



GUYANA

ACT NO. 26 of 1990

PUBLIC UTILITIES COMMISSION ACT 1990

I assent.

H. D. HOYTE
President

1990-12-31

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AN ACT to make provision for the establishment, functions and procedure of the Public Utilities Commission and for matters connected therewith.

Enacted by the Parliament of Guyana:—

A. D. 1990

PART I
PRELIMINARY

1. This Act may be cited as the Public Utilities Commission Act 1990 and shall be deemed to have come into operation on the 1st October 1990. Short title and commencement.
2. This Act shall, — Application.
 - (a) with effect from its commencement, apply to every public utility engaged in providing any service specified in section 4(1)(a) or (b); and
 - (b) with effect from such date as may be specified by the Minister, by order, to any public utility engaged in providing any other service referred to in section 4(1) (c) as may be specified in that order:

Provided that an order under paragraph (b) may specify that this Act shall apply to any public utility specified in the order with such modifications, restrictions, exclusions and adaptations as may be specified therein.
3. (1) In this Act — Interpretation
 - (a) “chairman” means the chairman of the Commission, and includes an *ad hoc* chairman appointed under section 8;
 - (b) “Commission” means the Public Utilities Commission established by section 5;

- (c) "compensation" includes gain and reward;
- (d) "consumer", in relation to a public utility, means a person making use of any service provided by the public utility;
- (e) "licence" means a permission granted to a public utility authorising it to provide a service;
- (f) "member" means a member of the Commission and includes an *ad hoc* member appointed under section 8 and the chairman;
- (g) "public utility" has the meaning assigned to it by section 4;
- (h) "rate" means every rate, fare, toll, charge, rental or other compensation or payment whatsoever for any service provided by a public utility;
- (i) "service" includes the accommodation afforded consumers by a public utility, the supplying or furnishing of any commodity derived directly from the purposes in which a public utility is engaged and the use and accommodation afforded the public by the facilities employed by or in connection with any service provided by a public utility; but does not include any other commodity, by-product or article produced or manufactured by a public utility or any associate thereof that is offered for sale to the public at retail or wholesale prices.

(2) In this Act, where a public utility has been granted a licence to operate only in any part or parts of Guyana, references to Guyana shall be construed as references to such part or parts of Guyana.

Definition
of "public
utility".

4. (1) In this Act "public utility" means any person (including the lessee, trustee, receiver or liquidator of such person) who or which owns or provides the following services —

- (a) the production, generation, storage, transmission, sale, delivery, furnishing or supplying, directly or indirectly to or for the public, of electricity;
- (b) the conveyance or transmission of messages or communications by telephone, telegraphy or wireless telegraphy;
- (c) any other service specified by the Minister, by order, being any of the following services, —
 - (i) carriage of passengers, in motor buses or hire cars;
 - (ii) airport and airline services;

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- (iii) carriage of goods for hire or reward by goods vehicles;
- (iv) lighterage or cargo handling;
- (v) dockage, wharfage or related cargo services; and
- (vi) water supply services, except retail deliveries.

(2) Notwithstanding anything contained in subsection (1), any person, not otherwise a public utility, who or which provides any service only to himself or itself or his or its employees or tenants, shall not, where such service is not resold to or used by others, be deemed to be a public utility.

(3) In this section "motor bus", "hire car" and "goods vehicle" have the same meanings as in the Motor Vehicles and Road Traffic Act.

Cap. 51:02

PART II
PUBLIC UTILITIES COMMISSION

5. (1) There is hereby established a Commission to be known as the Public Utilities Commission which shall consist of a chairman and four other members to be appointed by the Minister from among persons appearing to the Minister to be qualified as having had experience of, and shown capacity in, matters pertaining to the functions of the Commission.

Establishment
of Public
Utilities
Commission.

(2) The Commission shall be a body corporate.

6. Subject to the provisions of section 9, the members of the Commission shall hold office for a period of three years but shall be eligible for re-appointment on the expiry of their term.

Term of
appointment
of members.

7. The chairman and other members of the Commission shall be paid such salary and allowances as may be determined by the Minister.

Emoluments
of members.

8. (1) Where in the opinion of the Minister the chairman or any other member is interested in any matter before the Commission (otherwise than as a consumer in relation to any public utility), the Minister may appoint another person as *ad hoc* chairman or other member, as the case may be, temporarily for the purposes of that matter, and while the Commission deals with the aforesaid matter, the chairman or other member so interested shall not participate in its sittings.

Ad hoc
members.

(2) The remuneration and the other terms and conditions of appointment of an *ad hoc* chairman or other member shall be such as may be determined by the Commission.

9. (1) The Minister may terminate the appointment of the chairman or any other member for good and sufficient cause, and in particular, if the chairman or other member —

Termination of
appointment
and resignation
of member.

- (a) becomes of unsound mind or incapable of carrying out his duties;
- (b) becomes bankrupt or compounds with his creditors;
- (c) is convicted of any offence;
- (d) is guilty of misconduct;
- (e) is absent, except on leave granted by the Commission, from all meetings of the Commission held during two consecutive months, or during any three months in any period of twelve months;
- (f) fails to carry out any of the duties or functions conferred or imposed on him by this Act:

Provided that the appointment of the chairman or other member shall not be terminated under this subsection unless he has been given a reasonable opportunity of being heard.

(2) A member may resign from his office by letter addressed to the Minister.

Disqualifica-
tion of chairman
or other member.

10. (1) The chairman or any other member shall not directly or indirectly —

- (a) hold, acquire or become interested in any share, stock, debenture or other security of any public utility;
- (b) have any interest in any contract or agreement for the construction of any works or the providing of any service for or by any public utility;
- (c) have any interest in any device, appliance, machine, article, patent or patented process, or any part thereof, which is required or used by any public utility for the purpose of its equipment or service:

Provided that the chairman or any other member shall not be deemed to have any interest in a public utility by reason of the fact that he uses a motor bus or hire car of any public utility or that he is the user or subscriber of a telephone, or the user or purchaser for personal or domestic purposes of electric current.

