

BEFORE THE PUBLIC UTILITIES COMMISSION

In the matter of an Application by
the Guyana Water Inc. for a review
of Order 2 of 2022.

PRESENT

Public Utilities Commission

Ms. Dela Britton - Chairman
Dr. Nanda Gopaul - Commissioner
Ms. Verlyn Klass - Commissioner
Mr. Maurice Solomon - Commissioner (Excused)
Mr. Rajendra Bisessar - Commissioner (Absent)

In attendance:

Mr. Vidiyahar Persaud - Secretary/Legal Officer

Guyana Water Inc

Mr. Nigel Niles - Executive Director of Corporate Services
Ms. Andrea Khan - Executive Director of Commercial Services and Customer
Relations (ag)
Mr. Jaigopaul Ram - Executive Director of Business
Mr. Mark David - Director of Finance

The Guyana Consumers Association

Mr. Patrick Dial - Chairman

On the 21st day of September 2022, the Commission by virtue of its statutory powers granted under the provisions of section 77 of the Public Utilities Commission Act No. 19 of 2016 embarked upon a public review of the *Residential Reconnection Non-Voluntary* fees of \$7,500 as approved by the Commission in its Order No. 2 of 2018 for the Guyana Water Inc. (GWI).

This review had its genesis from complaints received from consumers and the Guyana Consumers Association to the Commission regarding the reconnection rate for disconnected GWI consumers.

The Association and Complainants were of the view that the reconnection rate of \$7,500 was a “perplexingly high penal rate for consumers.”

After considering the representations made at the hearing, the Commission declined to vary the charge and stated *inter alia* that:

“The Commission recognizes that the reconnection cost of \$7,500 as set by the PUC in Order 2 of 2018 is steep, however at the same time the Commission is conscious that the actual costs relating to disconnections and reconnections are in most instances above that of the rate set by the Commission and that the ‘turn off’ option which costs the Company \$6,600 is not a viable option by the Company for repeated/delinquent consumers. The Commission also recognizes that the fee of \$7,500 is inclusive of the costs associated with both the disconnection and reconnection of consumers.”

The Commission in its Order No. 2 of 2022 directed that the Company should implement a number of measures which included an increase of its internally set credit limit of \$10,000 to \$12,500 in order to alleviate the financial burden on the low-income residential consumers who may be challenged to meet their monthly billing obligations.

On the 9th day of November 2022, the Guyana Water Inc. wrote the Commission indicating that the threshold for disconnection should remain within the province of the utility and that Order No. 2 of 2022 conflicts with section 66 of the Water and Sewerage Act No. 5 of 2002 which gives the discretion to the utility to disconnect the supply of water for a consumer upon failure of the owner/occupier to pay its charges within twenty-eight (28) days of notice to pay. The Commission, by way of a letter dated the 18th day of November 2022, informed the Company that after careful review and consideration it has decided not to review any tenets of Order No. 2 of 2022 and as such the aforementioned Order dated the 21st day of October 2022 remains extant.

On the 5th day of October 2023 by way of letter, the Company made a further application to the Commission under section 77 of the Public Utilities Commission Act No. 19 of 2016 to review and vary Order No. 2 of 2022. The Company’s application was premised on the grounds that the order to increase the customer’s credit limit conflicts with the provision of section 66 of the Water & Sewerage Act No. 5 of 2002 and that setting a credit limit is not within the remit of the Commission. The Company informed the Commission that a legal opinion was solicited from the Ministry of Legal Affairs by the GWI which stated the following in its conclusion:

“It is submitted therefore, that the Commission’s decision to set and/or increase GWI’s customer credit limit is beyond the remit of the Commission as such, a power was not stipulated in PUCA and to do so will be in conflict with section 66 of the Water and Sewerage Act”.

The Commission entered into a Public Hearing on the 6th day of December 2023 to review Order No. 2 of 2022.

GUYANA WATER INC.

The Guyana Water Inc. in its representation to the Commission pressed its position as outlined in its application to the Commission to vary and remove the direction by virtue of PUC’s Order No. 2 of 2022 dated the 21st day of October 2022, which states that with effect from the 1st day of January, 2023 the Company is required to increase the credit limit for customers from \$10,000 to \$12,500 to allow customers an extended grace period for payments.

The Company maintained that that portion of Order No. 2 of 2022 is in conflict with section 66 of the Guyana Water and Sewerage Act No. 5 of 2002, which makes provision for the following:

A public supplier may cut off a supply of water to any premises if the owner or occupier is liable to pay charges to the public supplier and has failed to do so within 28 days of the receipt of notice requiring him to pay such charges.

Additionally, the Company contended that section 21 of the Public Utilities Commission Act No. 19 of 2016 permits the Commission in the execution of its functions to give effect to any other law governing a public utility and that all decisions and acts of the Commission must be fair and in accordance with the PUC Act and any other written law in operation in Guyana.

