

BILL No. 3 of 1994

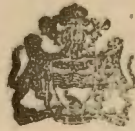
SATURDAY, 5TH FEBRUARY, 1994

PARLIAMENT OFFICE,
Public Buildings,
Georgetown,
Guyana.

1st February, 1994

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. 3 of 1994

PUBLIC UTILITIES COMMISSION (AMENDMENT) BILL 1994

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
2. Amendment of section 22 of the Principal Act.
3. Amendment of section 26 of the Principal Act.
4. Amendment of section 29 of the Principal Act.
5. Amendment of section 32 of the Principal Act.
6. Amendment of section 38 of the Principal Act.
7. Amendment of section 39 of the Principal Act.
8. Amendment of section 41 of the Principal Act.
9. Amendment of section 42 of the Principal Act.
10. Amendment of section 43 of the Principal Act.
11. Amendment of section 44 of the Principal Act.

12. Amendment of section 45 of the Principal Act.
13. Amendment of section 46 of the Principal Act.
14. Insertion of new section 47A in the Principal Act.
15. Amendment of section 65 of the Principal Act.
16. Amendment of section 68 of the Principal Act.
17. Amendment of section 69 of the Principal Act.
18. Amendment of section 70 of the Principal Act.
19. Amendment of section 71 of the Principal Act.
20. Amendment of section 83 of the Principal Act.
21. Amendment of section 89 of the Principal Act.

A BILL

Intituled

AN ACT to amend the Public Utilities Commission Act 1990.

A. D. 1994

Enacted by the Parliament of Guyana:—

Short title:
No. 26 of
1990

1. This Act, which amends the Public Utilities Commission Act 1990, may be cited as the Public Utilities Commission (Amendment) Act 1994.

Amendment
of section
22 of the
Principal
Act.

2. Section 22 of the Principal Act is hereby amended in the following respects —

- (a) in subsection (1) by the substitution, for the words “the functions”, of the words “the regulatory, investigatory and enforcement functions”;
- (b) after subsection (2), by the insertion of the following subsections as subsections (2A) and (2B). —

“(2A) As further provided in sections 26 (2), 29, 33 and 65 (1), the Commission shall act in a manner that is consistent with, and that gives effect to, the provisions of any agreement, between the Government and a public utility, that has been entered into prior to the date on which this Act came into operation.

(2B) The decisions and orders of the Commission shall be fair, in accordance with this Act and other applicable written laws 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 by any complainant, public utility and consumers.”.

3. Section 26 (2) of the Principal Act is hereby amended in the following respects —

Amendment of section 26 of the Principal Act.

- (a) by the insertion, after the words "shall be deemed", of the words "by the Commission, for the purposes of this section and section 27,";
- (b) by the deletion of all the words beginning with the words "and such agreement" and ending with the words "under section 27".

4. Section 29 (2) of the Principal Act is hereby amended in the following respects —

Amendment of section 29 of the Principal Act.

- (a) in the opening portion, by the insertion, after the words "timely manner," of the words "without lawful excuse,";
- (b) in paragraph (a) —
 - (i) in paragraph (a), by the insertion, after the words "ten thousand dollars;," of the words "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:";
 - (ii) by the insertion of the following proviso at the end —

"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."

5. Section 32 (2) of the Principal Act is hereby amended by the insertion, after the words "commensurate risks", of the words "and to assuring confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital".

Amendment of section 32 of the Principal Act.

6. The proviso to section 38 (2) (d) of the Principal Act is hereby amended by the substitution, for the word "full", of the words "in accordance with the practice in the telecommunications industry, adequate".

Amendment of section 38 of the Principal Act.

Amendment
of section
39 of the
Principal
Act

7. Section 39 of the Principal Act is hereby amended in the following respects —

- (a) in subsection (1), by the insertion, after the words "by the public utility", of the words "including rates for new services,";
- (b) in subsection (2), by the substitution, for the word "until", of the word "unless".