(2) Any person who holds or has any interest as is referred to in subsection (1) (a), (b) or (c) shall not be appointed as the chairman or other member and in case he is so appointed, when the matter comes to the knowledge of the Minister, he shall terminate the appointment of such person as chairman or other member:

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Provided that the appointment of any person as chairman or other member shall not be terminated under this subsection unless he has been given a reasonable opportunity of being heard.

(3) Where the chairman or any other member has, after he has been appointed the chairman or other member, acquired any interest as is referred to in subsection (1) (a), (b) or (c), he shall be deemed to be guilty of misconduct.

11. The terms and conditions of appointment of the chairman or any other member, other than those referred to in sections 6 to 10 (inclusive), shall be such as may be determined by the Minister.

Other terms and conditions of appointment.

12. The appointment, termination of appointment and removal of the chairman and other members shall be published in the *Gazette*.

Notification of appointment and removal.

13. It shall be the duty of the chairman and other members to make and subscribe an oath or affirmation that he will faithfully, fully and impartially, and to the best of his ability, discharge the trust, and perform the duties devolving upon him by virtue of his appointment, which oath or affirmation may be taken before any magistrate or justice of the peace, and shall be deposited by the chairman or other member with the Head of the Presidential Secretariat.

Oath of Office

14 (1) There shall be constituted a panel of assessors (hereinafter referred to as the "public utilities panel") consisting of not more than six persons to be appointed by the Minister, after consultation with the public utilities to which this Act applies, from among persons appearing to the Minister as having had experience of, and shown capacity in, matters relating to or connected with the functions of the Commission.

Assessors.

(2) Sections 10, 12 and 13 shall *Mutatis Mutandis* apply to the members of the public utilities panel.

(3) The members of the public utilities panel shall be paid such salary or allowance, and shall be subject to such other terms and conditions of appointment, as may be determined by the Minister.

(4) Where for the purposes of any particular complaint, hearing or other proceeding of the Commission, the Commission, either upon application by any of the parties thereto or otherwise, deems it expedient, there shall be appointed to assist the Commission two assessors from the public utilities panel.

(5) In appointing such assessors regard shall be had to the particular case or proceeding to be heard so that, as nearly as the circumstances may permit, the persons selected as assessors shall be conversant with and have knowledge of the technicalities that may arise in considering such particular complaint or in the course of such hearing or other proceeding.

(6) Any assessor so appointed shall, for the purposes of such complaint, hearing or other proceeding in respect of which he is appointed and subject to the provisions of this Act and of any regulations, exercise all the powers and functions of a member except that the decision of the Commission shall be the decision of the members only, (excluding any such assessor) or a majority of such members, as the case may be.

Sittings of
Commission.

15. (1) The headquarters of the Commission shall be at Georgetown, but the Commission may hold its sittings at any other place in Guyana.

(2) Where the chairman cannot for any reason attend any sitting of the Commission, he may authorise in writing any other member to preside at the sitting.

(3) No sitting or order of the Commission shall be deemed to be invalid or ineffective only on the ground that there was a vacancy in the Commission or any member did not participate in a sitting of the Commission:

Provided that at the chairman, or other member authorised by the chairman under subsection (2), and two other members participated in the sitting of the Commission.

Procedure
Commission

16. Subject to the provisions of this Act the Commission may regulate its own procedure and may make rules for that purpose.

PART III OFFICERS AND EMPLOYEES

Officers and
employees of
Commission

17. (1) The Commission may, with the approval of the Minister, employ a secretary, and such other officers and employees as are required for the proper conduct of the business of the Commission:

Provided that the Minister may direct that his approval shall not be necessary for the employment by the Commission of any class of officers or other employees.

(2) The remuneration and other terms and conditions of employment (including the payment of any pension, gratuity or other like benefits by reference to their service) of the secretary and other officers and employees of the Commission shall be such as may be determined or varied by the Minister from time to time.

Employment
of experts

18. The Commission may at any time, with the approval of the Minister, retain the services of professional persons and determine the remuneration payable to such persons and their other terms and conditions of appointment.

(19) (1) For the purposes of any enquiry or examination conducted by it or in the performance of any of the other functions conferred on it by this Act, the Commission may, with the consent of the appropriate authority, utilise the services of any public officer or other employee of the Government.

Obtaining services of public officers.

(2) In this section "appropriate authority", in relation to any public officer or other employee of the Government, means the person or authority vested with power to appoint such public officer or employee of the Government to the position he holds in the Government.

20. (1) Section 28 of the Public Corporations Act 1988 shall *mutatis mutandis* apply to public officers, persons (not being public officers) holding appointments in the public service, and teachers, referred to therein, who are seconded, temporarily transferred or transferred to the Commission as if the Commission were a public corporation.

Superannuation benefits. No. 21 of 1988.

(2) The Commission may, with the approval of the Minister, make such provisions as it deems appropriate for the payment of pension, gratuity or other allowances in respect of the service of its officers and other employees on their retirement from their employment with the Commission.

PART IV FUNDS AND RESOURCES

21 (1) The funds and resources of the Commission shall consist of —

- (a) sums paid to, or recovered by, the Commission under any provision of this Act;
- (b) any property or investment required by, or vested in, the Commission;
- (c) moneys earned or arising from any property or investment acquired by, or vested in, the Commission;
- (d) sums provided to the Commission by or under any appropriation law;
- (e) sums allocated from time to time to the Commission from loan funds;
- (f) sums borrowed by the Commission for the purpose of meeting any of its obligations or the performance of any of its functions; and
- (g) all other sums or property which may in any manner become payable to or vested in the Commission in respect of any matter incidental to its functions.

Funds and resources of Commission.

(2) The charges on any amount which may be allocated to the commission from any loan funds shall be met by the Commission except that all or any part of such charges may be met out of moneys provided by or under any appropriation law.

(3) For the purposes of this section, the expression "loan funds" means such sums as may be made available from time to time to the Government by way of loan.

PART V FUNCTIONS

Functions of
Commission.

22. (1) The Commission shall perform the functions conferred on it by this Act.

(2) The Commission has power to do anything which in the opinion of the Commission is calculated to facilitate the proper discharge of its functions or is incidental thereto.

(3) Subject to the provisions of this Act, in the exercise and discharge of its functions the Commission shall not be subject to the direction or control of any other person or authority.

