

**IN THE COURT OF APPEAL OF THE SUPREME COURT OF
JUDICATURE**

APPELLATE JURISDICTION

CIVIL APPEAL NO. 19 OF 2002

In the matter of the Public Utilities
Commission Act 1999.

- and -

In the matter of Order 2 of 2002 made
by the Public Utilities Commission
bearing date 20th March, 2002.

BETWEEN

GUYANA POWER AND LIGHT INC.

Respondent/Appellant

- and -

PUBLIC UTILITIES COMMISSION

**GUYANA BANK FOR TRADE AND INDUSTRY
LIMITED**

**GUYANA NATIONAL COOPERATIVE BANK
LIMITED**

TEXACO WEST INDIES LIMITED

Complainants/Respondents

BEFORE:

Hon. Madame Justice Desiree P. Bernard - Chancellor
Hon. Madame Justice Claudette M.C. Singh - Justice of Appeal
Hon. Mr. Justice Nandram Kissoon - Justice of Appeal

Mr. M. Fitzpatrick, SC with Mr. T. Jonas for Appellants
Mr. A. Chase, SC with Ms. P. Chase for first-named Respondent
Mr. R. Khan for second-named Respondent
Mr. E. Luckhoo, SC for fourth-named Respondent
No appearance entered for third-named Respondent

2004: November 18

2005: January 13
March 11

J U D G M E N T

BERNARD, C. *delivered the judgment of the Court:*

The Appellant company is a public utility operating in Guyana under a licence to supply electricity. Standard terms and conditions were approved on 1st October, 1999 and modified on 31st March 2000. The licence was granted in accordance with the Electricity Sector Reform Act 1999 (hereinafter referred to as “ESRA”) which is an Act “to provide for the regular, efficient, coordinated and economical supply of electricity and for matters incidental thereto or connected therewith.”

The first-named Respondent is a Commission established under the Public Utilities Commission Act, 1999 to perform regulatory, investigatory, enforcement and other functions conferred on it by the Act for public utilities. The Appellant company falls under its jurisdiction.

The charges which a consumer is required to pay for supply of electricity by the Appellants are laid down in ESRA and the Third Schedule thereto. Between November 2000 and March 2001 the Respondent companies filed complaints with the first-named Respondent alleging that the Appellants had levied charges on them claiming retroactive underbilling.

After a hearing the first-named Respondent made the following orders:

- (i) GPL cannot claim retroactive billing against any consumer unless it establishes that there was unauthorised interference whereby electricity could have been consumed without being properly metered; or where it has reasonable evidence that the consumer was not previously billed for consumption of electricity because the meter reader was unable to read the meter due to non-access on the premises. The Utility cannot of course do this in perpetuity because it has within 2 months to repair, resecure or resite the meter in order to ensure that it accurately registers the amount of electricity consumed.
- (ii) GPL cannot unilaterally enforce payment based on the above grounds until and unless it serves on the customer notice of its intention with reasons and grounds on which it proposes to act, giving the consumer the opportunity to respond thereto.

The alleged underbilling by the Appellants stemmed from the fact that an incorrect multiplier was used by them in calculating the rates to be paid by the Respondent companies for consumption of electricity. This was due to an error in the Appellants' computer system, and was not discovered until after monthly bills has been sent out and payment on the bills received from the companies.

The issues to be determined in this appeal are:

- (a) Are the Appellants entitled to recover from the Respondents payment of rates retroactively for any period for alleged underbilling.
- (b) Have the Appellants established a right to recover the said payments.

In analysing these issues one should first examine the relevant sections of **ESRA**. **Section 23** provides that in a contract for the supply of electricity the public supplier shall give to the consumer a notice that, inter alia, states whether the rates to be charged will be determined under **Sections 26 to 28**, inclusive, or by a special agreement between the public supplier and the consumer under **Section 29**, which should specify the rates to be charged or the proposed terms of the agreement. **Section 26** provides that the rates to be charged by a public supplier for the supply of electricity shall be in accordance with such rates as may be fixed from time to time by the Public Utilities Commission in accordance with the Act and the Public Utilities Commission Act.

Sections 26(3) (a) & (b) further provide that a rate for the supply of electricity which is fixed by the Commission "shall be disclosed in such a manner as to show the methods or formulae by which and the principles on which the charges are to be made as well as the prices which are to be

charged” (emphasis added), and “shall be published in a daily newspaper” (emphasis added).

There is no evidence that there was any special agreement with any of the Respondent companies so the rates to be charged would be those fixed by the Commission. There is also no evidence that the methods or formulae by which or on which the charges are to be made were ever disclosed to the companies or published in a daily newspaper in accordance with **Section 26(3)** of **ESRA**.

In my opinion the multiplier used to determine the charges for electricity consumed is a method or formula which should have been disclosed to the companies. However, over the years the Respondents have accepted and paid bills based on a multiplier of 240 which seems never to have been questioned. It was explained at the hearings of the PUC by Mr. McElroy, an official of the Appellant company, that the recordings on the meters are controlled by current transformers, and this seems to have been the accepted position. The problem arose when the Appellants sought to increase the multiplier to 480 from 240 based on their alleged computer error.

At page 21 of the record Mr. McElroy gave an explanation of how the current transformer affects consumption. His evidence was that when a customer applies for service the GPL estimates what the likely consumption will be in the future based on the customer’s installations. The current transformer is supplied at the time of connection and may be upgraded depending on load factors.

According to Mr. McElroy Guyana National Cooperative Bank requested a check on their consumption when their multiplier was increased, and this was done, but no such request was made by Guyana Bank for Trade

