

BEFORE THE PUBLIC UTILITIES COMMISSION

**In the matter of the Public Utilities
Commission Act 1990 (No. 26 of
1990)**

- and -

**In the matter of the
application by the Guyana
Electricity Corporation to
review the decision of the
Public Utilities Commission
dated 12th December, 1997.**

PAMADATH J. MENON, A.A.	-	Chairman
HUGH GEORGE	-	Member
JOHN WILLEMS, A.A.	-	Member
CHANDRABALLI BISHESWAR	-	Member
BADRIE PERSAUD	-	Member

REPRESENTATIONS -

Guyana Electricity Corporation	-	Mr Loris Ganpatsingh, S.C., Attorney-at-law
Consumers' Advisory Bureau of Guyana.	-	Ms Eileen Cox, A.A. Chairperson

DECISION

The Guyana Electricity Corporation (GEC) had executed a Lease Agreement dated 31st March, 1996, in favour of Wartsila Diesel Inc. in respect of a second 11MW Power Plant at Garden of Eden. It had executed another Lease Agreement dated 9th May, 1996, in favour of Wartsila Diesel Caribbean Inc. in respect of a 22MW Power Plant at Kingston. Under the two Lease Agreements, GEC undertook to execute the following security documents. These, in regard to the second 11MW Wartsila Diesel Plant at Garden of Eden, were the following -

- (a) a grant to the lessor of a first lien on any and all right, title and interest of GEC in the Facility that is, the second 11 MW Wartsila Diesel Plant, and in all additions, attachments, accession, and substitutions thereto;
- (b) a grant to the Lessor of (i) a mortgage and pledge constituting a first lien on the Facility Site (that is, the real property where the Facility will be located) (ii) a mortgage and pledge constituting a first lien on the Existing Station, that is, the first 11 MW Wartsila Diesel Plant at Garden of Eden, including a lease or right of use of the land on which the Existing Station is located, (iii) an assignment of all insurance policies relating to the Facility and the Existing Station; and (iv) an assignment of all material agreements related to the Facility and Existing Station;
- (c) execution and delivery of such additional documents, including financing statements, certificates of title, affidavits, notices and similar instruments, in form satisfactory to Lessor, necessary or appropriate to perfect and maintain such security interests and assignments.

In regard to the 22MW Wartsila Diesel Plant at Kingston the security documents which GEC undertook to execute under the Lease Agreement were -

- (a) a grant by GEC to the Lessor of a first lien on any and all rights, title and interest of GEC in the Facility, that is the 22 MW Wartsila Diesel Plant at Kingston, and in all additions, attachments, accession, and substitutions thereto;
- (b) a grant to the Lessor of (i) a mortgage and pledge constituting a first lien on the Facility site, (that is the real property where the Facility will be located), including a lease or right of use of the Facility Site; (ii) a mortgage and pledge constituting a second lien on the Existing Stations, that is, the two 11 MW Wartsila Diesel plants at Garden of Eden, and on the site of the Existing

Stations, including a lease or right of use of the land on which the Existing Stations are located; (iii) a mortgage and pledge constituting a first lien on GEC's property consisting of land and buildings thereon, located at 40 Main Street, Georgetown, (iv) a mortgage and pledge constituting a first lien on GEC's property consisting of land and buildings thereon, located at 257-259 Middle Street, Georgetown; (v) an assignment of all insurance policies relating to the Facility and the Existing Stations; and (vi) an assignment of all material agreements related to the Facility and the Existing Stations;

- (c) such additional documents, including financing statements, certificates of title, affidavits, notices and similar instruments, in form satisfactory to Lessor, necessary or appropriate to perfect and maintain such security interests and assignments.

In the case of both Lease Agreements the execution of security documents referred to in this paragraph are stated to be undertaken by GEC for securing its obligations to the Lessor under the Lease Agreements.

2. Pursuant to proceedings which this Commission initiated by a notice dated 24th August, 1995, and subsequent correspondence between this Commission and GEC, and superseding the drafts of the mortgages and debentures which GEC had earlier submitted for approval, on 31st December, 1996, GEC submitted to this Commission a new set of documents for approval. These are -

- (i) A First Mortgage in respect of the transaction relating to the Second 11 MW Wartsila Plant at the Garden of Eden;
- (ii) A debenture in respect of the above transaction;
- (iii) A First Mortgage in respect of the transaction relating to the 22MW Wartsila plant at Kingston;
- (iv) A Second Mortgage in regard to the above transaction; and
- (v) A debenture in respect of the transaction relating to the above plant.

Consequent on the assignment of rights, these documents were sought to be executed in favour of Blue and White Power Financing Inc.

