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The following Bill which will be introduced in the National Assembly is published for general information.

F. A. Narain,
Clerk of the National Assembly.



GUYANA

BILL No. 32 of 1997

PUBLIC UTILITIES COMMISSION BILL 1997

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A BILL

Intituled .

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

A D. 1997

Enacted by the Parliament of Guyana: -

PART I

PRELIMINARY

- Short title and commencement. 1. This Act may be cited as the Public Utilities Commission Act 1997 and shall come into operation on such date as the Minister may by order appoint.
- Application. 2. This Act shall -
- (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, apply 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.
- Interpretation. 3. (1) In this Act -
- (a) "chairman" means the chairman of the Commission, appointed under section 5(1);
 - (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;
- (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.

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, wireless telephony, telegraphy, or wireless

Definition
of "public
utility."

telegraphy, satellites, cable television, telecom service providers, pay telephone service providers, telecom resellers, internet and other telecom network service providers, radio common carriers, or cellular mobile service providers;

(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;
- (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

Establishment
of 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 of high character and integrity and to be qualified as having had extensive and relevant professional expertise in trade, finance, economics, law, accounting, engineering, or business management.

(2) The Commission shall be a body corporate.

Term of
appointment of
members.

6. (1) Subject to section 9 and subsection (2), the members shall hold office for a period of three years but shall be eligible for re-appointment on the expiry of their term.

(2) Only for the first constitution of the Commission, upon the enactment of this Act, the Minister shall appoint a Chairman for a term of three years, two members for a term of two years, and two members for a term of one year.

(3) Any subsequent appointment or re-appointment of the Chairman and members shall be for three years.

7. (1) The chairman and other members shall be paid such salary and allowances as may be determined by the Minister, and the terms and conditions of appointment of the chairman or any other member, shall be such as may be determined by the Minister. Emoluments of members.

(2) The chairman shall not, during any term of service on the Commission, hold any other position in the Government and, within the five years preceding his appointment to any term, the chairman or other member shall not have held any senior position in a public utility under the jurisdiction of the Commission pursuant to this Act.

(3) The chairman and any other members as may be designated by the Minister shall devote all of their time to the Commission.

8. (1) A member of the Commission who is interested in any public utility, company, person or undertaking which is an interested party, or in any other matter, in any proceedings before the Commission, other than as a consumer in relation to any public utility, affecting a public utility shall disclose to the Commission the fact and nature of his interest and shall not take part in any deliberation or any decision of the Commission relating to the said proceedings, and such a disclosure shall forthwith be recorded in the records of the Commission. Conflicts of interest of members.

(2) In the case of the absence, recusal or other inability of the chairman to act at any meeting, the remaining members being not less than three shall form a quorum and shall elect one of their numbers to preside at the meeting.

(3) If, for any reason, there is an insufficiency of members to form a quorum for a meeting, resulting in the Commission not sitting and impeding the proper functioning of the Commission, the Minister may appoint temporarily such number of ad hoc members for such period as may be necessary to ensure the proper functioning of the Commission.

9. (1) The Minister may terminate the appointment of the chairman or any Termination

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of appointment and
resignation
of members.

other member for good and sufficient cause, and in particular, if the chairman or other 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 felony or misdemeanor ;
- (d) is guilty of misconduct inconsistent with membership of the Commission;
- (e) except for the reason provided for in section 8(1), 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.

Disqualification
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 goods or any services 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;
 - (d) hire themselves as consultants or hire as consultants for the Commission any company or entity in which they have any interest, directly or indirectly;

- (e) receive any other benefit, directly or indirectly, from a public utility, any group, association or person appearing at or interested in any proceedings of the Commission:

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 of electric current, or that in the ordinary course he is a user of any other service of a public utility subject to this Act.

- (2) Any person disqualified under subsection (1) 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:

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, committed a breach of subsection (1) he shall be deemed to be guilty of misconduct.

