

IN THE COURT OF APPEAL OF THE SUPREME COURT OF  
JUDICATURE

APPELLATE JURISDICTION

GUYANA

CIVIL APPEAL NO. 79 OF 2001

BETWEEN:

GUYANA POWER AND LIGHT INC.

Appellants

- and -

PUBLIC UTILITIES COMMISSION

Respondents

BEFORE:

Hon. Madam Justice Desiree P. Bernard - Chancellor  
Hon. Madam Justice Claudette M.C. Singh - Justice of Appeal  
Hon. Mr. Justice Ian N. Chang - Justice of Appeal

Mr. M.F. Fitzpatrick, SC with Mr. T. Jonas for Appellants  
Mr. A. Chase, SC with Ms. P. Chase for Respondents

2003: May 19, 20  
*October 1*

J U D G M E N T

BERNARD, C.:

This appeal concerns orders made by the Respondents on 28<sup>th</sup> August, 2001 after hearings which sought clarification with respect to the introduction of new electricity rates from 1<sup>st</sup> July, 2001.

From the record of appeal filed it seems that the Respondents had written the Appellants on 10<sup>th</sup> July, 2001 requesting information as to whether the increased rates would be reflected in the electricity bills of consumers issued in July 2001, and whether consumers whose bills were prepared in July for consumption of electricity prior to 1<sup>st</sup> July, 2001 would be billed at the new rates. On 11<sup>th</sup> July, 2001 the Appellants responded indicating that the new rates would apply to bills issued in July 2001. On

12<sup>th</sup> July, 2001 the Respondents again wrote the Appellants requesting clarification as whether the bills issued in July 2001 for electricity consumed prior to July will attract the new rates. No response was received from the Appellants.

After two days of hearing the Respondents found that the increased rates could only be applied to consumption from 1<sup>st</sup> July, 2001, and made the following orders:

- (i) GPL shall bill customers for the actual consumption of electricity up to and including June 30, 2001 at the then existing rate.
- (ii) Any and all amounts collected in excess of those rates based on the July 1, 2001 rates to be credited to the account of each consumer for whom the excess or additional amounts were collected.
- (iii) Such credit must be reflected in the respective bills and not later than October 31, 2001.

It was further ordered:

- (i) That the new rates with effect from October 1<sup>st</sup>, 2001 will be billed to customers for electricity consumed with effect from 1<sup>st</sup> October, 2001.
- (ii) GPL is hereby ordered to pay to the PUC the cost of two hearings on 24<sup>th</sup> July and 2<sup>nd</sup> August, 2001, in the sum of One hundred and ninety-seven Thousand one hundred and eight dollars (\$197,108.00).

At the hearing of the appeal filed by the Appellants, Counsel made reference to the Electricity Sector Reform Act 1999 (ESRA), the Second Schedule of which established a temporary scheme governing rates for electricity. This scheme came to an end on 1<sup>st</sup> January, 2001. After this date the rates were governed by the First Schedule to the Act. He informed the Court that one of the reasons for privatisation of the electricity sector was that rates should be paid at market cost, and at the commencement the rates were heavily subsidised by the Government. It was later decided that the



subsidies would be removed gradually. The Government also agreed that the subsidy would be continued beyond 1<sup>st</sup> January, 2001 on a month to month basis. This agreement was reflected in letters dated January 9<sup>th</sup>, 2001, February 6<sup>th</sup>, 2001, April 3<sup>rd</sup>, 2001, May 2<sup>nd</sup>, 2001 and July 11<sup>th</sup>, 2001 which carried the subsidies to the end of September, 2001. In the last letter of July 11<sup>th</sup>, 2001 it was agreed that October 1<sup>st</sup>, 2001 until December 31<sup>st</sup>, 2001 the rates to be charged would be those determined in accordance with ESRA and GPL's licence.

Counsel for the Appellants contended that the legal liability of customers after 1<sup>st</sup> January, 2001 was to pay the formula rate as laid down in the First Schedule and described in the licence. The subsidy is a revenue subsidy, and not a consumption subsidy. With regard to the rates for May and June 2001, Counsel identified the provisos (i) and (ii) in the letter dated May 2<sup>nd</sup>, 2001 whereby the subsidy was payable for bills paid in May and June, and not for what would actually be paid in July, 2001. He contended that the problem arose because of Government's reduction in the subsidy from the end of June 2001. The increased charges related to bills under the letter agreements, and the Respondents in determining the issue related the increases to consumption. Counsel submitted that the Respondents misread the intent and meaning of the letter agreement of 2<sup>nd</sup> May, 2001, and he referred to the First Schedule of ESRA which sets out the procedure for changing rates. He contended that there was no need for the Appellants to apply to the Respondents for an increase in rates as this was provided for in the First Schedule. Further, the legal liability of the customer after 1<sup>st</sup> January, 2001 was to pay the formula rates as laid down in the First Schedule and described in the licence.

Counsel for the Respondents in reply identified the issue as being whether the Appellants can properly charge a customer for electricity consumed in one month at a rate fixed for a later month solely on the ground that the bill was issued in the later month. He drew the Court's attention to the last letter dated July 11<sup>th</sup>, 2001 sent by the Appellants to the Hon. Prime Minister. Paragraph 3 of that letter sets out the agreement between the parties that "(a) during July, August and September, 2001 GPL will charge its customers 'July, August and September, 2001' Actual Rates" as set forth in Schedule A attached hereto, (b) July, August and September 2001 Electricity Rates, determined in accordance with ESRA and the Licence, will be used in determining the amount of the subsidy, and are as also set forth in Schedule A attached hereto". There was also a proviso to the effect that Government would pay directly to GPL a subsidy, which is equal to the estimated amount of revenue which will be foregone arising from the difference between the July, August and September 2001 Electricity Rates and the July, August and September 2001 Actual Rates.

Counsel for the Respondents made reference to Sections 23 (b), 26(3) (a) & (b) and 27 (2) of ESRA as well as Section 7 (2) of the Second Schedule of ESRA which provides that rates reflected in a bill for retroactive consumption of electricity should be those in effect at the time the consumption of electricity occurred. It was also unfair to give customers only 24 hours' notice of increase of rates.

The rates to be charged by the Appellants for consumption of electricity by customers were governed by the Second Schedule of ESRA and covered the period from an appointed day (no doubt the day when the Appellants succeeded the Guyana Electricity Corporation as suppliers of electricity) until 1<sup>st</sup> January, 2001. The term "actual rates" as defined in the

