

Decision 00-10-005 October 5, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Crystal River Oil and Gas, L.L.C.,

Complainant,

vs.

Pacific Gas and Electric Company,

Defendant.

Case 00-07-004
(Filed July 6, 2000)

O P I N I O N

1. Summary

Crystal River Oil and Gas, L.L.C. (Crystal), which operates natural gas fields in Northern California, filed this complaint against Pacific Gas and Electric Company (PG&E) on July 6, 2000, contesting PG&E's announced decision to disconnect Crystal's Durham Field in Butte County. Crystal at the same time filed a motion for a temporary restraining order to prevent the disconnection. PG&E on shortened notice responded on July 14 to the complaint and the motion for a restraining order, and also filed a motion to dismiss for failure to state a cause of action. In a ruling dated July 18, the assigned Administrative Law Judge denied the motion for a temporary restraining order and directed Crystal to respond to the motion to dismiss by July 27. Crystal did so. After consideration

of all of the pleadings and declarations, the motion to dismiss is granted. This proceeding is closed.¹

2. Background

Crystal asserts that there is a dispute between it and PG&E as to whether Crystal has breached its contract with PG&E, as that contract was amended on April 30, 1999. Crystal asserts that PG&E intends to disconnect Crystal's Durham Field from PG&E gas Line 156 because of the alleged breach, and that such disconnection would cause economic harm to Crystal.

PG&E responds that its relationship with Crystal is governed by a California Production Interconnection and Operating Agreement (CPIOA) dated May 30, 1997, as amended, and that the contract permits either party to terminate the CPIOA on 30 days' written notice after an initial one-year term. PG&E states that it exercised that option in a letter sent to Crystal on February 23, 2000, and that it has offered to continue receiving gas from Durham Field at another connection point.

Both parties agree that the dispute underlying this action dates to February 15, 2000, when a PG&E customer, Fenn Farms, reported a gas outage. Crystal interconnects with PG&E's system near Fenn Farms. PG&E claims that the February outage and other earlier outages were caused by Crystal's operation of a compressor located one mile from Fenn Farms. Crystal claims the outage was caused by PG&E's negligence in maintaining pipeline operations.

¹ We had initially categorized this complaint as an adjudicatory proceeding and indicated that an evidentiary hearing would be needed. However, in light of our determination that the motion to dismiss should be granted, we determine that no hearing is necessary, and change our prior determination accordingly.

3. Termination Provision

Since 1997, Crystal's interconnection with PG&E has been governed by a CPIOA, also known as Agreement No. 4044.² Crystal signed the agreement in May 1997 and PG&E signed it in July 1997. Section 7.2 of the agreement permits either party to terminate after the agreement has been in effect for one year. Specifically, Section 7.2 states:

- (a) Termination for Convenience: Either Party may terminate this Agreement after the Initial One Year Period upon thirty (30) days written notice.

The agreement also provides at Section 7.2(d) that “[u]pon termination of this Agreement, PG&E shall have the right to disconnect from PG&E’s Gas Plant the Facilities used to receive Producer’s gas.” PG&E’s Gas Plant includes Line 156.

An amendment to Agreement No. 4044, called “Amendment No. 1,” was executed in April 1999. Amendment No. 1 expressly retains all provisions of the underlying agreement, including Section 7.2.

The initial one-year period of Agreement No. 4044 has elapsed. On February 23, 2000, PG&E gave written notice that it was terminating Agreement No. 4044, including Amendment No. 1, pursuant to the 30-day termination provision in Section 7.2. In the same letter, PG&E offered to continue to receive Crystal’s gas deliveries at a different connection location.

² PG&E has submitted declarations showing that the Commission approved the interconnection and start-up costs provisions of the agreement in Resolution G-3223.

Crystal responds that PG&E is or should be precluded from terminating the contract pursuant to Section 7.2(a), alleging that Agreement No. 4044 is a contract of adhesion and the termination provision is unconscionable.

4. Discussion

Both parties urge speedy resolution of this matter because Fenn Farms will have a need for substantial amounts of natural gas for grain drying operations in late August or early September.

As a general rule, this Commission does not adjudicate contract disputes merely because one party is a public utility. Since the Commission has no jurisdiction to award damages, complaints alleging breach of contract are better served through the civil courts. (*Penaloza v. P.T.&T.* (1965) 64 CPUC 496, 497.)

Nevertheless, the Commission does adjudicate contract disputes in the exercise of its regulatory jurisdiction, particularly where utility service to the public may be affected. In such a case, jurisdiction may be deemed concurrent with that of the civil courts. (*Investigation into transmission system operations* (1992) 43 CPUC2d 234.)