The Company further submitted that to grant customers a grace period/limit of \$12,500 would allow consumers at least a period of five to six months of credit for an unmetered consumer, which is beyond the twenty-eight (28) days as prescribed in section 66 of the Water and Sewerage Act No. 5 of 2002 and that this grace period hampers the cashflow of the Company. GWI posited that since the Order of the Commission became effective the Company’s outstanding receivables have increased to over \$200 million - \$300 million and consequentially reduced the Company’s cash inflow. The Company noted that at the same time it is required to meet its creditors’ obligations in a timely manner, as payments to suppliers according to standard invoicing are due within 30

days. The Company noted that the credit limit of \$10,000 was a discretionary limit set by it and that the limit as set by the Commission would equate to approximately three to four months of billings for an unmetered customer. The Company was strong in its contention that the credit limit is not a rate, but rather an issue of law and that no limit was set by the Water and Sewerage Act No. 5 of 2002, nor are there regulations promulgated under the Act. It was the contention of the Company that any decision to fix the credit limit should remain within the purview of the utility.

In closing, GWI reiterated that the decision to increase the credit limit or to instruct the Company to increase the credit limit to \$12,500 is in contravention of the PUC Act and requested that the Commission make a decision to remove this instruction.

GUYANA CONSUMERS ASSOCIATION

The Guyana Consumers Association in its presentation stated that the determination of any charge to a consumer is within the undisputed mandate of the Public Utilities Commission. The Association emphasized that at no time at all did the body give the impression that consumers should not be responsible for any obligations to a service provider. The Consumers Association representative however maintained that the rate of \$7,500 for reconnection is “oppressive”, taking into account that “when disconnecting a consumer is merely a turning off of the meter” and that it “is completely outlandish and should be changed.”

The Association further noted the Company’s claim that the current disconnection/reconnection charge is subsidized by it and stated that in cases where consumers are not in a position or cannot afford to pay their water bills, queried the manner in which these consumers could afford to pay a disconnection fee of \$7,500. The Association opined that in comparison with other service providers, consumers enjoy reconnection fees which are far less than the \$7,500 GWI charge.

The Association opined that the fees may be high as the Company may be hiring private contractors to disconnect and reconnect consumers. The Association issued a call for there to be a detailed breakdown of the charges submitted to the Commission for scrutiny in order for it to determine whether the Company is allowing itself to be exploited by its contractors or anyone else.

The Association opined that as a result of the conflict between the “two parties”, the decision should be in favor of the consumers and that consumers should be given the benefit of the doubt during these proceedings.

The basis for the current review is provided for in section 77 of the Public Utilities Commission Act No. 19 of 2016 which authorizes the Commission to:

suspend, review, vary or rescind any decision or order made by it and, where under this Act a hearing required before any decision or order is made, such decision or order shall not be suspended, varied or rescinded without giving the parties affected by the decision or order a reasonable opportunity of being heard.

The rationale as provided by the Guyana Water Inc. for this review is contained in its application to the Commission dated the 5th day of October 2023 (received by the Commission on the 9th day of November 2023), which in brief argues that the credit limit as set by the Commission in Order No. 2 of 2022, that is to:

Increase its credit limit from \$10,000 to \$12,500 to allow consumers an extended grace period for payment. [page 6 of Order No. 2 of 2022]

conflicts with section 66 of the Water and Sewerage Act, No. 5 of 2002 which provides that:

A public supplier may cut off a supply of water to any premises if the owner or occupier is liable to pay charges to the public supplier and has failed to do so within 28 days of the receipt of notice requiring him to pay such charges. [emphasis PUC].

In arriving at its decision on the 21st day of October 2022 the Commission took into consideration the costing as provided by the Company, that is, the costs associated with reconnections and disconnections which exceed the rate of \$7,500 for residential consumers as set by the Commission in its Order No. 2 of 2018 and declined to vary its rate. The Commission during its deliberations for Order No. 2 of 2022 took into account the argument as put forward by Guyana Consumers Association, that the removal of water connections in its entirety is to remove the human right to potable water is in contravention of United Nations Resolution 64/292 which “*formally recognizes for the right to water and sanitation and acknowledges that clean drinking water and sanitation are essential to the realization of all human rights...*”. The Commission also took into consideration that the Association deemed the tariff to be a “draconian reconnection rate” and that it was the GCA’s view that there should be no reconnection fee or in the alternative a reconnection fee of \$100.

In balancing the consumers' interest with that of the operator's the Commission then determined that a credit ceiling of \$12,500 would allow consumers an extended grace period for payments. It should be noted that the credit limit of \$12,500 must be read in conjunction and not in isolation with other stipulations/directives in the Order.

The rationale for the Commission's previous decision is to be read against the backdrop of its wide regulatory powers which are derived specifically from section 21(5) of the Public Utilities Commission Act. No. 19 of 2016, which section empowers the Commission "*to do anything which in the reasonable opinion of the Commission is calculated to facilitate the proper discharge of its functions or is incidental thereto.*"

Therefore, the Commission determined that the increased credit limit was intended as a mechanism to allow delinquent consumers to avoid disconnection for minimum balances in light of the sharp reconnection charge and not as an absolution for non-payments.

