

Public Buildings,
Brickdam,
Georgetown.
Phone 592-2-73189 or 72182.
Fax 592-2-73534.

⑨

Public Utilities Commission

Annual Report 1991

Existing To Serve The Public Of Guyana

THE COMMISSION

Establishment of the Commission

The Public Utilities Commission is a body corporate established under the PUBLIC UTILITIES COMMISSION (PUC) ACT No. 26 of 1990 which came into effect on 1st October, 1990.

Composition of the Commission

Under section 5 (1) of the Act the Commission is made to "consist of a chairman and four other members to be appointed by the Minister from among persons appearing to the Minister to be qualified as having had experience of, and shown capacity in, matters pertaining to the functions of the Commission."

In keeping with the powers conferred on him under section 5(2) of the Act the Minister, the then Deputy Prime Minister (Public Utilities) R.H.O. Corbin, appointed the following persons to be commissioners with effect from 14th March, 1991:

- | | | |
|------------------------------|---|----------|
| • Mr. Joseph A. Tyndall, CCH | - | Chairman |
| • Mr. John Willems, AA | - | Member |
| • Mr. Hugh K. George | - | Member |
| • Mr. Errol Hanoman | - | Member |
| • Mr. A.M.B. Sankies | - | Member |

for a term of three years as stipulated by section 6 of the Act.

The members were sworn in on Saturday April 6, 1991 after which the Commission held its first managerial meeting at the BIDCO Training Centre, Queenstown, Georgetown.

THE FUNCTIONS AND RESPONSIBILITIES OF THE COMMISSION

Quality and Costs of Services Offered by the Utilities

The Public Utilities Commission is a regulatory body the functions of which include ensuring a satisfactory quality of service from public utilities to consumers, as well as monitoring the provision of that service to ensure it is provided at a reasonable cost. To be able to do this the Act confers on it regulatory, investigatory and enforcement powers and stipulates that the decisions and orders of the Commission "shall be fair in accordance with the Act and other applicable laws in operation in Guyana and, subject to any rule of law or provision of this Act relating to the burden of proof, based on the evidence presented to the Commission."

Returns to the Utilities

While protecting the public's interest, the Commission needs to ensure that the utilities earn a sufficient level of profits to guarantee its continuance as a viable entity. This level of profits is usually agreed before hand with the utility.

Utilities Affected by the PUC's Regulatory Powers

The PUC Act applies to every utility engaged in:

- a. The production, generation, storage, transmission, sale, delivery, furnishing or supplying, directly or indirectly to or for the public, of electricity.
- b. The conveyance or transmission of messages or communications by telephone, telegraphy or wireless telegraphy.
- c. Any other services 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. lightering or cargo handling;
 - v. dockage, wharfage or related cargo services, and
 - vi. water supply services, except retail deliveries.

In summary, the functions of the PUC, in keeping with the provisions of the Act No. 26/1990, are as follows:-

- a. to determine and fix the rates which the public is entitled to pay;
- b. to monitor, scrutinise and approve of the public utility's investment programme;
- c. to ensure that the utility provides and maintains a safe, adequate and efficient standard and quality of service at a reasonable cost to consumers;
- d. to support the financial viability of the utility, with regard to both the ability of the company to earn reasonable, agreed profits and the avoidance of the utility and its customers from carrying too great a burden of debt.

All other detailed functions and responsibilities flow from the above-mentioned four areas with the Commission having the power to initiate and conduct investigations into the operations and standards of service of any public utility.