Economic
research

23. The Commission may establish an office of economic research which shall have the following functions —

- (a) collecting and compiling any information which may be of assistance to the Commission in the exercise or discharge of its functions under this Act;
- (b) keeping the information so collected and compiled up-to-date;
- (c) conducting studies of economy and efficiency; and
- (d) making such valuations of the property of a public utility as are required by the Commission;
- (e) such other functions as are incidental to any of the functions mentioned above.

Advisory
function of
Commission.

24 The Commission shall act in an advisory capacity to the Minister in such matters concerning public utilities as are referred to it by the Minister.

Investiga-
tions by
Commission.

25. For the purposes of the exercise and discharge of the functions of the Commission under this Act, the Commission shall have power to initiate and conduct investigations into the operations and standards of service of any public utility.

PART VI
SERVICE AND FACILITIES

26. (1) Every public utility shall maintain its property and equipment in such condition as to enable it to provide, and shall make every reasonable effort to provide service to the public in all respects safe, adequate, efficient, reasonable and non-discriminatory and shall make all such repairs, changes, alterations, substitutions, extensions and improvements in or to such service as shall be necessary or proper for the accommodation and convenience of the public or as shall be necessary to incorporate, from time to time, advances in technology.

Duty to provide adequate service.

(2) Where the Government and a public utility have entered into an agreement as to the standard or quality of service to be provided by the public utility, or the licence granted to the public utility makes provision in respect thereof, the service provided by the public utility shall be deemed to be reasonable or adequate if the aforesaid standard or quality is achieved and maintained and such agreement or provision in the licence shall be taken into account by the Commission in making any order under section 27.

27. (1) Where the Commission, after a hearing upon its own motion or upon a complaint, finds that the service provided by a public utility is not in accordance, with section 26, the Commission shall by order determine and prescribe the adequate or reasonable service to be provided by the public utility, including all such repairs, changes, alterations, extensions, substitutions or improvements and facilities as shall be reasonably necessary and proper for the accommodation and convenience of the public; and may also direct the public utility to pay to any consumer compensation for loss or damage suffered by the consumer on account of the failure of the public utility to comply with section 26.

Proper service established on complaint.

(2) Where the technology employed is out-of date or where any advance in technology, which could result in an improvement in the service or in reducing its cost, has not been incorporated in the service provided by a public utility in a timely manner, the Commission shall have power to issue, by an order under subsection (1), directions to the public utility to take such measures as the Commission deems appropriate to remedy the inadequacy of the service provided.

(3) An order under subsection (1) shall specify reasonable time to comply with the same or, where the compliance is to be in stages different times may be specified to comply with each stage.

28. (1) Where the Commission, after hearing upon its own motion or upon a complaint, finds that an extension by any public utility of its existing service would in the opinion of the Commission provide sufficient business to justify the construction and maintenance of such extension, the Commission may order the public utility to make such extension to its service as the Commission may deem reasonable and expedient.

Commission may order extension of service.

(2) Where a licence granted to a public utility restricts its service to specified areas, an order under subsection (1) shall not require it to extend the service to any area outside the specified areas.

(3) For the purposes of this section "sufficient business" means such business as will yield such gross revenue, within the extended area of service at the rates for the time being authorised, as will produce a sum not less than the cost of operations, maintenance and depreciation and will produce a reasonable return on the capital outlay in respect of such extension;

Provided that the Minister and a public utility may agree as to what shall be "sufficient business", in relation to that public utility and where any such agreement is arrived at, the Commission shall have regard to that agreement in determining whether the extension of the service will provide sufficient business.

Development
and expansion
programme

29. (1) Where the Government and a public utility have entered into an agreement as to a development and expansion programme in respect of the service provided or to be provided by a public utility, and, in the opinion of the Minister, the public utility has not implemented the programme in a timely manner, the Minister may make a complaint to the Commission.

(2) Where the Commission, after giving the complainant and the public utility against which the complaint is made a reasonable opportunity of being heard, is satisfied that the public utility has failed or refused to implement the development and expansion programme in a timely manner, the Commission may by its order—

- (a) direct the public utility to pay to the Government such penalty as it thinks fit, being not less than ten thousand dollars;
- (b) recommend to the Government the cancellation of the licence granted to the public utility; or
- (c) make such other order as it thinks appropriate having regard to the facts and circumstances of the case.

(3) Nothing in subsection (2) shall be deemed to prevent or restrict in any manner any power vested in the Minister or the Government to revoke, suspend or cancel any licence granted to a public utility under the terms and conditions of the licence, the agreement entered into between the Government and the public utility, any written law or otherwise.

Restrictions
on ceasing
operation
of service

30 Except where a licence is revoked, suspended or cancelled or expires, and in accordance with the conditions of the licence, or such revocation, suspension or cancellation, no public utility shall cease from its operations or any part of them without first obtaining the permission of the Commission.

31. Subject to the provisions of section 26 (2), the Commission may make rules prescribing —

- (a) the quality and standard to be achieved and maintained by a public utility in respect of any service provided by it, including measures to be taken for the protection of the environment; and
- (b) the conditions to be contained in, and to become part of, all agreements entered into by a public utility and consumers in respect of any service provided by it.

Power to prescribe quality and standard of service and conditions relating to service to be contained in agreement.

PART VII RATES

Principles

32. (1) Every rate made, demanded or received by any public utility, from persons making use of the service provided by it, shall be fair and reasonable and in conformity with such rules as the Commission may from time to time prescribe.

Rates to be just and reasonable.

(2) In determining the rate that a public utility may charge for any service provided by it, the Commission shall have regard to consumer interest and investor interest and to the rate of return obtained in other enterprises having commensurate risks.

33. Where the Government and a public utility have entered into an agreement specifying —

- (a) the rate of return the public utility is entitled to in respect of the capital invested or dedicated for providing any service; or
- (b) the principles on the basis of which such rate of return is to be determined,

Agreement between the Government and a public utility regarding rate of return.

the Commission shall give effect to such agreement in determining the rate a public utility is entitled to demand or receive from any consumer or class of consumers or generally from all consumers in relation to the service.