Amendment
of section
41 of the
Principal
Act

8. Section 41 of the Principal Act is hereby amended in the following respects —

- (a) in subsection (1) —
 - (i) by the insertion after the words "a public utility", of the words "initiates a new service for which rates will be charged or";
 - (ii) by the insertion, after the words "tariff stating", of the words "the rate for the new service or";
- (b) by the insertion, after subsection (3) of the following subsection as subsection (4) —

"(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."

Amendment
of section
42 of the
Principal
Act

9. Section 42 of the Principal Act is hereby amended in the following respects —

- (a) in subsection (2), by the insertion, after the word "unless", of the words "during the period of suspension,";
- (b) by the insertion, after subsection (2), of the following subsection as subsection (3) —

"(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 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)."

10. Section 43 of the Principal Act is hereby amended in the following respects —

Amendment
of section
43 of the
Principal
Act.

- (a) in subsection (1) —
 - (i) by the substitution, for the words "The Commission may", of the words "On a prima facie consideration of the criteria set forth in section 32 (2) or, as the case may be, the terms of any agreement between the Government and a public utility referred to in section 33, the Commission may";
 - (ii) for the word "initiate" and the word "notice" substitute the word "initiated" and the word "motion", respectively;
- (b) in subsection (3), by the insertion, after the words "is of the opinion that", of the words "having regard to the criteria set forth in section 32 (2) or, as the case may be, the terms of any agreement referred to in section 33,".

11. Section 44 of the Principal Act is hereby amended by the re-numbering of that section as subsection (1) thereof and —

Amendment
of section
44 of the
Principal
Act.

- (a) in subsection (1), as so re-numbered, by the substitution, for the words "In any proceeding", of the words "Subject to the criteria set forth in section 32 (2) or, as the case may be, the terms of any agreement referred to in section 33, in any proceeding";
- (b) by the insertion, after subsection (1), as so re-numbered, of the following subsection as subsection (2) —
 - "(2) Notwithstanding anything in subsection (1) in any proceeding upon complaint by a consumer involving any rate then being charged by a pub-

lic 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 be upon the complainant:

Provided that the public utility has complied with sections 82 and 83."

Amendment
of section
45 of the
Principal
Act:

12. Section 45 of the Principal Act is hereby amended by the re-numbering of that section as subsection (1) thereof and —

- (a) in subsection (1), as so re-numbered, by the substitution, in the opening portion, for the words "Where the Commission", of the words "Subject to the criteria set forth in section 32 (2), or, as the case may be, the terms of any agreement referred in section 33, where the Commission";
- (b) after subsection (1), as so re-numbered, by the insertion of the following subsection as subsection (2) —

"(2) Any rate 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."

Amendment
of section
46 of the
Principal
Act.

13. Section 46 (2) of the Principal Act is hereby amended by the substitution, for all the words beginning with "future period" and ending with "may direct", of the words "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".

Insertion of
new section
47A of the
Principal
Act.

14. The Principal Act is hereby amended by the insertion, after section 47, of the following section as section 47A —

"Approval
by the Com-
mission of
develop-
ment and
expansion
Pro-
gramme

47A (1) A public utility may submit for the approval of the Commission a development and expansion programme specifying the period within which it will be implemented and the arrangement for financing the same and such other particulars as may be prescribed by regulations made by the Minister or, subject to such regulations, specified by the Commission.

(2) The Commission, after considering all the relevant aspects of the development and expansion programme, including —

- (a) where the Government and the 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 the public utility, whether the development and expansion programme submitted by the public utility is in accordance with the agreement;
- (b) 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; and
- (c) the reasonableness of the cost and other terms and conditions of the financing arrangement for the development and expansion programme;

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

(3) Where a development and expansion programme, including the financial arrangement for the same, has been approved by the Commission under this section, it shall not be necessary for the public utility to obtain the approval of the Commission separately under section 47 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.”.

15. Section 65 (1) of the Principal Act is hereby amended by the insertion, after the words “proceeded against and” of the words “, upon the Commission’s presentation of itemized statements supported by receipts, where such receipts are issued.”.