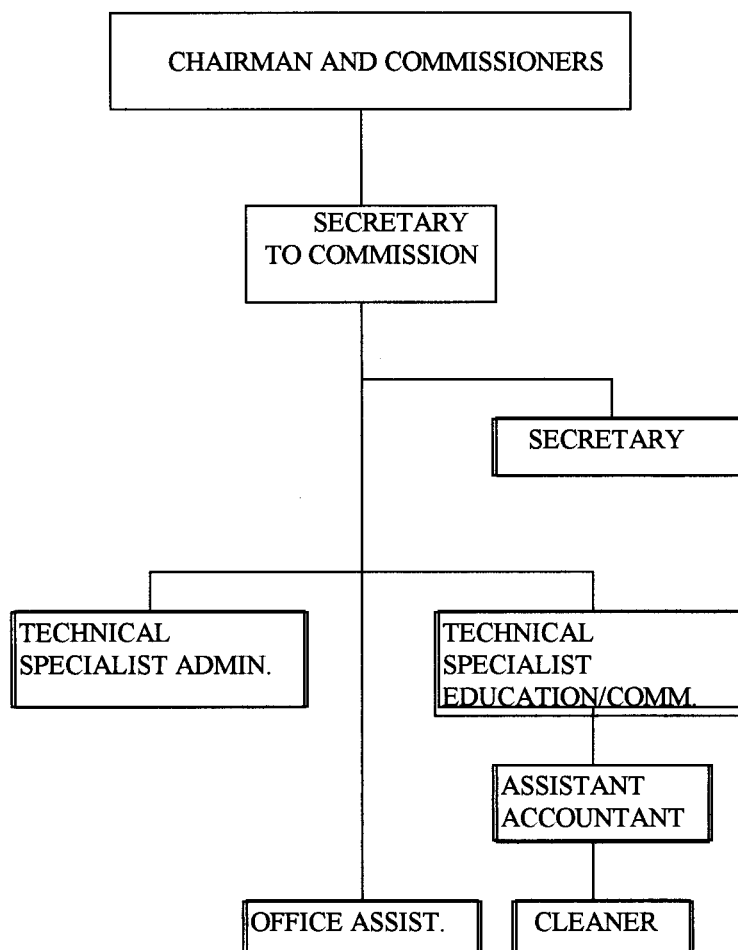
ADMINISTRATIVE ORGANISATION OF THE COMMISSION

During the year the staff of the Commission consists of the following persons:-

- The Chairman.
- 1 Administrative Secretary.
- 1 Junior Executive Officer.
- 1 Secretary/Typist.
- 1 Assistant Accountant.
- 2 Office Assistants, and
- 1 Cleaner.

Apart from the Chairman the staff were all seconded from the former Ministry of Public Utilities, while the other Commissioners served on a part-time basis.

The structure of the organisation is represented graphically in the following chart:



During the period the PUC did not find it expedient to use the authority given it under section 18 of the Act i.e. to retain the services of professional persons, with the approval of the Minister, and determine the remuneration payable to such persons and their other terms and conditions of appointment. It did, however, use the services of the Police Department to provide guard duty at the hearings in keeping with the provisions of section 19(1) of the Act which states that " For the purposes of any inquiry 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."

UTILITIES UNDER THE AUTHORITY OF THE PUC IN 1991.

In 1991 the utilities which fell under the regulatory umbrella of the PUC were the Guyana Electricity Corporation (GEC) and the Guyana Telephone and Telegraph Company Limited (GT&T).

OPERATIONS DURING 1991

Applications for Rate Increases.

During 1991 the PUC received three applications for rate increases from the regulated utilities. The first came from the GEC and the others from the GT&T. Their details are outlined below.

On March 14, 1991 the GEC filed an application with the Commission for an upward adjustment of its tariff. In keeping with the 30-day statutory deadline given under section 41(3) of the PUC Act, the first public hearing was fixed for April 11, 1991.

By letter dated April 15, 1991 which was amended by a further letter dated May 3, 1991 the Guyana Telephone and Telegraph Company Ltd. (GT&T) gave notice, under section 41(1) of the PUC act, of its desire to change the rates for its services with effect from May 20, 1991.

The rates GT&T wished to change are as follows:-

- a. Telex rates effective April 15, 1989.
 - b. Telephone collection rates (International)
 - c. Telegraph collection rates.
 - d. Direct exchange line rental, mileage and metered unit charges, excluding external and internal removals and conversions.
- PMBX and PABX installation rental and conversion charges.