34. (1) No public utility shall provide to any person any service at a rate which is unduly preferential or discriminatory.

Prohibition against discrimination in the matter of rate.

(2) Nothing in subsection (1) shall be deemed to prevent a public utility from demanding and receiving different rates from different classes of consumers.

Cost of
production or
generation.

35. (1) For the purpose of determining the cost of providing any service by a public utility, so as to determine the rate a public utility is entitled to demand and receive, the Commission shall have power and authority to investigate and decide whether any expenditure incurred by the public utility is justified or reasonable.

(2) Where a public utility does not itself produce or generate that which it distributes, transmits or supplies to the consumers but obtains the same from another source, the Commission shall have the power and authority to investigate the cost of such production or generation in any investigation or enquiry as to the reasonableness of the rate being charged or proposed to be charged by the public utility for any service provided by it.

Joint use of
facilities.

36. (1) Any public utility having tracks, conduits, poles, wires, switchboards, exchanges, works or other equipment shall, for a reasonable compensation (which in the case of any dispute shall be decided by the Commission on the complaint of any of the parties to the dispute), permit the use of the same by any other public utility where —

- (a) convenience or necessity requires such use; and
- (b) such use will not result in irreparable injury to the owners or other users of such equipment, or in any substantial detriment to the service provided by or to such owners or other users.

(2) The Commission may, after investigation and hearing as to whether it —

- (a) is in furtherance of convenience to, or the necessity of, the public, including specifically, but not exclusively, the public interest in service that is safe, adequate and economical;
- (b) will result in irreparable injury or detriment to the owner or user of such facilities or equipment without adequate compensation; and
- (c) is just and reasonable,

by order require that two or more public utilities enter into such arrangements, for interchange, interconnection, joint or combined or other arrangements for the provision of any service, upon such terms and conditions as the Commission may determine.

(3) The use of any facility or equipment, or the provision of any service, referred to in subsection (1) or (2) shall be permitted by the public utility required to do so, and the terms and conditions and compensation referred to therein shall be deemed to be lawful terms and conditions and compensation to be observed, followed and paid.

(4) An order of the Commission in respect of any matter referred to in subsection (1) or (2) may be modified or revoked by the Commission upon its own motion or on receipt of a complaint from any public utility or consumer affected thereby.

37. (1) It shall be lawful for a public utility to demand and receive, or for the Commission to fix, a uniform rate, to be charged from all consumers or any class of consumers throughout Guyana, or throughout any region into which Guyana is divided, for any service, provided by a public utility, notwithstanding that the cost of providing such service in any area of Guyana is different from the cost of providing the service in any other area of Guyana.

Uniformity
of rate.

(2) The Minister may, having regard to all relevant matters such as the distribution of the population of Guyana, the need for making the best use of the natural resources of Guyana and the needs of the economic development of Guyana, direct the Commission to fix a uniform rate throughout Guyana, or throughout any region into which Guyana is divided, for any service provided by a public utility and the Commission shall comply with the direction.

Change of Rate

38. (1) The rate being charged immediately before the commencement of this Act by any public utility for any service rendered by it shall not be increased after such commencement except in accordance with the provisions of this Act.

Continuance
of existing
rate.

(2) Without prejudice to the provisions of subsection (1), the rate being charged, immediately before the commencement of this Act, by any public utility for any service referred to in section 4 (1) (b) shall not be increased, for a period of three years from such commencement except, and then only to the extent to which it is justified, on the occurrence of any of the following events

- (a) a substantial increase in the average for a period of six months of the highest rate at which United States dollar is lawfully sold in Guyana, over the highest rate at which United States dollar was lawfully sold in Guyana during a period of thirty days immediately preceding the commencement of this Act;
 - (b) a change in long distance charges payable to foreign correspondents;
 - (c) the costs of providing service to interior areas of Guyana specified in any expansion and service improvement plan, agreed to by the Government and the public utility, are proved to be substantially higher than as stated in that plan;
- or

- (d) any natural disaster or other act of God leading to extensive destruction of plant and equipment;

Provided that the public utility has taken out and maintained full insurance coverage of loss to property, plant and equipment and business interruption, caused by such natural disaster or other act of God, and the sums paid by the insurer or insurers are not sufficient to meet the expenses of restoring the services provided by the public utility affected thereby, or to compensate the public utility for its loss of revenue arising from the business interruption as a result thereof.

Tariffs
filing.

39. (1) Every public utility shall, within three months of the commencement of this Act, and thereafter periodically within such time as may be specified by the Commission, file with the Commission in such form as it may specify, tariffs showing all rates established by the public utility and shall keep copies of such tariffs open to the public for inspection.

(2) Subject to the provisions of this Act, the rates specified in such tariffs shall be the authorised rates of such public utility until changed in accordance with the provisions of this Act.

Adherence
to tariffs.

40. (1) No public utility shall, directly or indirectly, demand or receive, for any service provided by it, a greater or lesser rate than the rate specified in the tariffs of such public utility applicable thereto, filed in the manner prescribed by this Act or determined by the Commission.

(2) Notwithstanding anything contained in this section, it shall be lawful for a public utility, with the permission of the Commission, to demand and receive from a consumer any special rate agreed to by the public utility and such consumer.

Notice of
change of
rate by public
utility.

41. (1) Where a public utility is desirous of changing any rate or rates being charged by it for any service provided by it, the public utility shall give thirty days notice to the Commission and file with that notice a tariff stating the new rate or rates.

(2) A notice under subsection (1) shall state —

- (a) the existing and duly established rate or rates;
- (b) the changes proposed to be made in the rate or rates;
- (c) the date from which the changed rate or rates are to take effect;
- (d) the reasons for the change in rate or rates; and
- (e) any other particulars specified by the Commission.

(3) Where a public utility has filed with the Commission any tariff stating any new rate or rates in respect of any service provided by it, the Commission may, either upon complaint or upon its own motion, enter upon a hearing to determine whether such rate or rates are fair and reasonable and where the Commission does not enter upon such hearing within thirty days of the filing of the tariff stating the new rate or rates, such new rate or rates shall be deemed to be the authorised rate or rates for the service.

