

*Case Name:*

**RE SUMMERSIDE, TOWN OF and MARITIME ELECTRIC COMPANY  
LIMITED**

**[1983] P.E.I.J. No. 29**

44 Nfld. & P.E.I.R. 128

130 A.P.R. 128\*

No. GDC-4088

**Prince Edward Island Court of Appeal**

**Nicholson, C.J., Large and MacDonald, JJ.**

**September 26, 1983**

(18 paras.)

**CASES NOTICED:**

Re Public Utilities Commission (1983), 41 Nfld. & P.E.I.R. 68; 119 A.P.R. 68 (P.E.I.C.A.), ref'd to. [para. 7].

Re Greater Winnipeg Cablevision Ltd. and the Public Utilities Board (1978), 93 D.L.R.(3d) 741 (Man.C.A.), ref'd to. [para. 8].

Re Allison MacLeod Ltd. & Ano. (1958), 14 D.L.R.(2d) 500, ref'd to. [para. 14].

**STATUTES NOTICED:**

Electric Power and Telephone Act, R.S.P.E.I. 1974, c. E-3, s. 8 [para. 5].

**COUNSEL:**

Ronald MacMillan and Roger Languille, for Public Utilities Commission

Benjamin Taylor, for Town of Summerside

William Lea, for Maritime Electric Company Limited

This case was heard on March 11, 1983, before Nicholson, C.J., Large and MacDonald, JJ., of the Prince Edward Island Court of Appeal.

[\*page129] On September 26, 1983, MacDonald, J., delivered the following judgment for the Court of Appeal:

1 MacDonald, J.:-- This matter has come before the court by way of a stated case made by the Public Utilities Commission (the "Commission"), pursuant to s. 17(1) of the Public Utilities Commission Act, R.S.P.E.I. 1974, c. P-31.

2 The Town of Summerside (the "Town") on July 30, 1982 applied to the Commission for a "Power Corridor" from Murray Corner, New Brunswick, via the N.B. - P.E.I. Interconnection Cable and Bedeque, Prince Edward Island substation to the Town, over conduits, poles, wires and other equipment owned or leased by Maritime Electric Company Limited (Maritime Electric). The purpose of obtaining the right to use the power corridor was to permit the Town to enter into negotiations with New Brunswick Electric Power Commission for the purchase of electrical power, which the Town hopes might be purchased more cheaply than it can produce it or purchase it from Maritime Electric.

3 On October 28, 1982, Mullally, J., granted the application of the Commission to state certain questions to this court. Because of the decision we have arrived at and our understanding of the position taken by counsel for the Town, we find it only necessary to answer certain of the stated questions:

4 The first question stated to the court is:

"1. For the purpose of section 8 of the Electric Power and Telephone Act, R.S.P.E.I. 1974, Cap. E-3 is the Town within the scope of the expression 'any other public utility' and as such entitled to make the application referred to ..."

5 Section 8 of the Electric Power and Telephone Act reads:

"8.(1) Every public utility that furnishes telephone services or electric energy to the public and having conduits, poles, wires or other equipment shall, for reasonable compensation, permit the use of the same by any other public utility furnishing either of the services wherever public conveniences and necessity requires the use, and when the use will not result in any detriment to the service already being rendered nor in any danger to the safety of the public.

(2) In case of failure to agree upon the use or as to the compensation therefor, any public utility or other person interested may apply to the commission, and, if, after an investigation, the commission ascertains that the use would be in the public interest and would not result in any impairment to the service already being rendered nor in any danger to the safety of the public, it may order that such use be permitted upon such terms and conditions and on the payment of such compensation as it may determine."

6 The facts of the stated case indicate that the Town owns its own generation and distribution facilities and sells electricity to customers within its corporate limits and to customers outside its corporate limits. The contention of the Town is that it falls within the scope of the expression "any other public utility".

7 In a recent decision of this Court, *Re Public Utilities Commission* (1983), 41 Nfld. & P.E.I.R. 68; 119 A.P.R. 68, (In Banco) it was held that the Commission had only the power to regulate that portion of the Town of Summerside's electrical program that related to the customers residing outside the corporate boundaries of the Town.

8 Counsel for Maritime Electric contended [\*page130] that there is a distinction between a corporation or municipality which operates a public utility and the activity which constitutes the corporation or municipality a public utility. He cited the case of *Re Greater Winnipeg Cablevision Ltd.* and the *Public Utilities Board* (1978), 93 D.L.R.(3d) 741 (Man.C.A.), where a cable television operator had rented the lines of the telephone company to transmit its signals. Subsequently, the telephone company increased its rental rate and the cable operator took the position that the telephone company had to have the approval of the Public Utilities Commission before the rates could be increased. The court stated that while the telephone company was a public utility in respect of certain matters, i.e., telephone and telegraph services, that did not mean it was a public utility for all purposes and held that the cable rentals did not fall within the jurisdiction of the Public Utilities Commission. As indicated by Guy, J.A., merely because a telephone company may be a public utility for one purpose would not make it a public utility if it wished to rent office space in a building it owned.