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| 11. | The appointment, termination of appointment and removal of the chairman and other members shall be published in the <u>Gazette</u> . | Notification
appointment
and removal. |
| 12. | 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. |
| 13. | (1) The headquarters of the commission shall be at Georgetown, but the Commission may, for convenience generally, hold its sittings at any other place in Guyana. | Sittings of
Commission. |

- (2) No sitting or order of the Commission shall be deemed to be invalid or in effective 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 a quorum of three members participated in the sitting of the Commission.

Immunity of members from

14. personally against the chairman or any member, officer or employee of the Commission in respect of any act done bona fide in pursuance or execution or intended execution of his duties or powers under this Act.

Procedure of Commission.

15. 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 Commission.

16. (1) The Commission shall employ a secretary, and such other officers as are required for the proper conduct of the business of the Commission.
- (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 Commission from time to time.

Employment of experts.

17. (1) The Commission may at any time, after consultation with the Minister, retain the services of professional persons and determine the remuneration payable to such persons and their other terms and conditions of appointment.
- (2) Section 10 mutatis mutandis shall apply to professional persons considered for retention, or retained, by the Commission pursuant to subsection (1).
- (3) Recommendations of professional persons retained by the Commission pursuant to this section shall not be binding on the Commission.

18. (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.
19. (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 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

BUDGET AND RESOURCES

20. (1) The Commission shall determine its own annual budget for submission to the Minister of Finance for inclusion in the annual budget presented to the National Assembly. Budget and resources of Commission.
- (2) The Commission shall have the discretion and authority to disburse funds obtained in accordance with this Act, subject to the provisions of any other written law.
- (3) The funds and resources of the Commission shall consist of -
- (a) sums assessed by the Commission and paid over to it by public utilities in accordance with Part XI;
 - (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.
- (4) All sums assessed by the Commission in the nature of fines or penalties imposed upon a public utility or any other company or person under this Act shall be paid directly to the Accountant General by such public utility, other company or person.
 - (5) 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.
 - (6) 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 OF COMMISSION

Functions
of Commission.

21. (1) The Commission shall perform the regulatory, investigatory, enforcement and other functions conferred on it by this Act.

- (2) In carrying out the functions mentioned in subsection (1), the Commission shall be bound by and shall give effect to, the provisions of the Guyana Energy Agency Act 1997, the Electricity Sector Reform Act 1997, the Telecommunications Act 1990, any other law governing a public utility subject to the Commission's jurisdiction, the terms of any licence issued by the Government to a public utility, and the terms of any agreement between the Government and a public utility, between the Government and an investor, which agreement is in relation to the privatisation or capitalisation of the public utility; and in the event of a conflict between such agreements and an existing law, the agreements will prevail.
- (3) The decisions and orders of the Commission shall be fair, in accordance with this Act and other written laws in operation in Guyana and, subject to any rule of law or provision of this Act relating to burden of proof, based on the evidence presented to the Commission.
- (4) 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 person or authority.

No. 27 of 1990

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

Economic
research.

- (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) monitoring regulatory trends in Guyana and other countries to enhance the efficiency, accuracy, and modernity of the Commission's internal operations and its decision-making on standards and quality of service, pricing and evaluation of development and expansion programmes; and
- (f) such other functions as are incidental to any of the functions mentioned above.

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Advisory
function
of Commission.

23. 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.

Investigations
by Commission.

24. 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

Duty to
provide
adequate
service.

25. (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.
- (2) Where an agreement exists between the Government and a public utility, or an agreement for the privatisation or capitalisation of a public utility exists between the Government and an investor, or the licence granted to the public utility or a written law makes provisions for the standard or quality of service, the service provided by the public utility shall be deemed by the Commission, for the purposes of this Part to be reasonable or adequate if the aforesaid standard or quality is achieved and maintained.

Proper service
established
on complaint.

26. (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 25, 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, subject to any other written law, 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 25.

- (2) Where the Commission finds that the service provided by a public utility is not in accordance with section 25 and subject to section 25(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.

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Commission
may order
extension of
service.