42. (1) Where the Commission has entered upon a hearing as stated in section 41 (3) in respect of any new rate proposed to be charged by a public utility for any service, pending such hearing and the decision thereon, the Commission may, upon delivering to the public utility affected thereby a statement in writing of its reasons therefor, at any time before such new rate becomes effective, suspend the operation of such rate for a period not longer than six months from the time the rate would otherwise become effective.

Suspension
of new rate.

(2) Where the operation of a new rate is suspended under subsection (1), the rate in force, when the tariff stating the new rate was filed under section 41 (1), shall continue in force during the period of suspension, unless the Commission establishes a temporary rate under section 43.

43. (1) The Commission may, in any proceedings involving the rate or rates charged or to be charged by a public utility, initiate either upon its own notion or upon a complaint, if the Commission is of the opinion that the public interest so requires, by order, fix temporary rate or rates to be charged by such public utility pending the final decision in such proceedings.

Temporary
rates.

(2) Any temporary rate or rates fixed under subsection (1) shall be effective from a date specified in the order until the final decision in the proceedings of the Commission referred to in subsection (1), unless modified or terminated sooner by the Commission.

(3) Where the Commission, upon examination of any annual or other report or of any papers, records, books or other documents or on the appraisal of the property of any public utility, is of the opinion that any rate or rates charged by such public utility are producing a return in excess of a fair return upon the fair value of the property of such public utility, used or useful in the service provided by it, the Commission may, by order, fix for a trial period not exceeding six months such temporary rate or rates to be observed by such public utility as, in the opinion of the Commission, will produce a fair return upon such fair value, and the rate or rates so fixed shall be effective from a date specified in the order of the Commission and shall become permanent at the end of such trial period, unless modified or terminated at any time during such trial period by the Commission.

(4). No order shall be made by the Commission under this section fixing a temporary rate or modifying or terminating such temporary rate without giving the public utility and the consumers affected thereby a reasonable opportunity of being heard, having regard to the fact that the rate proposed to be fixed or modified or terminated is only a temporary rate.

Burden of proof.

44. In any proceeding upon the motion of the Commission involving any proposed or existing rate charged by any public utility for any service, or in any proceeding upon complaint by a consumer involving any proposed increase in any rate charge by any public utility for any service, the burden of proof to show that the rate involved is fair and reasonable shall be upon the public utility.

Fixation of rate.

45. Where the Commission —

- (a) after a hearing upon its own motion or upon complaint, finds that any rate being charged by any public utility for any service is unfair or unreasonable; or
- (b) at the conclusion of any hearing under section 41 (3) concludes that any new rate filed by a public utility for any service is unfair or unreasonable,

the Commission shall determine the fair and reasonable rate (including the maximum and minimum rates) to be thereafter observed by the public utility and shall fix the same by order served on the public utility and such rate shall constitute the legal rate the public utility is entitled to demand and received for the service, until such rate is changed in accordance with the provisions of this Act.

Adjustment of
moneys due on
variation of rates.

46. (1) Where any rate as finally determined by the Commission is in excess of the rate existing prior to the filing with the Commission by a public utility of a tariff stating a new rate under section 41(1), or of the rate fixed temporarily under section 43, then the public utility shall be permitted by the Commission to amortize and recover, by means of a temporary increase in the rate as finally determined, the sum which represents the difference between the gross income actually received by the public utility during the period commencing with the date on which, under the notice given by it to the Commission, the new rate was to have come into effect and ending on the date on which the rate as finally determined by the Commission became effective, and the gross income which would have been received by the public utility during the same period if the rate as finally determined by the commission had been in effect.

(2) Where, consequent on an order finally determining the rate that a public utility is entitled to demand and receive for any service provided by it, any consumer becomes entitled to receive any sum from the public utility, it shall be adjusted towards any sum likely to become due to the public utility from the consumer for any future period or paid in cash to the consumer, as the Commission may direct.

PART VIII
OTHER REGULATORY PROVISIONS

47. (1) No public utility shall issue any stocks, shares or debentures or other evidence of indebtedness, payable after more than one year from the date thereof, unless it has first obtained the approval of the Commission for the proposed issue.

Approval by
Commission to
issue of securities.

(2) The Commission may grant the approval for the proposed issue in the amount applied for or in any lesser amount and subject to such conditions as it may deem reasonable or necessary to impose.

48. The Commission may prescribe by rules the forms of all books, accounts, papers and other records required to be kept by every public utility and every public utility shall keep and render its books, accounts, papers and other records accurately and faithfully in the form and manner so prescribed by the Commission, and shall comply with all directions of the Commission relating to such books, accounts, papers and other records.

Form of accounts.

49. (1) Every public utility shall keep and render to the Commission in the form and manner referred in section 48 uniform accounts of all business transacted by it in relation to the service provided by it.

Uniform
accounts.

(2) Every public utility engaged directly or indirectly in any business, other than the provision of any service, shall, if so required by the Commission, keep and render separately to the Commission, in the form and manner referred to in section 48, the accounts of all such other business, and the provisions of this section and section 48 shall apply to the books, accounts, papers and other records of such other business in the same manner as they apply to the books, accounts, papers and other records of the public utility in respect of the service provided by it.

50. (1) Every public utility which requires its consumers, as a condition precedent to receiving any service offered by such public utility, to make cash deposits with the public utility to secure payment of the sums payable for availing of such service, shall pay interest on such cash deposits at an annual compound rate of eight per cent or such other rate as may be specified in an agreement between the Government and the public utility.

Interest on
customer
deposits.

(2) The amount payable by a public utility to a consumer by way of interest under subsection (1) shall be paid to the consumer along with the cash deposit upon termination of the service for any reason, other than unjustifiable non-payment of the sums due to the public utility from the consumer on account of the service provided by the public utility to the consumer:

Provided that interest shall not be payable by the public utility upon deposits held by the public utility for less than six months:

Provided further that the consumer may, upon application therefor in the form prescribed by the Commission by rules and supplied by the public utility, obtain periodic payments of accumulated interest during the continuance of the provision of the service when the interest equals or exceeds one hundred dollars.

