

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CARGILL-ALLIANT, LLC : CIVIL ACTION
: :
: :
v. : :
: :
GPU SERVICE, INC. : No. 99-5312

MEMORANDUM

Ludwig, J.

June 30, 2000

Plaintiff Cargill-Alliant, LLC and defendant GPU Service, Inc. cross-move for summary judgment. Fed. R. Civ. P. 56.¹ Jurisdiction is diversity. 28 U.S.C. § 1332. Given the existence of triable issues, the motions will be denied.

Plaintiff Cargill is an electricity broker, purchasing and reselling electricity; defendant GPU is an electricity provider. On June 19, 1998, GPU entered into a "Firm LD" contract² in which Cargill agreed to deliver 100 megawatts of electricity per hour, from 8:00 AM to 11:00 PM, for the seven business days between June 22 and June 30, 1998, at a price of \$45 per megawatt hour. The contract did not state the source of energy or the ultimate

¹ “[S]ummary judgment should be granted if, after drawing all reasonable inferences from the underlying facts in the light most favorable to the non-moving party, the court concludes that there is no genuine issue of material fact to be resolved at trial and the moving party is entitled to judgment as a matter of law.” Kornegay v. Cottingham, 120 F.3d 392, 395 (3d Cir. 1997).

² Within the electricity industry, a firm LD contract provides liquidated damages in the event of a default, as opposed to a non-firm contract that provides traditional contract damages.

location, but required GPU to deliver the electricity to the PJM³ Western Hub. Upon receipt, it was Cargill's plan to sell the electricity to American Electric Power Company (AEP). It subsequently entered into a non-firm contract with PJM to transfer the energy from the Western Hub directly to the customer, AEP.

On June 25, 1998, the PJM Office of the Interconnection (PJM OI), the body that controls the amount of capacity resources within the pool, declared a maximum generation emergency (MGE). An MGE occurs when the PJM OI anticipates that insufficient amounts of electricity will be available within the PJM pool to serve all of its customers. When such an emergency occurs, the PJM in a conservation effort, first halts all non-firm contracts for the transmission of energy to a buyer located outside the pool. On June 25, 1998 during the MGE, AEP did not receive electricity from 11:45 to 23:00 EDT.

The parties agree that the Cargill-GPU agreement governs the entire transaction. They also agree that AEP received no energy from 11:45 to 23:00 EDT on June 25, 1998. They disagree, however, on whether GPU delivered electricity to the Western Hub at all times on June 25, 1998.

³ PJM is the governing body that oversees all sales of electricity in the Pennsylvania, New Jersey, and Maryland area, an area otherwise referred to as the PJM pool. It issues guidelines for the sale and resale of electricity and is responsible for apportioning the volume of electricity when the supply of electricity reaches a low level.

DISCUSSION

Cargill maintains that GPU did not deliver the electricity in question to the Western Hub. If it had done so, Cargill argues, the electricity would have continued to flow to AEP over the open transmission lines.

GPU submits that the electricity was delivered, but that the transmission to AEP was halted by the PJM. Because the contract between Cargill and the PJM was a non-firm contract, the PJM stopped transmission to AEP when the MGE occurred. Moreover, since Cargill paid less for the non-firm contract, it assumed the risk of a transmission termination. In support of its motion, GPU points out that it had surplus energy available at the Western Hub on June 25, 1998, which it sold back to the PJM pool the following day. Additionally, GPU offers evidence that during the MGE, energy was transmitted from the Western Hub to sources outside of the PJM pool for all firm transmission contracts. GPU's position is that Cargill's failure to purchase a firm transmission contract, not the failure to deliver electricity, resulted in the unfulfilled contract.

Even if transmissions were cut, Cargill counters, GPU is still at fault for implementing the contract with capacity resource energy.⁴ A capacity resource, according to Cargill, is an electric generating resource owned or contracted-for by an entity that serves end-use customers⁵ within the PJM region. In an MGE, the only energy transmissions curtailed by the PJM OI are those using

⁴ GPU does not deny that it used capacity resources to fulfill the contract.

⁵ An end-use customer is the final user of the transmitted electricity.

capacity resources for an end-user outside the PJM pool – non-capacity resources are not cut during an MGE. By using capacity resource electricity, Cargill insists, GPU violated the contract by providing energy that could be curtailed by the PJM OI.

In response, GPU notes that the contract required only that electricity be delivered to the Western Hub – and did not specify the type or end use of the electricity. The contract does not refer to either capacity or non-capacity resources, but simply states that GPU will supply the energy.

Since material questions of fact are present – whether GPU delivered the electricity, and if so, whether a certain form of electricity was contemplated – the motions must be denied.

Edmund V. Ludwig, J.

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ORDER

AND NOW, this 30th day of June, 2000, the motions for summary judgment are denied.

Edmund V. Ludwig, J.