27. (1) Subject to section 21 where the Commission, after hearing upon its own motion or upon complaint, finds that an extension by any public utility of 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.
- (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 Commission 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.

PART VII

DEVELOPMENT AND EXPANSION OF FACILITIES OR SERVICES

Development
and expansion
programme.

28. (1) Subject to any written law, a public utility must submit for the approval of the Commission any programme for development and expansion of facilities or services, specifying the period within which it will be implemented, the arrangements for financing and any other information required to be submitted to the Commission by any written law.
- (2) The Commission, after considering all the relevant aspects of the proposed development and expansion programme, including -
- (a) the benefits to be accrued to consumers of the service rendered by the public utility as a result of the implementation of the development and expansion programme;

- (b) the reasonableness of the cost and other terms and conditions of the financing arrangement for the development and expansion programme; and
- (c) any other criteria set forth in any written law,

may approve or reject the programme or may require the public utility to modify the programme suitably.

- (3) The Commission shall, within a period not exceeding forty-five days, consider and render a decision approving or rejecting, or requiring the suitable modification of, a development and expansion programme submitted to the Commission by a public utility, and, to the extent that the standard or quality of service that a public utility is required to provide pursuant to section 25, 26 or 27 is directly and materially dependent upon approval of a development and expansion programme, a public utility shall be excused from providing such standard or quality of service pending approval of such programme by the Commission.
- (4) Where an agreement exists between the Government and the public utility, or an agreement for the privatisation or capitalisation of a public utility exists between the Government and an investor, or the licence granted to the public utility or a written law makes provisions for a programme for the development and expansion of the facilities or services of a public utility, the Commission shall approve such programme.
- (5) With respect to a development and expansion programme submitted to the Commission under this Part, the Commission shall make the information included in such programme available to consumers at a reasonable cost to the consumer to be set by the Commission:

Provided that, in making such information available to consumers, the Commission shall take all due and reasonable care to protect and shall not publish or otherwise make publicly available the trade secrets of the public utility or any other information that may aid a competitor of the public utility, and such public utility may request that such information be maintained in confidence by the Commission and the Commission shall cooperate with the public utility in that regard.

- 29. (1) Where the Commission, upon its own motion or upon a

Failure to

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 implement
 development and
 expansion programme.

complaint by the Minister or an aggrieved party and after giving the complainant and the public utility a reasonable opportunity of being heard, finds that a public utility is not carrying out a development and expansion programme in the manner approved or that the utility has failed or refused to implement the development and expansion programme in a timely manner in any material respect, without lawful excuse, the Commission may, without prejudice to sections 68 and 69, by its order -

- (a) direct the public utility to pay to the Accountant General such penalty as the Commission thinks fit, being not less than ten thousand dollars; nor and not more than the cost of implementing the development and expansion programme, to the extent to which it was not implemented by the public utility, as on the day on which the Minister made the complaint :

Provided that the imposition of any such penalty shall not affect the contractual rights or obligations of any party and, in particular, shall not alleviate or substitute for full and satisfactory performance of any contractual obligations undertaken by a public utility.

- (b) recommend to the Government the suspension or 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.
- (2) Nothing in subsection (1) 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 or between the Government and an investor in relation to a privatisation or capitalisation of a public utility, any written law or otherwise.

Restrictions
 on ceasing
 operation of
 service

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

31. Subject to section 25(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 VIII

RATES

(a) 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 any written law and with such rules as the Commission may from time to time prescribe.
- (2) In determining the rate 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, provision of safe and adequate service at reasonable costs, and to assuring the financial integrity of the enterprise.
33. Where the Government and a public utility have entered into an agreement, or where the Government and an investor have entered into an agreement, in relation to the privatisation or capitalisation of the public utility, or where the Government has issued a licence to a public utility, or where a law exists, specifying -
- (a) the rate of return the public utility or the investor is entitled to in respect of the capital invested or dedicated for providing any service; or
 - (b) the principles, procedures, formulae or mechanisms, on the basis of which such rate of return is to be determined, or adjusted,

Rates to be just and reasonable.