(3) Every public utility to which subsections (1) and (2) apply, shall disclose to the consumer, with its final billing statement in each calendar year, the amount of interest which has accumulated on the cash deposit during that calendar year and the total amount of interest which has accumulated and has not been paid to the consumer under subsection (2).

Obligation to bill.

51. Every public utility shall supply every consumer every month, or at such other intervals as may be agreed to by the Commission in relation to any consumer or class of consumers, a bill showing the sum payable by the consumer on account of any service provided by the public utility during the preceding month, or other relevant period as may be agreed to by the commission.

PART IX PROCEDURE

Complaint.

52. (1) A complaint under this Act against a public utility may be made by the Minister or any person (including any other public utility) having an interest in the subject-matter.

(2) A complaint shall state the particulars of the act or omission complained of, the public utility against which the complaint is made and the relief sought.

(3) The Commission may make rules prescribing the form in which any complaint shall be made:

Provided that a complaint that furnishes the particulars and information required to be provided by the form shall not be rejected only on the ground that it is not strictly in accordance with the form.

Notice of complaint.

53. Upon the filing of a complaint against a public utility the Commission shall cause a copy thereof to be served upon the public utility, accompanied by a notice from the Commission requiring the public utility to satisfy the complaint, or to answer the same in writing, within such reasonable time as may be specified by the Commission in such notice:

Provided that the Commission shall have power, for good and sufficient cause shown, to extend the time so specified.

Security.

54. The Commission may require the complainant, not being the Government, to give security for the costs of the hearing and investigation of the complaint.

55. (1) The Commission may permit one or more persons to make a complaint, against a public utility, on behalf of a class of consumers or all consumers in relation to that public utility.

Representative
complaint.

(2) Where a complaint has been made under subsection (1) on behalf of a class of consumers, the Commission shall cause to be published at the expense of the complainant or complainants, in a prominent place at the headquarters of the Commission and in a newspaper having circulation in Guyana, a notice stating the particulars of the complaint and that the complainant or complainants have sought permission to make the complaint on behalf of the class of consumers specified in the notice or all consumers in relation to the public utility, the date, time and place of the hearing of the complaint, and that any person belonging to that class of consumers or any of such consumers, who is desirous of being heard in respect of the request shall be entitled to appear on the date and at the time and place so specified to make representations supporting or opposing the request.

(3) In the case of a complaint referred to in subsection (1), the Commission shall have power to join as complainant or respondent any person or persons belonging to the class of consumer or consumers on whose behalf the complaint has been permitted by the Commission to be made.

(4) A complaint referred to in subsection (1) shall not be withdrawn or settled except with the permission of the Commission.

(5) Where the complainant or complainants have applied for permission to withdraw or settle a complaint referred to in subsection (1), the Commission shall cause a notice thereof to be published, at the cost of the complainant or complainants, in a prominent place at the headquarters of the Commission and in a newspaper having circulation in Guyana, stating the date, time and place of the hearing of the application, and —

- (a) shall hear any person belonging to the class of consumers or consumers on whose behalf the complaint has been made, and appears on the date and at the time and place specified in the above mentioned notice and opposes the request; and
- (b) shall have power to allow any such consumer who so requests to continue to prosecute the complaint.

56. (1) Where the Commission proposes to initiate proceedings under this Act against any public utility, the Commission shall serve on the public utility, a notice stating the reasons for the initiation of the proposed proceedings, with the particulars relating thereto, and the date, time and place of hearing.

Initiation of
proceedings
by
Commission.

(2) A notice of the proposed proceedings shall be published at the headquarters of the Commission and in a newspaper having circulation in Guyana.

(3) The public utility and any other person having an interest in the subject-matter of the proposed proceedings shall be entitled to appear at the hearing and be heard.

Fixing of hearing.

57. (1) Where a public utility satisfies a complaint against it within the time specified therefor or extended by the Commission, the complaint shall be dismissed by the Commission.

(2) Where the public utility does not satisfy the complaint within the time specified therefor or extended by the Commission, and it appears to the Commission from a consideration of the complaint and answer thereto, or otherwise, that reasonable ground exists for investigating the complaint, the Commission shall fix a date, time and place for investigation and hearing of the matter.

(3) Notwithstanding anything contained in this section, where it appears to the Commission that a complaint is frivolous or unduly delayed, the Commission may reject the complaint.

Hearing to be public.

58. All hearings before the Commission shall be public and the parties to the proceedings shall be entitled to be heard in person or by counsel.

Decision of Commission.

59. (1) After the conclusion of the hearing, the Commission shall make an order in writing which shall state the time within which the order is to be complied with.

(2) The decision of the majority of the then membership of the Commission (without taking into account any vacancy) shall be the decision of the Commission, but any member not agreeing with the majority may record his views.

(3) An order under subsection (1) may deal also with any incidental matter that has arisen in the proceedings before the Commission.

(4) A certified copy of the order shall be served upon the public utility against which it is made, and notice thereof shall be given to the other parties to the proceedings.

Oaths and subpoenas.

60. The Commission shall have power to *subpoena* witnesses, to administer oaths, to examine witnesses, to compel the production of such books, records, documents and other records as it may deem necessary or proper for any proceeding, investigation or hearing held by it, to inspect any premises, buildings, machinery, equipment or facility owned, occupied or used by any public utility, and to do all other necessary and proper acts in the lawful exercise of its powers or the performance of its duties.

Notice.

61. Notice of all hearings, investigations and proceedings before the Commission shall be given in such form and manner as the Commission may prescribe by rules.

62. Where any dispute arises as to whether any agreement of the nature referred to in Part VI or VII has been entered into between the Government and a public utility or as to the terms of the agreement, a certificate under the signature of the Minister stating that any such agreement has been entered into and the terms of the agreement shall be admitted by the Commission as evidence of the facts stated therein.

Proof of agreement.

63. The Commission shall keep a full and complete record of its proceedings and of any investigation by it or on its behalf.

Records of proceedings.

PART X COSTS

64. The costs of, and incidental to, any proceedings before the Commission incurred by the parties thereto shall be in the discretion of the Commission and the Commission may make appropriate order in respect thereof while deciding the matter arising in the proceedings.

Costs of parties.

