

PUC ORDER NO. 1/2003

BEFORE THE PUBLIC UTILITIES COMMISSION

**In the matter of the Public Utilities
Commission Act No. 10 of 1999**

-and -

**In the matter of an application by Toolsie
Persaud Limited (the Company) for a
Variation of the terms of the PUC Order
No. 5/2002, in respect of payment to be
made by Toolsie Persaud Limited to
Guyana Electricity Corporation (GEC).**

PUBLIC UTILITIES COMMISSION

L.J.P. Willems , A.A.	-	Chairman of the Meeting
Hugh George	-	Commissioner
Badrie Persaud	-	Commissioner

In Attendance

Ms. Jennifer Ganpatsingh	-	Secretary (ag)/Financial Analyst
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TOOLSIE PERSAUD LIMITED

Toolsie Persaud	-	Chairman
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GUYANA ELECTRICITY CORPORATION

Ms. Nicola Pierre, Attorney-at-Law	-	Company Secretary
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This is an application by Toolsie Persaud Limited, hereinafter called "The Company" for a variation of an order, No. 5 of 2002, of the Commission made on 27th June, 2002, setting out the terms of payment in liquidation of an amount due, owing and payable by the Company to the Guyana Electricity Corporation, hereinafter referred to as the "Utility". The application was made on 7th February 2003.

In 1999 the Utility which was supplying electricity to the Company's Sawmilling Division disconnected the service on the grounds that the Company's employees had tampered with the supply resulting in loss to the Utility. The utility, as a consequence, claimed the sum of \$15,958,585.22 representing such loss.

The company then had applied to the Commission denying liability and sought an order for the re-instatement of the supply of electricity. The Commission at a hearing on the 9th day of June 1999, at which both parties were represented ordered (a) that the Company pay 50% of the arrears of \$4,294,818.00 due to GEC as per bill for April, 1999 and that the Utility upon the payment of that amount, restore the supply of electricity to the premises; and further that the remaining 50% of the aforesaid arrears should be paid within four (4) weeks after the first payment had been made: The Commission thereafter held a hearing with respect to the "assessed charges" amounting to \$15,958,585.22 to determine whether the Company was liable. The parties arrived at a settlement and agreed that without prejudice or admission of liability and in full settlement, satisfaction and discharge of any and all claims or cause of action by GEC against it, the Company would pay the sum of \$4,500,000.00 inclusive of costs. This was reflected in Order No. 5/2002 dated 27th June 2002 which said order also directed that:-

- (i) "the sum of two million dollars (\$2,000,000.00) be paid by Tooslie Persaud Ltd. to GEC on or before the 25th July 2002;
- (ii) The sum of two hundred and eight thousand three hundred and thirty five dollars (\$208,335.00) be paid monthly for eleven months, commencing from or before the 25th August 2002 and ending on or before 25th June 2003;

- (iii) A final payment of two hundred and eight thousand three hundred and fifteen dollars (\$208,315.00) be made on or before the 25th July 2003;
- (iv) Failure to pay any instalment will result in the full amount becoming due immediately.”

In support of the application for variation of the order, referred to in the first paragraph hereof, the Company pointed out that it had paid a total sum of \$2,883,440.00 as at 23rd January 2003 leaving a balance of \$1,461,478.00. The Company further claimed that the Saw Milling Division was in serious financial and cash flow difficulties due to the depressed state of the economy and sought a variation to pay \$100,000.00 per month with effect from January 2003.

Representation had been made to the Utility but the Secretary had refused the request. As a result the Commission heard the matter. At the hearing the Company relied on its pleadings and said it could not offer to pay more than \$100,000.00 per month. At the time of hearing further payments had previously been made by the Company since its letter of 23rd January 2003 and it was agreed both by the Company and the Utility that the sum of \$1,366,660.00 was owing at the time of the hearing.

The Utility in opposing the application offered the following reasons:-

- (1) The Order was not made against the Sawmilling Division but against the Company as a whole.

- (2) The Company at the date of the hearing was over \$700,000.00 in arrears of the agreed payments and that the application should not be heard until the arrears had been paid by the Company.
- (3) The Company was in contempt of the order and should not be heard until it had purged itself of the contempt.
- (4) The Order was made on the basis of a settlement between the parties and such an order could not be varied except by the party requiring a variation bringing a whole new action to have the settlement set aside and then only on the grounds of fraud, or mistake by the Company.
- (5) The Commission had no jurisdiction to entertain the application. Section 77 of the PUC Act No. 10 of 1999 did not confer on the Commission the ability to vary or rescind orders in a situation as in the current case which relates to the amount of money payable to a Company. The power to vary orders relates only to the PUC in the exercise of its regulatory authority.
- (6) The full amount outstanding was payable on default, and no interest was payable on the amounts involved. The requested variation if granted would extend the payment period approximately 14 months and such extension would be disadvantageous to GEC.

The Commission carefully considered all aspects of the matter and is of the view that it has the jurisdiction to hear the application made to the Commission by the Company.

With regard to the specific request by the Company the Commission has taken into account the following factors and consider them to constitute sufficient reasons for a denial of the Company's request.

- (a) The order was made on the basis of a settlement between the parties.
- (b) The order was made against the Company and not the Sawmilling Division and the Company has produced no evidence of its inability to pay the amounts owed.
- (c) No interest is payable on the amounts involved.
- (d) As at the date of the hearing, 6th May 2003 approximately \$700,000.00 was in arrears.

ORDER

- (i) The Commission rejects the application by Toolsie Persaud Ltd. and dismisses same.
- (ii) The Commission makes no order with respect to costs.

Dated this 10th day of June, 2003.


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L.J.P. Willems A.A.

- Chairman


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Hugh George

- Member


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Badrie Persaud

- Member