Agreement, licence or law regarding rate of return.

the Commission shall be bound by and shall give effect to such agreement, licence or law 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; and in the event of a conflict between such agreement and an existing law, the agreement shall prevail.

Prohibition against discrimination in the matter of rate.

34. (1) No public utility shall provide to any person any service at a rate which is unduly preferential or discriminatory.
- (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, subject to section 33, 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) Subject to sections 21(2) and 33, 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) Subject to sections 21(2) and 33, 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 initiative or on receipt of a complaint from any public utility or consumer affected thereby.

37. (1) Subject to sections 32 and 33, 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.
- (2) Subject to sections 32 and 33, the Minister Commission 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 public utility to charge 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 public utility Commission shall comply with the direction.

Uniformity of rate.

(b) Change of Rate

- | | | |
|---|-----|--|
| Continuance of existing rate. | 38. | The rate being charged by a public utility on the first day of January, 1996 for any service rendered by it shall not be increased, after such commencement except in accordance with the provisions of this Act or any other written law. |
| Tariffs filing. | 39. | <p>(1) Subject to section 33, 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 or any written law, file with the Commission in such form as it may specify, tariffs showing all rates actually being charged by the public utility from the first day of January, 1996 until the coming into operation of this Act, established by the public utility, including rates for new services, and shall keep copies of such tariffs open to the public for inspection.</p> <p>(2) Subject to the provisions of this Act, the rates specified in such tariffs shall be the authorised rates of such public utility unless changed in accordance with the provisions of this Act or any other written law.</p> |
| Adherence to tariffs. | 40. | <p>(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.</p> <p>(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.</p> |
| Notice of change of rate by public utility. | 41. | <p>(1) Subject to section 33, where a public utility initiates a new service for which rates will be charged or 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 rate for the new service or the new rate or rates.</p> <p>(2) A notice under subsection (1) shall state -</p> <p style="padding-left: 20px;">(a)(i) where it relates to changing any rate or rates -</p> <p style="padding-left: 40px;">(i) the existing and duly established rate or rates;</p> |

- (ii) the changes proposed to be made in the rate or rates;
 - (iii) the date from which the changed rate or rates are to take effect;
 - (iv) the reasons for the change in rate or rates; and
 - (v) any other particulars specified by the Commission or any written law.
- (b) where it relates to the rate for any new service -
- (i) the date from which the rate for the new service is to take effect; and
 - (ii) any other particulars specified by the Commission or any written law.
- (3) Subject to section 33, where the 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.
- (4) Hearings entered upon by the Commission under this section shall be promptly scheduled and held, and the decisions of the Commission under this section shall be rendered as expeditiously as possible and, in any case, not later than sixty days after the closing of the hearings.

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 unless during the period of suspension, unless, during the period of suspension, the Commission establishes a temporary rate under section 43.
- (3) If the hearing entered upon under section 41(3) in respect of a new or changed rate has not been concluded and an order containing the final decision of the Commission has not been made by the Commission before the expiry of the suspension period imposed by the Commission under subsection (1), and the Commission has not set a temporary rate under section 43, then the proposed new or changed rate shall come into effect on the expiry of the period of such suspension:

Provided that if the rate finally determined as fair and reasonable by the Commission is less than the proposed new or changed rate, the consumers shall have the right to receive reimbursement as provided in section 46(2).

- (4) Hearings entered upon by the Commission under this section shall be promptly scheduled and held, and the decisions of the Commission under this section shall be rendered as expeditiously as possible and, in any case, not later than sixty days after the closing of the hearing.

Temporary rates.

43. (1) On a prima facie consideration of the criteria set forth in section 32(2) or, as the case may be, the terms of any written law, licence or agreement between the Government and a public utility or between the Government and an investor referred to in section 33, the Commission may in any proceedings initiated under section 41(3) involving the rate or rates charged or to be charged by a public utility, initiate either upon its own motion 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.
- (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) Subject to sections 32(1) and 33, 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 having regard to the criteria set forth

in section 32(2), 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.

