Brick as contained in the Petition filed December 9, 2004.

DATED at Salt Lake City, Utah, this 18th day of April, 2005.

/s/ Richard M. Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
GW#41971