GWI in its representation centered their concern on the credit limit of \$12,500, arguing that the current rate structure of the Company will exceed the 28 days as contained in section 66 of the Water and Sewerage Act in that the grace period determined by the Commission will give consumers a period of "at least five to six months" with no obligation to pay GWI. Further the Company's position is that a credit limit is entirely within the administrative remit of GWI and not that of the Commission.

The Company has further contended that the credit limit *vis-à-vis* the time period for payments impacts on GWI's cash flow. This is of interest, in that the statistical data as provided by GWI to the Commission as instructed by Order No. 2 of 2022, for the period January 2023-August 2023 and October 2023 shows that a total of 17,599 consumers were disconnected for balances ranging from as low as \$5 to as high as \$1,500,000. The Commission's forensic review of the data also revealed that for the said period the Company disconnected approximately 1,803 consumers whose balances were under the \$12,500 cap as set out in the Commission's Order. It is in the Commission's estimation assuming that all disconnected consumers would have paid their reconnection fees, the Company would have absorbed a loss of approximately \$2,800,000 for disconnections and reconnections for the category of consumers under the \$12,500 limit. Further the Commission observed that approximately 10,000 of its customer base were disconnected for outstanding balances over \$30,000, which outstanding balances at the time of disconnection were

within the range of \$500,000 to \$1,500,000 and which far exceeded the five to six months credit period and is therefore contrary to the Company's contention of the impact of the \$12,500 extended credit limit. In short, the Company's statistical submissions are not consistent with its claim that GWI is financially disadvantaged as a result of the credit limit as set by the Commission.

A further detailed examination revealed that it would appear that the Company may not have a uniformed system or criteria for disconnections as a consumer may be disconnected for an outstanding balance for marginal arrears as low as \$1,000 or as high as \$1,500,000.

It is worthy of note that as per GWI's contention on page 4 of Order No. 2 of 2022 GWI, after its internal review had stated that "in an effort to ensure fluid revenue sought to reduce the credit ceiling from \$30,000 to \$10,000, which has proven to be beneficial to both unmetered and metered customers as they now enjoy grace periods of approximately (5) five months and (3) three months respectively before the disconnection process is initiated."

DECISION

After careful deliberation and consideration of the representations made by all parties in particular the submissions made by the Guyana Water Inc. and the Guyana Consumers Association, the Commission hereby orders that the credit limit of \$12,500 as contained and increased by Commission by virtue of Order No. 2 of 2022 be rescinded and that the credit limit of \$10,000 as set by the Company shall be restored with immediate effect.

However, the Commission wishes to note that the Company should be cognizant of the quantum of arrears owed by consumers who are challenged in their ability to make payments *vis-à-vis* the reconnection tariffs. Recognizing that it is onerous to foist heavy reconnection fees on financially challenged consumers and that water is a critical necessity, the Commission wishes to reiterate that disconnections and reconnections of consumers often result in an added deficit to the Company.

The Commission hereby directs that all other tenets of the Order 2 of 2022 remain intact and enforceable, and that the Guyana Water Inc. is hereby directed and reminded that in keeping with the directions as enshrined in Order No. 2 of 2022 which states that the Guyana Water Inc. is required by the 15th day of each month to submit the following information for which strict compliance is mandatory. This accords with section 83 of the Public Utilities Commission Act No. 19 of 2016, which empowers the Commission to: "*...by order require a public utility or a Public Utilities Commission*

telecommunications undertaking to furnish periodically at such intervals as may be specified by the Commission, and at such other times as the Commission may require, a detailed report of finances and operations in such form and containing such particulars and verified in such manner as the Commission may specify, including accounts, reports or other information....”

Further, the Commission reiterates as contained in Order 2 of 2022 that GWI is under a mandatory obligation to supply to the Commission with the following:

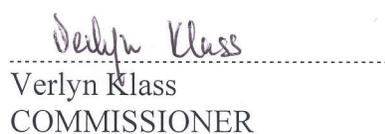
- (1) A list of the disconnected consumers and their outstanding balances at the time of disconnection.
- (2) The method of disconnection employed by the company for each consumer.
- (3) The total costs incurred by the company related to each method of disconnection.
- (4) The total number of consumers reconnected, and the costs associated with same.
- (5) The number of consumers who have entered into payment contracts, the quantum of the arrears and the contract period.

This Order is an opportune time for the Commission to further remind the Company of its binding instructions which were outlined in Order No. 2 of 2018, (*In the matter of an Application by the Guyana Water Inc. for a review of tariffs*) page 7 which specifically directed that the Guyana Water Inc diligently ensures that:

- Collection rates on annual billings should increase incrementally each year to a level of 96% by the end of December 2020.
- All disconnected consumers not legitimately reconnected should be revisited at least within 60 (sixty) days of being disconnected to ensure that these consumers are not illegally reconnected, and the collection of outstanding balances should be vigorously pursued.

Dated this the 29th day of December 2023


Dela Britton
CHAIRMAN


Verlyn Klass
COMMISSIONER


Dr. Nanda K. Gopaul
COMMISSIONER