44. (1) Subject to sections 32(1) and (2) and 33, in any proceeding, upon the motion of the Commission involving, or in proceeding upon complaint by a consumer involving, any proposed increase in any rate charged 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.
- (2) Notwithstanding anything in subsection (1), in any proceeding upon complaint by a consumer involving any rate then being charged by a public utility consequent upon a final decision by the Commission or by the operation of section 43(3) the burden of proof to show that the rate involved is not fair or reasonable shall initially be upon the complainant:

Burden of proof.

Provided that the public utility has complied with sections 81 and 82.

45. (1) Subject to sections 32(1) and (2) and 33, 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,

Fixation of rate.

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 by the public utility, and such rate shall constitute the legal rate the public utility is entitled to demand and receive for the service, until such rate is changed in accordance with the provisions of this Act.

- (2) Any rate lawfully being charged by a public utility shall not be decreased by the Commission in relation to a period earlier than the date on which the Commission commenced a hearing which resulted in the decrease, and for the purpose of this section, a hearing does not include a re-hearing.
- (3) Hearings entered upon by the Commission under this section shall be promptly commenced, scheduled and held.

Adjustment of
due on
variation of rates.

46. (1) Subject to section 33, 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) Subject to section 33, 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 a reasonable future period, to be determined by the Commission taking the interests of the public utility and the consumer into consideration, or paid in cash to the consumer if before the expiry of the aforesaid period he ceases to be a consumer in relation to the public utility.

PART IX 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 at of the Commission for the proposed issue.
- (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.
- (3) Where a development and expansion programme, including the financial arrangement for the same, has been approved by the Commission under section 28, it shall not be necessary for the public utility to obtain the approval of the Commission separately under this section for the issue of any stocks, shares or debentures or other evidence of any indebtedness in relation to the financial arrangement so approved by the Commission.
48. The Commission may by rules prescribe 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 accordance with internationally accepted accounting principles in Guyana 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.
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.
- (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 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
- Approval by Commission to issue of securities.
- Form of accounts.
- Uniform accounts.
- Interest on customer deposits.

deposits at an annual compound rate of eight percent or such other rate as may be specified in any other written law, a licence held by the public utility or an agreement between the Government and the public utility, or between the Government and an investor, in relation to privatisation or capitalisation of the public utility.

- (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 nonpayment 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 X 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.

- 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: Notice of complaint.

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

- 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. Security.

- 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 in 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.

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- (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 who 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:

Provided that where such consumer does not appear to prosecute the complaint and where the Commission considers the terms of the proposed withdrawal or settlement to be reasonable, the Commission shall grant the application for permission to withdraw or settle the complaint.

Initiation of
proceedings
by Commission.

- 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.
 - (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.

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.
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. Hearing to be public.
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. Decision of Commission.
- (2) The decision of a 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) The Chairman or, in the absence or inability to act of the Chairman, the person elected in accordance with section 8(2), shall preside at the meetings of the Commission; when so presiding, the Chairman or the person elected as aforesaid, as the case may be, shall, where there is an equality of votes, have an original and a casting vote.
- (4) An order under subsection (1) may deal also with any incidental matter that has arisen in the proceedings before the Commission.
- (5) 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.
60. The Commission shall have power to *subpoena* witnesses, to administer oaths, to examine witnesses, to compel the production of such books, records, Oaths and *subpoena*.

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.
- Proof of agreement. 62. Where any dispute arises as to whether any agreement of the nature referred to in Parts V, VI, VII, or VIII has been entered into between the Government and a public utility or between the Government and an investor attendant to the privatisation or capitalisation of the 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.
- Records of proceedings. 63. The Commission shall keep a full and complete record of its proceedings and of any investigation by it or on its behalf.