Because this case deals in part with the need of a consumer for reliable gas service, we elect to turn to the merits of PG&E's motion to dismiss and Crystal's defense. There is no issue of material fact with respect to contract termination under Section 7.2(a), and we may decide the issue as a matter of law.

Section 7.2(a) is unambiguous. It does not depend on any facts for its application, except the contract itself and a calendar. It permits the parties to avoid interconnection disputes that can foster customer service interruptions. Where a contract provision is unambiguous, the express language governs, and no obligation can be implied that would result in the obliteration of a right

expressly given under a written contract. (*Third Story Music, Inc. v. Waits* (1995) 46 Cal.App.4th 1007, 1013.)

Crystal does not dispute that it was properly served with a notice of termination pursuant to Section 7.2(a) of its contract. However, it argues that the contract is one of adhesion, and that the termination provision is unconscionable.

A contract of adhesion is a standard contract that, imposed and drafted by a party of superior bargaining strength, relegates to another party only the opportunity to accept the contract or reject it. (14 Cal.Jur. 3d (Contracts) § 10.) A contract of adhesion, or a standard contract, is enforceable like any other, but it may not be enforced if it is unduly oppressive or unconscionable. (*Westlye v. Look Sports, Inc.* (1993) 17 Cal.App.4th 1715.) In California, the standard for determining unconscionability is the presence of a contractual inequality that is so strong as to shock the conscience and confound the judgment of any person of common sense. (*California Grocers Assn. v. Bank of America* (1994) 22 Cal.App.4th 205.)

The doctrine of unconscionability has both a procedural element and a substantive element, and both must be present before a contract will be deemed unenforceable. (*Ellis v. McKinnon Broadcasting Co.* (1993) 18 Cal.App.4th 1796.) The procedural element focuses on inequality of bargaining power (oppression) and hidden terms (surprise). The substantive element refers to an overly harsh allocation of risks or costs that is not justified by the circumstances. (*Dean Witter Reynolds, Inc. v. Superior Court* (1989) 211 Cal.App.3d 758.)

While PG&E would appear to have superior bargaining power in a contract of this nature, it also is clear that Crystal had sufficient power to negotiate a 1999 amendment that worked in Crystal's favor. In seeking to terminate the agreement, PG&E relied on a contract provision (Section 7.2(a))

with which Crystal was or should have been familiar, since termination rights were the subject of the 1999 amendment. Hence, there was no element of surprise in the action taken by PG&E.

The right of termination here is mutual.³ The requirement of 30 days' notice guards against abrupt action. While Crystal may view the provision as unfair, the provision is not overly harsh, nor can it be said that the provision shocks the conscience of any person of common sense.

Since oppression, surprise and overly harsh terms have not been shown, the termination provision of the contract is not invalid on the basis of unconscionability. It follows that Crystal's complaint fails to state a violation of law or of Commission rule or order, as required by Pub. Util. Code § 1702. The motion to dismiss for failure to state a cause of action should be, and is, granted.

Because this matter has been decided on the basis of the validity of the termination provision in the parties' contract, we choose not to address PG&E's alternative ground for dismissal, i.e., that Section 7.10.5 of the contract purports to require the parties to litigate only in state or federal courts.

5. Comments on Draft Decision

The draft decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. No comments on the draft decision have been filed.

³ PG&E states that Crystal in May 1997 elected to terminate a long-term agreement with PG&E and enter into Agreement No. 4044 in order for Crystal to be able to sell to any other party in the Northern California gas market.

Findings of Fact

1. Crystal operates natural gas fields in Northern California.
2. Crystal entered into Agreement No. 4044 with PG&E on May 30, 1997.
3. On February 23, 2000, PG&E gave notice of termination of the contract to Crystal pursuant to the 30-day termination provision of Section 7.2(a) of Agreement No. 4044.

Conclusions of Law

1. As a general rule, the Commission does not adjudicate contract disputes because the Commission lacks jurisdiction to award damages.
2. The Commission does adjudicate contract disputes in the exercise of its regulatory jurisdiction.
3. Section 7.2(a) of the contract is not an overly harsh allocation of risks or costs that is not justified by the circumstances.
4. Section 7.2(a) is not unenforceable.
5. A hearing is not needed to resolve this complaint.
6. PG&E's motion to dismiss the complaint should be granted, effective immediately.

O R D E R

IT IS ORDERED that the motion of Pacific Gas and Electric Company to dismiss the complaint of Crystal River Oil and Gas, L.L.C., is granted; the complaint is dismissed, and the proceeding is closed.

This order is effective today.

Dated October 5, 2000, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
CARL W. WOOD
Commissioners