Originally, GT&T requested that each of the four categories of rates be multiplied by a factor of 2.84 to determine the proposed new charges. After amending this original proposal with respect to the local rates in category (d), the company eventually withdrew its application for all the category (d) domestic rates through a letter dated September 19, 1991 thus leaving only the request for international rate increases for the consideration of the PUC. These rates, payable by subscribers, are referred to as "collection charges", and GT&T requested that these be increased by 184 percent.

By correspondence dated December 30, 1991 the GT&T applied to the Commission for a determination of charges for a cellular telecommunication service to be effective on the first day of the new year.

Hearings.

1. The Guyana Electricity Corporation

The Corporation

The Guyana Electricity Corporation (GEC) is a state entity established under the Public Corporations Act (PCA) No. 21 of 1988, and incorporated as a company under the Companies Act, Chapter 89:01 of the Laws of Guyana with the Government of Guyana as the sole shareholder.

Under section 4 of the Electric Lighting Act, Chapter 56:02 the Corporation is the sole body corporate with a licence to provide electricity to the areas within Guyana as stipulated in the first schedule to section 16 of the Electricity Act, chapter 56:01.

By the PUC Act No. 26 of 1990 the Commission became vested with the authority to regulate the rates charged by the Corporation for services provided to the public. This authority was, however, subsequently revoked pursuant to the PUC (Amendment) Act No. 10 of 1991. Regulation of the GEC by the PUC. Therefore, pertains only to the Corporation fulfilling its mandate under the licence granted to it by the Government of Guyana.

GEC', Hearings.

As scheduled, hearings on the matter began on April 11, 1991 at the Bidco Training Centre. The Commission listened to presentations from the management of GEC in which Acting General Manager, Mr. Wilfred Leander, explained to the Commission and other interested parties gathered, including the Guyana Consumers Association, that the Corporation was requesting the increase in its tariffs because

- a. fuel costs which amounted to approximately 75% of GEC's operational costs, had substantially risen following the recent devaluation of the Guyana dollar;
- b. maintenance expenses, approximately 95% foreign cost in nature, had skyrocketed because of the same devaluation; and
- c. local operating costs had increased.

According to him the increased rates filed for would have resulted in an increase of 95% in projected revenue.

After listening to the case put and an intervention by Mr. Miles Fitzpatrick, counsel for the Guyana Consumers Association, the Commission requested from GEC certain documents that the Corporation did not then have available but which were deemed to have been important and extremely relevant to the Commission's eventual determination on the matter.

The second day of the hearing took place on April 18, 1991 at Bidco Training Centre. The learned Attorney General, appearing on behalf of the Government of Guyana, presented facts and figures to inform the Commission that the Government had entered into an agreement with the Inter-American Development Bank (IDB) for a loan to rehabilitate the GEC. Under the terms of this agreement, the utility was committed to maintaining and/or adjusting its tariffs upwards in order to achieve certain targets in relation to revenues, return on net investment and an agreed ratio between internally generated funds and the GEC's debt service requirements.

The PUC could not, however, guarantee to the GEC that its final determination of the utility's request for a rate increase would be in keeping with the IDB/GEC/Government of Guyana agreement. This brought into focus the fact that any variance from the agreed condition would have breached the agreement and thereby jeopardise the disbursement of the loan, and the vitally needed rehabilitation programme of the GEC. According to the Attorney General, failure by the PUC to grant the increase would have had a deleterious effect on the National Economic Recovery Programme.

The Government of Guyana solved the problem by swiftly moving to Parliament, on April 22, 1991, and amending the PUC Act No. 26/1990 to exempt the GEC from the PUC's rate-fixing authority. The amendment, however, did not affect the Commission's regulatory responsibility for non-tariff matters.

Conclusion of These Hearings.

When the hearing resumed on April 23, 1991, the proceedings before the Commission were accordingly terminated.

2. The Guyana Telephone and Telegraph Company (GT&T)

The Company

GT&T Company Limited is a company incorporated under the Companies Act, Chapter 89:01 of the Laws of Guyana and has its registered office at Brickdam, Georgetown, Guyana.