PART XI

FUNDING OF THE COMMISSION AND COSTS

- Annual assessment upon public utilities. 64. (1) The annual budget of the Commission, as approved by the National Assembly, shall be funded by an annual assessment by the Commission upon the public utilities under its jurisdiction.
- (2) The annual assessment imposed pursuant to subsection (1) shall be calculated by the Commission by determining the ratio that the gross income derived from services provided by a public utility bears to the gross income from services provided by each other public utility under the jurisdiction of the Commission, and, on the basis of such determination, the Commission shall assess each public utility its pro rata obligation to fund the budget of the Commission.
- (3) The Commission shall, on the basis of the budget that it shall submit to the Ministry of Finance pursuant to section 20 and no later than forty-five days before the beginning of the financial year to which such budget

relates, determine and notify each public utility under its jurisdiction of the annual assessment upon such public utility and of the annual assessment upon each other public utility under the Commission's jurisdiction

- (4) A public utility shall pay over to the Commission the annual assessment made pursuant to this section in two equal installments on the fifteenth day of January and on the fifteenth day of July in each year, and the first installment shall be paid (respective of the date on which the National Assembly approves the national budget, save that such payment shall be adjusted if necessary based on the amount of the first installment approved by the National Assembly.
- (5) On or before the thirty-first day of March in each year, the Commission shall prepare and make available to each public utility, to the public, and to the Minister an accounting of the funding received pursuant to this section and the use or other disposition of such funding.
- (6) For purposes of this section, "gross income derived from services" means the gross income derived in the most recently-ended financial year of a public utility.

65. (1) To the extent not defrayed from the resources of the Commission obtained pursuant to Part IV and section 64, 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 upon the Commission's presentation of itemized statements supported by receipts, where such receipts are issued, 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 percent; and
- (b) in respect of all other investigations, one-tenth of one percent, of the net investment of the public utility or such other sum as may be specified in, or determined in accordance with any other written law, a licence held by the public utility or an agreement

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between the Government and the public utility, or between the Government and an investor, in relation to a privatisation or capitalisation of the public utility.

- (2) The amount determined and assessed to a public utility and paid by it under subsection (1), and one-half of the amount determined and assessed to a public utility and paid by it under section 64, shall be taken into account in determining its operating costs for the purposes of this Act.
- (3) 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 an appropriate order in respect thereof while deciding the matter arising in the proceedings.

PART XII

ENFORCEMENT OF ORDERS

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| Execution of order. | 66. | <ol style="list-style-type: none"> (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. (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. | <ol style="list-style-type: none"> (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 in any material particular and without lawful excuse, been complied with within a reasonable time to be 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 - <ol style="list-style-type: none"> (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 or the business of the public utility.
- (4) The Commission, upon taking possession of the property and 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 in respect of any material particular and without lawful excuse, and to comply with an order made by the Commission within a reasonable time to be stated therein for compliance 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

Dissolution of
public utility
in default.

default of the public utility in respect thereof, and such certificate shall be published in the Gazette and a newspaper having circulation in Guyana.

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- (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 1991, 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.
- (3) In this section "company" has the same meaning as in the Companies Act 1991.

PART XIII

OFFENCES AND PENALTIES

70. Every public utility which in respect of any material particular and without lawful excuse fails or refuses to obey an order of the Commission shall be liable on summary conviction to a fine of five hundred thousand dollars. Dissolution of order of Commission.
71. Every public utility which in respect of any material particular and without lawful excuse 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 hundred thousand dollars.
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 hundred thousand dollars. Making or furnishing false return or information.
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 willfully 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 hundred thousand dollars. Wilful default by employee, etc. of public utility in furnishing information.

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- 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 hundred 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 hundred 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 XIV

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.
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.
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.
- (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.

Stay of
proceedings
pending appeal.

Determination
of question by Court
of Appeal.

Case stated
upon question of law.

PART XV XIV

MISCELLANEOUS

Duty of public utility to co-operate with Commission.

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 furnish information and returns.

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 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 which show in itemized detail -

- (a) depreciation;
- (b) salaries and wages;
- (c) legal expenses;
- (d) taxes and rentals;
- (e) the quantity and value of material used;
- (f) receipts from residuals, by-products, services or other sales;
- (g) total and net cost;
- (h) gross and net profits;
- (i) dividends and interests;
- (j) surplus or reserve;
- (k) prices paid by consumers;
- (l) any other information whether or not similar to the information under paragraphs (a) to (k),

and the public utility shall comply with the request.