65. (1) The expenses incurred by the Commission, and determined and assessed by it, in connection with any investigation or proceeding under this Act involving any public utility, and all expenses of any litigation (including appeals) arising from any such investigation, or any valuation, revaluation or proceedings, or from any order or action of the Commission, shall be borne by the public utility investigated or proceeded against and shall be paid by the public utility to the Commission within such time as may be specified by the Commission:

Costs of investigation or proceeding.

Provided that the amount so determined and assessed to any one public utility in any one year by the Commission shall not exceed —

- (a) In respect of any proceedings relating to rate, one-half of one per cent; and
- (b) in respect of all other investigations, one-tenth of one per cent,

of the net investment of the public utility or such other sum as may be specified in, or determined in accordance with, an agreement between the Government and the public utility.

(2) The amount determined and assessed to a public utility and paid by it under subsection (1) shall be taken into account in determining its operating costs for the purposes of this Act.

PART XI ENFORCEMENT OF ORDERS

66. (1) On the application of any party to any proceedings before the Commission and the production of a certified copy of the order of the Commission in such proceedings, the High Court may execute the order as if it were an order made by it.

Execution of order.

(2) This section is without prejudice to any other provision of this Part.

Compliance with order in proceedings relating to rate.

67. A public utility to which an order relating to rate applies shall make such changes in the tariffs filed by it as may be necessary to make the same conform to the order and thereafter no change shall be made in the tariffs so filed except in accordance with the provisions of this Act.

Enforcement of order by taking over management of business of public utility.

68. (1) Where an order made by the Commission in respect of a public utility (not being an order fixing rate or for the payment of any sum of money) has not been complied with, within the time stated therein for compliance, the Commission may take such steps and employ such persons as may be necessary for the enforcement of such order, and for that purpose may —

- (a) forcibly or otherwise enter upon, seize and take possession of the whole or any part of the movable or immovable property of the public utility, together with the books, documents and offices of the public utility; and
- (b) until the order has been enforced assume and take over the management of the business of the public utility for and in the interests of the owner or owners of the public utility, its creditors and the consumers.

(2) During the period when the Commission manages the business of a public utility under subsection (1), the Commission may exercise all or any of the powers, duties and rights of the owner or owners or directors of the public utility, and of its officers, in all respects, including the employment and dismissal of officers and employees of the public utility:

Provided that the Commission shall not remain in possession of the property or manage the business of the public utility or any part thereof for a period in excess of six months unless within that period it proceeds against the public utility under section 69.

(3) Upon the Commission so taking possession of the property and business of any public utility, every officer and employee of the public utility shall obey the orders of the Commission and of any person placed by the Commission in authority in the management of any department of the business of the public utility.

(4) The Commission, upon taking possession of the property or taking over the management of the business of a public utility, may determine, receive and pay out all moneys due to or owing by the public utility and give cheques, acquittances and receipts for moneys to the same extent and with like effect as the proper officers of the public utility could do if possession of the property had not been taken or management of the business had not been taken over.

(5) The costs incurred by the Commission for any purpose referred to in this section shall be in the discretion of the Commission and the Commission may order by whom and in what amount or proportion such costs, as determined and assessed by the Commission, shall be paid to the Commission.

69. (1) Where a public utility, which is a company, has failed or refused to comply with an order made by the Commission within the time for compliance stated therein, and the Commission is of the opinion that no effectual means exist for compelling the public utility to comply with the order, the Commission shall transmit to the Minister a certificate signed by the chairman setting forth the nature of the order and the default of the public utility in respect thereof and such certificate shall be published in the *Gazette* and a newspaper having circulation in Guyana.

Dissolution of public utility in default.

(2) Upon publication of the certificate, the Commission may apply to the High Court to have the public utility wound up and the High Court shall deal with the application as if, for the purposes of the Companies Act, failure or refusal by a company to comply with an order made by the Commission were a ground for winding up the company by the High Court.

Cap. 89:01

(3) In this section "company" has the same meaning as in the Companies Act.

PART XII OFFENCES AND PENALTIES

70. (1) Every public utility which fails or refuses to obey an order of the Commission shall be liable, on summary conviction, to a fine of five thousand dollars.

Disobedience of order of Commission.

71. Every public utility which fails or refuses —

Failure of public utility to furnish information.

(a) To prepare and furnish to the Commission within the time, in the manner and form, and with particulars and verifications, specified by or under this Act any return or information —

(i) required to be furnished by or under this Act; or

(ii) directed to be furnished by the Commission for the purpose of the exercise or discharge of any of its functions; or

(b) to answer any question relevant to any matter which is the subject of any proceedings before the Commission, or investigation by the Commission,

shall be liable, on summary conviction, to a fine of five thousand dollars.

Making or
furnishing false
return or
information.

72. Every public utility which makes any return or furnishes any information to the Commission, which is false in any material particular, shall be liable on summary conviction, to a fine of five thousand dollars.

Wilful default by
employee, etc. of
public utility in
furnishing infor-
mation.

73. Where the Commission at any time, by notice served on any public utility, directs it to furnish to the Commission any return or information, which the public utility may be required to furnish, and the public utility wilfully refuses or fails to furnish the return or information to the best of its knowledge, or means of knowledge, in the manner directed by the Commission at or within the time stated in the notice, the public utility shall be liable, on summary conviction, to a fine of one thousand dollars.

Obstruction of,
or interference
with, members,
officers, etc. of
Commission in
discharge of
duties.

74. Every person, who obstructs or interferes with any member of the Commission, officer or other person employed by the Commission in the exercise of the rights conferred or duties imposed by or under this Act, shall be liable, on summary conviction, to a fine of five thousand dollars.

Penalty for other
offences.

75. Every public utility, or officer, employee or agent of a public utility, guilty of the contravention of any provision of this Act (including rules or regulations made thereunder) for which no penalty has been prescribed by any other provision of this Act, shall be liable, on summary conviction, to a fine of five thousand dollars.

Penalty in the case
of continuing
offence.

76. For the purposes of this Part, in the case of a continuing offence, there shall be deemed to be a separate and distinct offence committed every day on which the offence continues.

PART XIII REVIEW AND APPEAL

Suspension or
review by
Commission of its
own decision or
order.