Amendment of section 65 of the Principal Act.

16. Section 68 (1) of the Principal Act is hereby amended by the substitution, for the words “been complied with, within the time”. of the words “, in any material particular and without lawful excuse, been complied with, within a reasonable time to be”.

Amendment of section 68 of the Principal Act.

Amendment
of section
69 of the
Principal
Act.

17. Section 69 (1) of the Principal Act is hereby amended
by —

- (a) the insertion, after the words "or refused", of the words "in respect of any material particular and without lawful excuse."; and
- (b) the substitution, for the words "the time for compliance stated therein", the words "a reasonable time to be stated therein for compliance".

Amendment
of section
70 of the
Principal
Act.

18. Section 70 of the Principal Act is hereby amended by the substitution, for the words "(1) Every public utility which fails", of the words "Every public utility which in respect of any material particular and without lawful excuse fails".

Amendment
of section
71 of the
Principal
Act.

19. The opening portion of section 71 of the Principal Act is hereby amended by the substitution, for the words "which fails", of the words "which in respect of any material particular and without lawful excuse fails".

Amendment
of section
83 of the
Principal
Act.

20. Section 83 of the Principal Act is hereby amended in the following respects —

- (a) in subsection (2), by the substitution, for the words "Every public utility", of the words "Upon reasonable notice by the Commission, every public utility";
- (b) in subsection (3), by the insertion, after the words "by the Commission"; of the words "and upon reasonable notice to the public utility";
- (c) by the insertion, after subsection (2), of the following subsection as subsection (2A) —

"(2A) 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."

Amendment
of section
89 of the
Principal
Act.

21. Section 89 (2) of the Principal Act is hereby amended by the insertion, after paragraph (b), of the following paragraph as paragraph (bb) —

“(bb) the particulars that a development and expansion programme submitted by a public utility for the approval of the Commission should contain;”.

EXPLANATORY MEMORANDUM

The Bill seeks to make in the Public Utilities Commission Act 1990 (No 26 of 1990) certain amendments —

- (a) which are required to be made under the First Addendum to the Sale and Purchase Agreement entered into by the Government of Guyana and the Atlantic Tele-Network, Inc. on 20th December, 1990; and
- (b) which are considered necessary or desirable in the light of the experience gained during the period when the Act has been in force.

2. Among amendments of the first category are the following —

- (i) section 29 (2) is sought to be amended to include the element of lawful excuse in determining whether a public utility has committed an infringement referred to in that provision and to prescribe a maximum penalty in paragraph (a);
- (ii) the proviso to section 38 (2) (d) is sought to be amended to clarify that adequate insurance coverage is to be taken out by a public utility in accordance with the practice in the telecommunications industry;
- (iii) sections 68 and 69 are sought to be amended to include the elements of lawful excuse and non-compliance in any material particular in determining whether any order made by the Public Utilities Commission has been infringed for the purpose of the above provisions;
- (iv) a new section 47A is sought to be inserted to clarify that where the Public Utilities Commission has approved a development and expansion programme, including the arrangement for financing the same, it shall not be necessary for the public utility to obtain separately the approval of that Commission for the issue of any stocks, shares or debentures or other evidence of indebtedness in relation to that financial arrangement.

3. The amendments sought to be made in sections 39 and 41 of the Act, by clauses 7 and 8 seek to clarify the position relating to the role of the Pub-

lic Utilities Commission in the charging of rates for new services by a public utility.

4. A new subsection (4) is proposed to be inserted in section 4 of the Act to make provision for prompt scheduling of hearings and rendering of decisions.

5. Section 44 of the Act is proposed to be amended to shift the burden of the proof to the consumer in certain cases. But this will arise only if the public utility has complied with sections 82 and 83 of the Act.

6. A new subsection (2A) is proposed to be inserted in section 83 of the Act to provide that the records relating to the business of a public utility shall be kept in Guyana.

Michael Shree Chan,
Senior Minister,
Ministry of Trade, Tourism and Industry.