- (2) Upon reasonable notice by the Commission, 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) All the records, including records stored by means of electronic equipment, relating to the operations and business of a public utility shall be kept at its principal place of business, or other places of business, in Guyana.
- (4) Whenever required by the Commission and upon reasonable notice to the public utility, 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.
- (5) All information and documents provided to the Commission under this Act shall be publicly available:

Provided that the Commission shall take all due and reasonable care to protect and shall not publish or otherwise make publicly available the trade secrets of the public utility or any other information that may aid a competitor of the public utility.

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 served 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, may, 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) an accounting of the funds received by the Commission and the Commission's use or other disposition of such funds, in such form and in such detail as the Minister may prescribe.
- (2) A copy of every report under subsection (1) shall be laid before the National Assembly by the Minister.

Evidence of documents.

- 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.

87. Subject to any written law, any licence or any agreement between the Government and a public utility, or between the Government and an investor, in relation to the privatisation or capitalisation of the public utility, the Commission may make rules in respect of all or any of the following matters -
- (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 and any matter to be taken into account in fixing the rate for any service provided by a public utility;
 - (e) the form and manner of keeping and rendering books, accounts and other records by public utilities and the matters that the annual report of a public utility should specify;
 - (f) the form of application by a 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) the fees payable in respect of matters within the jurisdiction of the Commission;
 - (k) the particulars that a development and expansion programme submitted by a public utility for the approval of the Commission should contain;
 - (l)(k) any other matter that is required to be, or may be, prescribed by the Commission by rules for carrying out the purposes of this Act.

Power of
Commission to
make rules.

- Power of the Minister to make regulations. 88. The Minister may make such regulations as are necessary for carrying out the purposes of this Act.
- Repeal of the Public Utilities Commission Act 1990. 89. The Public Utilities Commission Act 1990 is hereby repealed.
- Transitional provisions. No. 26 of 1990 90. (1) Notwithstanding the repeal of the Public Utilities Commission Act 1990 by section 89 the Public Utilities Commission constituted under section 5 of the first mentioned Act shall, for such time as the Minister deems necessary, continue to function as such on and after the coming into operation of this Act, as though the chairman and other members were appointed under section 5 of this Act, and shall have and discharge all the powers vested in it under this Act, and in respect of all pending -
- (i) matters engaging the attention of the Commission;
 - (ii) complaints before the Commission;
 - (iii) appeals by or against the Commission;
 - (iv) proceedings in the Court of Appeal or the High Court in which the Commission is a party,
- on the day immediately preceding the coming into operation of this Act, shall have and discharge all the powers vested in it under the Public Utilities Commission Act 1990, and that Act shall stand unrepealed to the extent necessary to facilitate the discharge of the functions of the Commission in respect of the aforesaid matters, complaints, appeals and proceedings.
- (2) The assets and liabilities of the Commission constituted under the Public Utilities Commission Act 1990 shall be transferred, with effect from the coming into operation of this Act, to the Commission constituted under this Act.
 - (3) All contracts, deeds, bonds, overdrafts, guarantees, agreements or other instruments or other documents, which were subsisting immediately before the coming into operation of this Act, and relating to the assets and liabilities of the Public Utilities Commission constituted under the Public Utilities Commission Act 1990, shall be of full force and effect

against or in favour of the Public Utilities Commission constituted under this Act and be enforceable as fully and effectually as if, instead of the Public Utilities Commission constituted under the Public Utilities Commission Act 1990, the Public Utilities Commission constituted under this Act had been named therein or had been a party thereto.