77. The Commission may suspend, review, vary or rescind any decision or order made by it and, where under this Act a hearing is 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.

Appeal.

78. (1) An appeal shall lie to the Court of Appeal from any final decision or order of the Commission.

(2) The party proposing to appeal shall give to the Commission and to the party or parties in whose favour the decision or order has been given, a notice of appeal within fourteen days of the decision or order of the Commission.

(3) The appellant, the Commission and the party or parties in whose favour the decision or order of the Commission was given shall be entitled to be heard by counsel upon the hearing of the appeal.

(4) The Chancellor may appoint not more than two persons (hereinafter in this section referred to as assessors) who, in his opinion, are qualified by reason of their knowledge and experience in respect of matters relevant to the appeal, to assist the Court of Appeal, at the hearing of the appeal, in determining any question of fact arising in the appeal.

(5) The assessors shall be paid such allowances as may be determined by rules of court or, in the absence of rules of court in regard to this matter, as may be determined by the Chancellor.

(6) All costs incidental to the hearing of the appeal (including the fees payable to the assessors) shall be at the discretion of the Court of Appeal.

79. No appeal shall of itself stay or suspend the operation of any decision or order of the Commission against which the appeal has been filed, but the Court of Appeal may stay or suspend, in whole or in part, the operation of the decision or order of the Commission during the pendency of the appeal, upon such terms and conditions (including the furnishing of security) as that court may think fit.

Stay of proceedings pending appeal.

80. On the hearing of the appeal and the determination of the question involved in the appeal, a certified copy of the decision of the Court of Appeal shall be forwarded to the Commission and thereupon the Commission shall make an order in accordance with that decision.

Determination of question by Court of Appeal.

81. (1) The Commission may, upon the application of any party to any proceedings before it, or on its own motion, state a case in writing for the opinion of the Court of Appeal upon any question which, in the opinion of the Commission, is a question of law arising in the proceedings.

Case stated upon question of law.

(2) The Court of Appeal shall hear and determine the question of law stated for its opinion by the Commission and shall remit the matter to the Commission with the opinion of the Court of Appeal thereon, which opinion shall be binding on the Commission and all the parties to the proceedings.

PART XIV MISCELLANEOUS

82. It shall be the duty of every public utility to co-operate with the Commission and its officers, employees and agents in the performance of their functions and for that purpose to comply with all lawful requests made, or directions or instructions given, by the Commission or its officers, employees or agents.

Duty of public utility to co-operate with Commission.

83. (1) The Commission may, by order, require a public utility 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

Duty of public utility to furnish information and returns.

of finances and operations in such form and containing such particulars and verified in such manner as the Commission may specify and the public utility shall comply with the request.

(2) Every public utility shall furnish to the Commission all information required by it and shall make specific and complete answers to all questions submitted by the Commission.

(3) Whenever required by the Commission, a public utility shall deliver to the Commission all contracts, reports of engineers, documents, books, accounts and other records in the possession or control of the public utility and in any way relating to its property or service or affecting its business, or copies of the same verified in such manner as the Commission may specify.

Ascertainment of value of property of public utility.

84. (1) The Commission may, by order, from time to time direct the ascertainment, by appraisal, of the value of the property of any public utility and in that connection may enquire into every fact which, in its judgement, has any bearing on that value, including the amount of money actually and reasonably expended in that undertaking in order to provide service reasonably adequate to the requirements of the public utility by the public utility.

(2) All expenses in connection with any appraisal ordered by the Commission, including all expenses incurred in connection therewith by the public utility whose property is the subject of the appraisal, where the Commission so directs, be charged to the capital account and added to the rate base of the public utility.

Annual report.

85. (1) The Commission shall, on or before the thirty-first day of March in each calendar year, make to the Minister a report in respect of the preceding calendar year stating briefly —

- (a) all applications and complaints to the Commission under this Act, and summaries of the findings of the Commission thereon;
- (b) summaries of the findings of the Commission in regard to any matter in respect of which the Commission has acted on its own motion;
- (c) such other matters as may appear to the Commission to be of public interest in connection with public utilities; and
- (d) such other matters as the Minister may prescribe by regulations.

(2) A copy of every report under subsection (1) shall be laid before the National Assembly by the Minister.

86. A copy of any order or other document in the custody of the Secretary of the Commission, certified by the Secretary to be a true copy and sealed with the seal of the Commission, shall be evidence of the order or other document.

Evidence of documents.

87. The Commission may, with the approval of the Minister, make rules prescribing fees to be paid in respect of any matter within the jurisdiction of the Commission.

Fees.

88. The Commission may make rules in respect of all or any of the following matters —

Power of Commission to make rules.

- (a) the procedure of the Commission;
- (b) the quality and standard to be achieved and maintained by a public utility in respect of the service provided by it, including measures to be taken for the protection of the environment;
- (c) the conditions to be contained in, and to become part of, all agreements entered into by any public utility and consumers in respect of any service rendered by it;
- (d) the rates that may be demanded and received by public utilities from consumers;
- (e) the form and manner of keeping and rendering books, accounts and other records by public utilities;
- (f) the form of application by consumer for receipt of interest on cash deposit;
- (g) the form of any complaint under this Act;
- (h) the form and manner of giving any notice by the Commission;
- (i) the time, form and manner of furnishing to the Commission any return or information by a public utility, the particulars to be contained in it and the verification thereof;
- (j) with the approval of the Minister, the fees payable in respect of matters within the jurisdiction of the Commission;
- (k) any other matter that is required to be, or may be, prescribed by the Commission by rules.

89. (1) The Minister may make regulations for carrying out the purposes of this Act.

Power of the Minister to make regulations.

(2) Without prejudice to the generality of the foregoing, such regulations may, in particular, make provisions in respect of all or any of the following matters —

- (a) the procedure of the Commission;
- (b) any matter to be taken into account by the Commission in fixing the rate for any service provided by a public utility;
- (c) the matters that the annual report of a public utility should specify;
- (d) any other matter that is required to be, or may be, prescribed by the Minister by regulations.

Passed by the National Assembly on 1990—10—29.

M.B. Henry
Clerk of the National Assembly (Ag.)

(BILL No. 29/1990)