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SECRETARY'S OFFICE
PUBLIC UTILITIES COMMISSION

Order No.2/002

BEFORE THE PUBLIC UTILITIES COMMISSION

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

- and -

In the matter of complaints filed by
Texaco West Indies Limited, The
Guyana National Co-operative
Bank (GNCB), and the Guyana
Bank for Trade & Industry (GBTI)
against the Guyana Power & Light
Inc. (GPL).

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|-----------------------------|---|----------|
| Mr. Prem Persaud, C.C.H | - | Chairman |
| Mr. John L.P. Willems, A.A. | - | Member |
| Mr. Hugh George | - | Member |
| Mr. Badrie Persaud | - | Member |

Representation:

Guyana Power & Light Inc. (GPL)

| | | |
|-----------------------------|---|-------------------------|
| Mr. Miles Fitzpatrick, S.C. | - | Attorney-at-Law |
| Mr. Hugh McElroy | - | Commercial Manager |
| Mr. Phillip Jacques | - | Chief Financial Officer |

Guyana National Co-operative Bank (GNCB)

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|------------------------|---|-----------------------------|
| Ms. Rosaline Robertson | - | Attorney-at-Law |
| Ms. Sonia Roberts | - | Chief Financial Officer |
| Ms. Verlyn Ross | - | Electrical Systems Engineer |

Guyana Bank for Trade and Industry (GBTI)

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|-------------------|---|-----------------|
| Ms. Dolly Sukhdeo | - | Attorney-at-Law |
| Ms. H. Yasin | - | Attorney-at-Law |

Texaco (West Indies) Limited

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|------------------------|---|------------------------|
| Mr. E.V. Luckhoo, S.C. | - | Attorney-at-Law |
| Mr. Manzoor Nadir | - | Accountant |
| Mr. Colin Richmond | - | Assistant Area Manager |

**The Consumers' Advisor Bureau
Guyana Consumers Association**

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| Ms. Eileen Cox, A.A. | - | Chairperson |
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On the 24th November, 2000, Texaco West Indies Limited filed a complaint with the Public Utilities Commission (the Commission) against the Guyana Power and Light Inc. (GPL) levying charges upon them for the retroactive recovery of losses for the supply of electricity.

On the 9th February, 2001, the Guyana National Co-operative Bank (GNCB) filed a complaint with the Commission in respect of their electricity account against the recovery of charges where GPL claimed that the Bank was underbilled.

Guyana National Co-operative Bank (GNCB)

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Guyana Bank for Trade and Industry (GBTI)

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On the 24th November, 2000, Texaco West Indies Limited filed a complaint with the Public Utilities Commission (the Commission) against the Guyana Power and Light Inc. (GPL) levying charges upon them for the retroactive recovery of losses for the supply of electricity.

On the 9th February, 2001, the Guyana National Co-operative Bank (GNCB) filed a complaint with the Commission in respect of their electricity account against the recovery of charges where GPL claimed that the Bank was underbilled.

And on the 9th March, 2001, the Guyana Bank for Trade and Industry (GBTI) filed a complaint against the retroactive increase in electricity charges on their account.

In each case the Utility Company claimed that the accounts were underbilled by factors of 10, 54 and 240 in that the correct multiplier had not been factored into the respective computer calculations and as such it was entitled to recovery of the difference for 24 months retroactively. The amounts claimed are \$2,947,587.00; \$31,630,988.70 and \$13, 204,749.00 respectively.

The Commission scheduled public hearings to enquire into these complaints, and representations were made on behalf of the parties.

THE ISSUES:

The issues for determination by the Commission are:-

- (1) whether the multiplier factor in each case is correct;
- (2) whether the under-billings were due to the application of the wrong multiplier factor;
- (3) whether GPL is entitled to retroactive recovery of alleged losses for two (2) years; or for any period.

SUBMISSIONS:

GPL submitted that the initial bills were sent out in accordance with the **Standard Terms and Conditions pursuant to paragraph 6:3** which states, inter alia, that:

“In the event of unauthorised interference, whether by the Customer or otherwise, whereby electricity could have been consumed without being properly metered, the Company shall have the right to estimate the unrecorded consumption for a retrospective period not to exceed twenty four (24) months, and to indicate the resultant charges in the customer’s account.”

But then later conceded that there was no unauthorised interference in any of the cases, as a result they proposed that the bills be retroactive for six (6) months in accordance with the provision of the Electricity Sector Reform Act 1999 (ESRA).

Paragraph 7.2 of the Third Schedule of ESRA states as follows:-

“(2) Nothing in this Act shall be construed as preventing a public supplier from **billing a consumer retroactively for electricity consumption for a maximum period of six months prior to the issuance of such a bill, upon the presentation of reasonable evidence that the consumer was not previously billed for such consumption, and the rates reflected in such a bill should be those in effect at the time the consumption of electricity occurred.**”

Senior Counsel Edward Luckhoo submitted on behalf of Texaco West Indies Limited that:

- (i) Section 7:2 of the Third Schedule of ESRA does not apply to the present circumstances as what section 7:2 effectively does is limit the powers in any circumstance, of GPL to retroactively bill a consumer for six months, and it effectively establishes a limitation period to the right of GPL with regard to retroactive billing;
- (ii) generally speaking, legislation is .. not to have retroactive effect and retroactive operation of legislation is an exception to the general rule of construction, ... (and) in such circumstances any retroactive power must be strictly construedIf there is any ambiguity whatever with regard to interpretation of 7:2 it must be resolved in favour of the consumer;
- (iii) on a clear interpretation of section 7:2 once a consumer had been billed, GPL cannot contend that the consumer was not previously billed; and the question of retroactivity does not arise;
- (iv) that if the legislation was intended to apply to circumstances where a

consumer was billed previously, but GPL is claiming an additional amount for that period, the legislation must say so, but it does not. There is no reference in the legislation to any additional amount that could be claimed by GPL during the six-month period;

- (v) Section 7:2 refers to the consumer not being previously billed for such consumption;
- (vi) a person or a Corporation must be entitled to know what he is being billed for when he is billed Section 7:2 was not intended to relate to a situation where due to the intrinsic negligence and callousness and lack of system of the Power Company, a proper bill was not sent out in due time.

Can GPL bill a customer retroactively for 6 months?

As we understand it GPL's claim is that the consumer was not billed for such consumption of electricity for which he was responsible because in as much as a bill was sent it did not reflect the actual consumption because of the wrong multiplicand factor being applied.

The consumers complaint is, of course that he was billed for the relevant period and that was the end of the matter.

Section 16 (1) and (2) of the Third Schedule of ESRA states as follows:

- (1) Subject to subparagraphs (2) and (3) and paragraph 17, sums billed to and payable by a consumer shall be for actual electricity supplied and shall be determined by reading the meter through which electricity is supplied to such consumer's premises:
- (2) If, **for any reason not within a public supplier's control**, the public supplier is unable to secure access to read a meter on a consumer's

premises, the public supplier may **determine the amount** of electricity supplied to the premises based on a reasonable estimate of actual consumption of electricity by the consumer during any month in the previous six months.

Section 17 (1) of the Third Schedule of ESRA states as follows:

- (1) If, for reasons other than tampering with a meter or the consumer's failure to ensure that the **public supplier** has access to the relevant meter, a public supplier is unable to read a meter on the consumer's premises or is satisfied that the meter is not accurately registered the amount of electricity supplied to a consumer's premises, the public supplier may determine the amount of electricity supplied based on a **reasonable estimate of actual consumption of electricity** by the consumer during any month in the previous six months:

Provided that the public supplier may determine the amount of electricity supplied pursuant to this subparagraph for a period of no more than two consecutive billing periods, **during which the public supplier shall remedy its inability to read the relevant meter or repair, re-secure or re-site such meter in order to ensure** that it is accurately registering the amount of electricity supplied.

The intention of the legislature seems to be that GPL must provide reasonable evidence that the consumer was not previously billed for such consumption which the utility feels it was entitled to be paid. **See Section 7.2 of the Third Schedule of ESRA 1999.**

Such evidence can be that for reasons not within its control the utility was unable to secure access to read the meter on the consumer's premises: The utility is then permitted to issue a bill based on reasonable estimate of actual consumption of electricity by the consumer during **any month** in the previous six months.



The section further provides that the Utility in such cases shall remedy its inability to read the relevant meter, or repair, resecure or resite such meter in order to ensure that it accurately registers the amount of electricity consumed. **See Sects. 16 and 17 of the Third Schedule of ESRA.**

The Act contemplates that retroactive billing can be permitted for two reasons:-

- (i) where there is **unauthorised interference whether by the consumer or otherwise**, whereby electricity could have been consumed without being properly metered (**Para 6.3 of the Standard Terms and Conditions**); and
- (ii) when GPL is unable to read the meter or is satisfied that the meter has not accurately registered the amount of electricity consumed, it can determine the amount of electricity supplied based on a reasonable estimate of actual consumption by the consumer during any month in the previous six months **provided** that GPL determine the amount of electricity for a period of no more than two consecutive billing periods. (**See Section 17 of the Act**)

Section 51 of the Act provides that GPL shall supply every consumer every month a bill showing the amount payable for service provided during the preceding month.

GPL has not established any unauthorised interference and as such properly conceded it could not go back for 24 months.

On the other hand it had to establish by **reasonable evidence** that the meter did not accurately register the amount of electricity consumed.

Did it establish this? All we have is the claim that the proper multiplicand was not factored into the billing. We had no evidence whatever as to why that was so

We think that the Act does not contemplate non recording of the actual consumption in such circumstances as a reason for retroactive claim for 6 months.

The act authorises GPL to resite, resecure or repair the meter within a specified time. The legislation could not have been intended for GPL to benefit from the negligence or neglect by its officers in not factoring the correct multiplicand. That would surely be authorising retroactive legislation with respect to financial matters which must be clearly and unambiguously stipulated in the legislation. If that was the intent of Parliament it would have specifically and strictly said so. It would also disrupt social and financial order when persons or businesses would have already budgeted for these expenses. It is through no fault of the consumer that he was underbilled.

We find from the evidence that GNCB is not indebted to GPL as the incorrect multiplicand was in use. That by consent the matter involving GBTI was resolved. And with respect to Texaco we find that GPL is not entitled to recovery of the amount for any retroactive period.

It is therefore now ordered as follows:

- (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 re-site 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.

(iii) GPL will pay the cost to the Commission in the sum of \$100,000.

Dated this 20th March, 2002.

Prem Persaud

Prem Persaud, C.C. H.

- Chairman

J. Willems A.A.

J. Willems A.A.

- Member

Hugh K. George

Hugh George

- Member

Badrie Persaud

Badrie Persaud

- Member