3. By its decision dated 12th December, 1997, and for the reasons stated therein, this Commission approved, under section 47 of the Public Utilities Commission Act, 1990 (No. 26 of

1990), the execution by GEC of the security documents mentioned at items (i) and (iii) in para. 2 above and refused to grant approval for the execution of the other documents mentioned in that para. This Commission also directed GEC to pay to the Consumers' Advisory Bureau \$200,000 as costs.

4. By application dated 6th January, 1998, GEC sought a review of the decision of this Commission in respect of two matters -

- (i) the refusal of approval for the execution of one second mortgage and two debentures; and
- (ii) award of \$200,000 as costs to the Consumers' Advisory Bureau.

5. We heard this matter at the public hearings on 28th January, 1998 and 17th March, 1998. We have carefully considered the submissions made on behalf of GEC and the Consumers' Advisory Bureau of Guyana.

6. As regards the first matter the application for review states as follows -

“The Commission has rejected the GEC’s request to grant the Blue and White Power Financing a second mortgage and two debentures on certain properties and interests of the GEC. The Corporation is kindly requesting that the PUC review its decision in that regard and allow the Corporation to execute the liens as proposed in its application.”

No specific reason was given as to why our order of 12th December, 1997, should be reviewed.

7. Mr Ganpatsingh, Senior Counsel representing GEC, stated at the public hearing on 17th March, 1998 -

“It seems to me that the Commission took an unduly objective approach to the problem and did not take sufficient account of the peculiar interests of both the financial entity and GEC itself, but rather approached the problem from the point of view as to whether or what would be of sufficient comfort to the financing entity in the opinion of the Commission.”

He further stated -

“As I said, we felt, or feel, the Commission did not sufficiently focus on the subjective consideration that affected both Blue and White Power Financing and GEC in these arrangements.”

8. We do not think that we are wrong in being objective in our decision making. We are of the view that we are required to be objective in our approach.

9. Mr Ganpatsingh conceded at the above-mentioned public hearing that it was not spelt out in the two Lease Agreements that GEC would execute the two debentures. He, however, contended that the language of the two Lease Agreements was wide enough to accommodate the issuing of the debentures in addition to the mortgages. We had held in our order of 12th December, 1997, that the two Lease Agreements do not obligate the GEC to execute the two debentures. We are not convinced of any reason to change that view.

10. We also cannot appreciate Mr Ganpatsingh's argument that the express words of section 26(3) of the Electricity Act, Cap. 56:01, empowering a mortgagee or chargee to appoint a receiver of the whole or part of the property mortgaged or charged, should be ignored.

11. Even if it is a case where two views were possible and the Commission took one of those views, in preference to the other, that is not a ground for review.

12. The Public Utilities Commission Act 1990 (No. 26 of 1990) was enacted on 31st December, 1990, and it is retrospective in operation with effect from 1st October, 1990. Section 47 of that Act was in operation right from the beginning. The parties are presumed to be aware of the provision. Besides, GEC was reminded of that provision by this Commission's notice dated 24th August, 1995, long before GEC executed the two Lease Agreements dated 31st March, 1996 and 9th May, 1996.

13. We reject Mr Ganpatsingh's argument that nobody could have foreseen "the extent the PUC would, so to speak, take unto itself or arrogate unto itself the powers to refuse the issuing of security documents in the circumstances in which GEC agreed to do so." We do not know how GEC could have assumed that this Commission would just rubber stamp whatever they did.

14. GEC's objection to the award of costs to the Consumers' Advisory Bureau was based on two grounds -

- (i) the Consumers' Advisory Bureau was not a party to the proceedings; and
- (ii) there was no justification for the award.

The consumers were vitally interested in the proceedings that led to the Order of this Commission dated 12th December, 1997. Under section 64 of the Public Utilities Commission Act 1990 (No. 26 of 1990) this Commission had the power to award the costs of the Consumers' Advisory Bureau.

ORDER

15. In the light of the above discussions, and having carefully considered the application for review and the submissions at the public hearings in regard to that application, we hereby dismiss the application dated 6th January, 1998, filed by GEC, for the review of the Order of this Commission dated 12th December, 1997.

Dated at Georgetown, Guyana

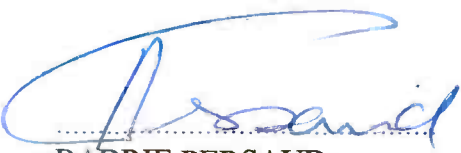
this ^{23rd}..... day of April, 1998


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PAMADATH J. MENON, A.A. - CHAIRMAN


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HUGH GEORGE - MEMBER


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JOHN WILLEMS, A.A. - MEMBER


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CHANDRABALLI BISHESWAR - MEMBER


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BADRIE PERSAUD - MEMBER