

Decision 11-04-016 April 14, 2011

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Rio Bravo Rocklin,

Complainant,

v.

Pacific Gas and Electric Company (U39E),

Defendant.

Case 10-07-020  
(Filed July 19, 2010)

**ORDER EXTENDING STATUTORY DEADLINE**

**Summary**

Public Utilities Code Section 1701.2(d) provides that adjudicatory cases, such as this one, shall be resolved within 12 months of initiation unless the Commission makes findings why that deadline cannot be met and issues an order extending that deadline. In this proceeding, the 12-month deadline for resolving the complaint is July 19, 2011. This order extends the 12-month deadline to July 19, 2012.

**Background**

On July 19, 2010 Rio Bravo Rocklin (Rio Bravo) filed a complaint against Pacific Gas and Electric Company (PG&E). Rio Bravo's complaint alleges that from June 9, 1999 to March 1, 2009, PG&E underpaid Rio Bravo for capacity purchased from its biomass facility; that this underpayment was the result of PG&E's failure to inform Rio Bravo that the biomass facility was no longer a

“remote” resource and PG&E’s failure to apply the appropriate “non-remote” capacity loss adjustment factor (CLAF); and that PG&E has been unjustly enriched at Rio Bravo’s expense. In addition to findings consistent with these allegations, Rio Bravo asks the Commission to order PG&E to remit approximately \$2,000,000, which is the difference between the amount Rio Bravo claims PG&E should have paid for capacity from Rio Bravo as a non-remote resource, and the lesser amount PG&E actually paid during the period between January 1, 1999 and February 28, 2009, plus interest.

PG&E responded to Rio Bravo’s complaint on August 27, 2010, by filing an answer to the complaint and a concurrent motion to dismiss the complaint. In these filings, PG&E argues that Rio Bravo’s complaint is without merit because:

- 1) Rio Bravo has not alleged any contractual basis for additional payment;
- 2) Rio Bravo fails to identify any law, rule, or Commission order which either requires PG&E to notify Rio Bravo that its facility might have become non-remote or to order a CLAF study; 3) PG&E did not have the necessary information to change its capacity payment factor; and 4) the Commission’s adopted CLAF methodology requires a study to revise the CLAF and specifies that the study must be based on PG&E’s transmission and distribution system in existence at the time of the study. Thus, PG&E argues that even if it has pertinent information, that information cannot now be used to justify a retroactive increase (or decrease) in capacity payments. Finally, PG&E asserts that because the parties’ rights are governed by the terms of their contract, Rio Bravo’s claim for equitable restitution cannot be heard. PG&E restates the arguments above in its motion to dismiss and asserts that: 1) the complaint should be dismissed for failure to state a claim for relief, and 2) it is entitled to

judgment as a matter of law as there are no triable issues of fact. Rio Bravo responded to PG&E's motion to dismiss on September 13, 2010.

By ruling dated November 4, 2010 a prehearing conference (PHC) was scheduled for November 22, 2010, at 10:00 a.m. Discussions at the PHC focused on PG&E's motion to dismiss the Rio Bravo complaint, the status of discovery between the parties, and the schedule for the proceeding.

On January 12, 2011 Rio Bravo and PG&E filed a joint motion seeking an extension of time for evidentiary hearings in order to pursue resolution and settlement of the disputed issues in this proceeding. After noting that the extension would allow them to focus on settlement discussions, rather than continuing with the litigation schedule, Rio Bravo and PG&E pointed out that the extension was also needed to prepare documentation supporting the settlement, and to submit a joint motion seeking Commission approval of the settlement. Rio Bravo and PG&E also acknowledged that the requested extension might extend the proceeding beyond the deadline imposed by Public Utilities Code Section 1701.2(d),<sup>1</sup> and jointly stipulated their assent to any delay beyond this deadline.

On January 13, 2011 the assigned Administrative Law Judge (ALJ) granted the request by Rio Bravo and PG&E, and cancelled the scheduled hearings and briefings. The ALJ also directed Rio Bravo and PG&E to provide an update on their settlement efforts on, or before, February 15, 2011. On February 11, 2011

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<sup>1</sup> Unless otherwise stated, all statutory references are to the California Public Utilities code. In relevant part, section 1701.2(d) provides that "[a]djudication cases shall be resolved within 12 months of initiation unless the commission makes findings why that deadline cannot be met and issues an order extending that deadline."

Rio Bravo and PG&E notified the ALJ that negotiations were at an impasse and requested that hearings be rescheduled.

### **Discussion**

Based on the current status of the case, this proceeding cannot be completed by July 19, 2011. An extension of time for an additional 12 months is necessary for resolution of this matter.

### **Waiver of Comments**

Under Rule 14.6(c)(4) of the Commission's Rules of Practice and Procedure, the Commission may reduce or waive the period for public review and comment on decisions extending the deadline for resolving adjudicatory proceedings. Accordingly, pursuant to Rule 14.6(c)(4), the otherwise applicable period for public review and comment is being waived.

### **Findings of Fact**

1. This proceeding was initiated on July 19, 2010.
2. Rio Bravo and PG&E filed a joint motion seeking an extension of time before evidentiary hearings in order to pursue resolution and settlement of the disputed issues in this proceeding.
3. Rio Bravo and PG&E acknowledged that the requested extension might extend the proceeding beyond the deadline imposed by Public Utilities Code Section 1701.2(d), and jointly stipulated their assent to any delay beyond this deadline.
4. Due to the request for additional time for settlement discussions, additional time is needed to adjudicate and complete this proceeding.

### **Conclusion of Law**

The 12-month statutory deadline imposed by Public Utilities Code Section 1701.2(d) should be extended until this proceeding is resolved.

**IT IS ORDERED** that the 12-month statutory deadline in this proceeding, July 19, 2011, is extended for an additional 12 months until July 19, 2012.

This order is effective today.

Dated April 14, 2011, at San Francisco, California.

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK FERRON

Commissioners