9 However, the latter case and its implications must be distinguishable from the case before us. Here the very activity which is under review is directly connected with and is within the scope of the Town acting as a public utility. The activity is directly connected with the transmission and furnishing of electricity. Because of the earlier decision of this court holding that the Commission would have authority to regulate the Town's electrical program as it affected customers outside the Town's corporate boundaries, we see no reason for not concluding that the Town is a public utility insofar as its electrical program applies to nonresidents of the Town.

10 The latter conclusion, however, does not completely answer the question as the Town contends that it should be allowed to make its application permitting it to use the power corridor and to supply electrical energy, both to customers inside and outside the Town's boundaries even though the Commission would only have jurisdiction over the "outside" portion of its operation. The Town alleges that once a finding is made that it is a public utility, then it [sic] one for all purposes.

11 For the reasons already given we cannot agree with this statement. The Town states that the matter of "outside customers" versus "inside customers" has relevance only to the jurisdiction of the Commission as regards the "public utility" status of the Town and not to the matters which the Commission ought to consider once the right of the Town to make application has been determined. Counsel for the Town went further and stated that s. 8 would be interpreted incorrectly if only outside customers were allowed to receive the prospective benefits of the power corridor. The "public interest", he stated, was not limited to outside customers.

12 In our opinion the "public interest" as it relates to s. 8 of the Electric Power and Telephone Act is confined to the "public" who are being served by the public utility. Section 8(1) is concerned with one public utility requesting to use the "conduits, poles, wires or other equipment" of another public utility. The sub-section provides among other things, that such an arrangement may be entered into where public convenience and necessity requires the use. It is difficult to see why a person who is not being served by a public utility, as in the present case the inside customers, should be dealt with when consideration has to be given to public convenience and necessity.

**13** Similarly, s. 8(2) speaks of the Commission ascertaining whether or not the use would be in the public interest [\*page131] and would not result in any impairment to the service already being rendered. Again, if a person is not being served by one of the utilities subject to the application, there is no service being presently rendered to him.

**14** In ascertaining the meaning to be placed on the words "public interest" in s. 8(2) the question may be asked why should the Commission be concerned with the interest of the public that is not served by the public utility in the context of s. 8. Section 8 is not a section that empowers the Commission to be the watchdog for the general public or all citizens of Prince Edward Island, but only those who are being served by the public utilities in question: *Re Allison MacLeod Ltd. & Ano.* (1958), 14 D.L.R.(2d) 500 (P.E.I.S.C. - In Banco).

**15** While some argument might be made that the Commission, under s. 8 should guard against any danger befalling the general citizenry as the result of the approval of an application under that provision, there is nothing contained therein that would indicate that it would be necessary for the Commission to ascertain that the approval must be in the interest of the whole of the general public. "Public interest" as contained in s. 8(2) must be equated with the same public referred to in s. 8(1), i.e., public convenience and necessity, and there it can only be referring to the public served by the involved public utilities.

**16** Finally, the argument of the Town that a public utility for one purpose means a public utility for all purposes, fails for the reason that that portion of the Town's energy program which supplies outside customers and is, therefore, deemed to be a public utility must be completely divorced from the portion that supplies the in-town customers. It is as if there were two separate companies owned by the Town, one of which is a public utility. Viewed in this manner, when the company which performs the duty of a public utility makes an application under s. 8 of the Electric Power and Telephone Act, there can be no justification for the company that is not a public utility to seek any benefits from any contract that the first company might make. Therefore, "public interest" in s. 8(2) insofar as it refers to the Commission ascertaining if the use would be in the public interest, is limited to those people being served by one of the public utilities being dealt with. We would agree with the counsel for Maritime Electric Company Limited when he states that the legislature never intended that a corporation which carries on unregulated activities, activities which do not constitute it a utility, would use rights conferred by the legislature for the purpose of serving its customers in its non-utility activities.

**17** During the course of the hearing it was our understanding that if we were to decide that the Town would not be allowed to use the power corridor for its inside customers, which consists of two-thirds of its customers, then it would not be interested in pursuing the application. That being the case, we can see no purpose in answering the several other questions submitted to the court.

**18** Costs may be spoken to.

Order accordingly.