On January 28, 1991, Atlantic Tele-Network Inc. (ATN), a holding company with its headquarters in St. Thomas, US Virgin Islands, acquired 80% of the common stock of GT&T from the Government of

Guyana. The remaining 20% was retained by the Government which was represented by two (2) Directors on the Board of Management of GT&T.

GT&T provides domestic and international telecommunications services to Guyana and, except for the local telegraph service provided by the Guyana Post Office Corporation (GPOC), is the sole provider of telecommunication services in the country. Under the terms of its licence GT&T has an exclusive permission to provide these services for a period of twenty (20) years, renewable at its option for a further period of twenty (20) years. Further, under the terms of two other exclusive and non-exclusive licences, GT&T must provide a number of other communication services to Guyana. These include:-

- Public telephone
- Radio telephone
- Sale of advertising in any directories of telephone subscribers.
- Switched or non-switched private line service supported by facilities constructed over public right of way.
- Supply of terminal and customer premises equipment.
- Telefax, telex and telegraph service and telefax network services.
- Sale of telefax or teleprinter equipment.
- Provision of cellular radio telephone service, etc.

In keeping with paragraph 6.9(b) of the Purchase Agreement for GT&T, after January 1991, tariffs had to be set at a level to guarantee GT&T a minimum return of fifteen (15) percent profit on its capital invested.

Details of Hearings.

In accordance with section 41(3) of the PUC Act, and pursuant to a notice of hearing dated May 6, 1991, a public hearing was convened at the Bidco Management Training Centre in Georgetown on May 10, 1991. Hearings continued for another twelve (12) days during the months of May, June, July and October, 1991.

Participants at the Hearings

The hearings were conducted by the full Commission comprising Chairman Joseph Tyndall and the four other Commissioners. Mr. Peter Britton, S.C., in association with Mrs. Deborah Backer, appeared as Legal Advisers to the Commission while Lynch Associates Ltd. headed by Mr. Winston Lynch A.A., appeared as Financial Adviser.

Witnesses for the Company, GT&T, comprised:-

- | | | |
|----------------------|---|---|
| Mr. James E. Kean | - | General Manager of GT&T. |
| Mr. Michael Welch | - | Consultant to GT&T. |
| Ms Jennifer Grainger | - | Finance Manager, GT&T. |
| Mr. WAHL Parris | - | Former Deputy Prime Minister, Planning and Development, who was subpoenaed by the Company through the Commission. |

Mr. Joseph Sanders and Mr. Albert Sheen appeared as Counsel for the Company in association with Mr. John Raynor (Adviser).

Other witnesses appeared at the request of the Commission.

Reasons for the Rate Increase - Evidence, information, Documents Requested, Findings, etc.

During the lengthy hearing, the Company outlined its case for the various categories of rate increases. Mr. Joseph Sanders introduced the Company's case and led the arguments which attempted to justify the Company's position. Among his contentions were the following:

- i. That in keeping with the provisions of section 38 of the PUC Act, the four events or conditions which would justify an automatic rate increase had occurred.
- ii. That a fifth event, as set out in the first addendum to the Purchase Agreement, had also occurred but that that was not relevant to the Company's case.
- iii. That the five events had the characteristics of being out of the Company's control.
- iv. That the two around which the Company's case revolved were:
 - a. the provision for an increase in the rate in the event of a substantial increase in the value of the US dollar in relation to the Guyana dollar, and
 - b. the provision for an increase in the event "of a change in long distance charges payable to foreign correspondents".

Mr. Sanders explained that the Company had to collect more Guyana dollars to pay, in hard currency, the foreign correspondents' charges or payments which were expenses the Company had to meet the results of the devaluation of the Guyana dollar.

The hearings thereafter were devoted to the presentation, discussion and interpretation of evidence and arguments put forward by witnesses for all the sides involved. Arguments as to the meaning - legal and otherwise - of such concepts as "lawfully sold" as well as of relevant sections of the PUC Act and the Purchase Agreement, were fully ventilated.