- (4) All actions or other proceedings commenced before the coming into operation of this Act, for the enforcement of any right relating to any asset or liability which is transferred by this Act to the Public Utilities Commission constituted under this Act, and to which the Public Utilities Commission constituted under the Public Utilities Commission Act 1990 is a party, may be continued by or against the Public Utilities Commission constituted under this Act, and such actions or other proceedings may be amended accordingly.
- (5) Notwithstanding anything contained in this Act or any other written law or agreement, the appointments of all the officers and employees employed by the Public Utilities Commission constituted under the Public Utilities Commission Act 1990 immediately before the coming into operation of this Act, shall be continued in the employment of the Public Utilities Commission constituted under this Act.

EXPLANATORY MEMORANDUM

1. Modeled on the laws of other Caribbean jurisdictions governing the regulation of public utilities, the Guyana Public Utilities Commission Act (the "PUCA") was originally enacted in 1990 and applies to the Commission's regulation of all public utilities in Guyana. The legal reform to the PUCA involves extensive amendments that will require re-enactment of the PUCA at the same time that the Electricity Sector Reform Act (ESRA) and the new Guyana Energy Agency Act are enacted.
2. To ensure that the Commission is insulated from potential political influence, the amendments strengthen the Commission as an institution by empowering the Commission (rather than a government Minister, as was previously the case) to make its own decisions in such areas as the Commission's budget, self-recusal in the case of conflicts of interest, the retention of professional consultants to advise on rate-making and other technical issues, and the employment of an adequate staff. The amendments also replace language that was vague in the PUCA to give greater definition in such matters as the requirements for service on the Commission and for avoiding conflicts of interest, the grounds for termination of a Commissioner's service, the criteria for evaluating and approving public utilities' development and expansion programmes, the accounting standards applicable to public utilities, the information that must be included in financial and operational reports that public utilities must make to the Commission, the availability of such information to the public and the protection of trade-secrets, and the rule-making powers of the Commission. In perhaps the most significant amendment for institutional strengthening, the source of the Commission's funding will no longer be the Government, but will be the public utilities that the Commission regulates, assessed to the public utilities in the ratio that their gross incomes from services provided bear to one another; fifty percent of the annual assessment may be passed along by public utilities to consumers in the public utilities' rate-base, which will result in consumers and public utilities sharing 50%-50% in support of the Commission's regulatory activities.
3. Because the PUCA applies to all public utilities placed under its jurisdiction, it is not possible for the PUCA itself to specify every standard and procedure governing its regulation of each public utility that it regulates. To address this problem and, thus, achieve a desirable level of specificity for the regulation of each individual sector, e.g., electricity, telecommunications, transportation, the amendments bind the Commission to effectuate the more highly-specific provisions of laws, such as the ESRA, that are themselves sector-specific, in regulating the public utilities that operate in that sector. The amendments also ensure that the Commission will honour and, where the Commission's jurisdiction applies, effectuate the terms of licences issued by the Government to public utilities and the contractual commitments made by the Government to an investor in the context of a privatisation of a public utility (such as GEC).

4. Via a 1991 amendment to the PUCA, GEC was removed from the Commission's rate-making jurisdiction. The new amendments will place GEC back under the Commission's jurisdiction for all purposes covered by the PUCA, including rate-making. The amendments also provide that, in addition to the more generalized rate-making provisions of the PUCA (which apply to rate-setting for all public utilities), the Commission must follow the procedures, principles and formulae set forth in the First and Second Schedules to the ESRA, as well as GEC's licence, in setting the rates that may be charged by GEC to consumers for electricity and electricity-related services.
5. The PUCA had previously made it optional for a public utility to seek Commission approval of its programmes for the development and expansion of services to consumers. Because development and expansion programmes largely control the quality of services provided to consumers and directly impact upon the financial health of public utilities, the amendments now make Commission approval of such programs mandatory. By cross-referencing the applicability of sector-specific laws to the Commission's decision-making, the PUCA amendments require that the Commission must apply the ESRA's provisions governing sustainability programmes (i.e., development and expansion programs) that GEC and other potential public suppliers of electricity in Guyana must maintain and annually submit for Commission approval.

M. SHREE CHAN,
Minister of Trade, Tourism and Industry.