In order to be in a position to make a proper pronouncement, the Commission, on the advice of its financial advisers, Lynch Associates, and in keeping with the relevant provisions of the PUC Act, requested numerous documents from the Company. Among those requested by Order of the Commission were:

- a. Agreements with GT&T and its foreign correspondents.
- b. Written information with regard to the overall financial operations of the Company.
- c. Balance sheets/general ledger.
- d. Information on domestic expenditure
- e. Documents supporting the transactions underlying the accounting aggregates.
- f. Company's records for verification - invoices, contracts, agreements, receipts, etc.

At the hearing on June 15, 1991, Lynch Associates reported that while most of the information pertinent to the Company's revenues were made available, many documents requested had not been forthcoming. M They claimed that many seemed to have been deposited in the US Virgin Islands and despite requests, officials were not available to render the assistance required.

Conclusion of These Hearings.

a. Order Issued.

After protracted deliberations and analyses by the Commission, a 14-point list of findings was produced. Based on those findings the Commission issued an Order dated November 12, 1991. In summary the order was as follows:-

- i. The rates for domestic services shall remain unchanged having regard to the Commission's acceptance of the Company's decision to withdraw its application with respect to the proposed increases for these services.
- ii. Subject to a number of procedures and conditions requested by the Commission, the rates for the use of the Company's international services shall be increased with effect from May 20, 1991 by an amount equivalent to 168.86 percent of the accounting rate component, in respect of each collection charge.¹

b. Supplemental Decision.

A supplemental Decision was also issued on December 23, 1991.

Two important considerations emerged from this December 23, 1991 Supplemental Decision. These were as follows:-

- i. That the documentation's submitted by the Company for the purpose of verifying the accounting rates did not satisfy the requirements of the Order. The result was that all the rates in question could not be verified. The only accounting rates that were verified were those for telephone traffic to the USA, CANADA, the UNITED KINGDOM and ANTIGUA. These were, therefore, the only rates permission was given to be increased.
- ii. The Commission found that it could not act on the basis of naked figures devoid of any explanation or justification of the underlying assumptions and methodology. It therefore regretted that it could not approve a temporary rate increase over and above the new rates - the temporary surcharge - until such time as the Company was able to provide it with a satisfactory basis for doing so. As a result the collection charges for all telephone calls to all other foreign destinations and for telex and telegram services to all foreign destinations were to have remained unchanged.

¹ The increases proposed by the Company in its application amounted to some 184 percent.

The PUC decided that "the implementation of a temporary rate increase in the new rates for the recovery of the sum, determined in accordance with section 46(1) of the PUC Act, 1990, and in pursuance of Order No. 4 of the Order dated November 12, 1991, shall be deferred until such time as proposals satisfactory to the Commission are submitted by the Company,"

GENERAL MATTERS

Special Issues and Problems

Based on the experiences of the reporting period, an analysis of the minimum conditions to be satisfied if the PUC was to fulfill its mandate' indicated the following:

- i. That transactions between the GT&T and its parent company and other affiliates and associates were not carried out on an arms length basis. The corporate boundaries of the public utility were not strictly respected.
- ii. GT&T had not provided the Commission with all information requested for the discharge of its responsibilities. This was not in keeping with the law and the provisions of section 83 of the PUC Act. The failure of the GT&T to comply fully and in a timely fashion with the Commission's request for information was a major problem during the hearings.
- iii. That the GT&T was duty-bound to deal directly with the PUC on all matters pending before the Commission, or for which the Commission had exclusive regulatory responsibility.
- iv. Special provisions or arrangements had to be made so that legal processes in which the Commission was involved can be disposed of as expeditiously as possible. Again, in 1991, the PUC was seriously 'hobbled' by prolonged delays in legal processes.
- v. The PUC needed the resources necessary for the effective discharge of its responsibilities. In this respect the future financing of the PUC needed to have been seriously addressed.