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# Public Utilities Commission



## Annual Report 1992

*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 1<sup>st</sup> 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 14<sup>th</sup> 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. lighterage 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.

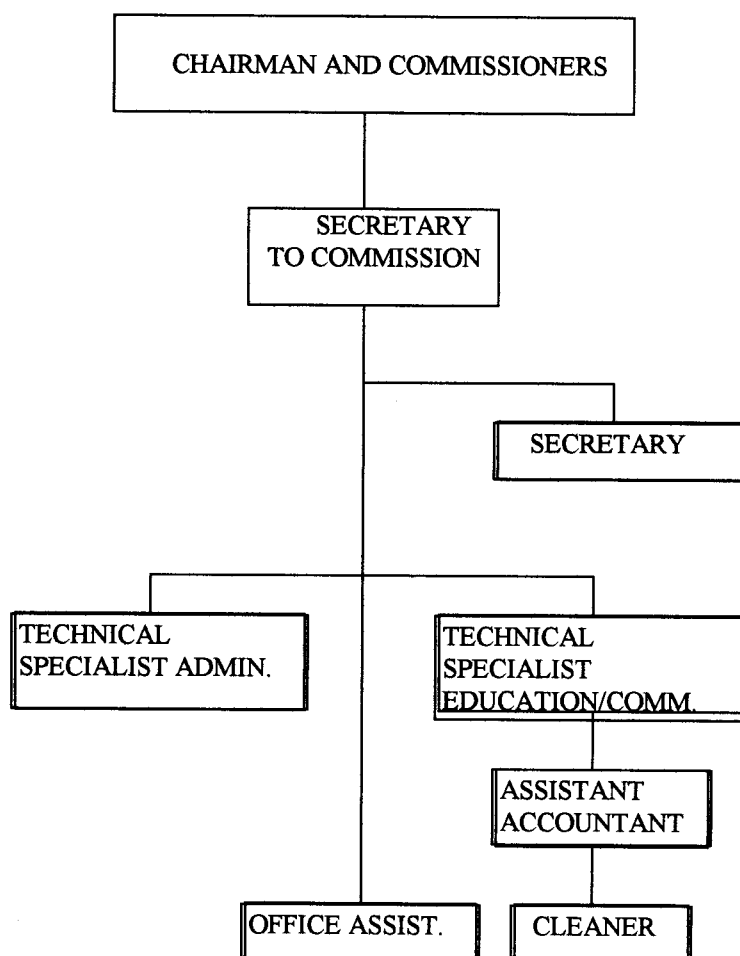
### **ADMINISTRATIVE ORGANISATION OF THE COMMISSION**

During the year the staff of the Commission continued to be 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 1992.**

In 1992 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 1992**

#### **Applications**

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.

#### **Other Matters**

On Thursday May 28, 1992, the PUC served a notice on GT&T on the matter of the Company's arrangements for direct telecommunication services to the USA, Canada and the UK and the installation of special telephones or call boxes in connection with these services.

The PUC also served notice on the GT&T on the matter of the employment of foreign nationals by GT&T.

#### **Hearings**

#### **Guyana Telephone and Telegraph Company Limited**

#### **Cellular Rates**

Public hearings, in respect of the application for the determination of cellular charges, were held on January 228 and 30, 1992. After outlining the basis of the Company's application, and because the Company concluded that its submission would not have been entertained or considered so that an award of rates which would have been fair and reasonable could have been made, the Company withdrew the application.

#### **Direct Telecommunication Service**

A mid-June hearing was scheduled to investigate whether

1. the direct services to the overseas destinations of the USA, Canada and the UK were introduced primarily for travelers as conceived by the foreign telephone companies, and
2. the main target was the Guyanese public
3. what was the justification and other considerations, and
4. who would be ultimately required to meet the investment and other costs of providing these services.

Members of the public and representative organisations were invited to appear and be heard and/or to make written submissions in keeping with the provisions of Article 56(3) of the PUC Act.

The Commission held another hearing in connection with the employment of foreign nationals by GT&T. The issues considered were whether in employing such persons GT&T was complying with paragraph 6.14 of the Purchase Agreement and whether the costs associated with it was justified or reasonable in keeping with section 35(1) of the PUC Act.

### **Conclusion of the Hearings**

As a result of an application to the High Court by the GT&T, an injunction was granted restraining the Commission from further proceeding with both scheduled hearings until motions challenging the said hearings were heard.

### **Other Matters**

As a result of matters pending from 1991 and notices given in relation to hearings on specific issues, the PUC was involved in some instances of litigation. These were as follows:-

1. An ex parte application by way of affidavit filed by GT&T for an interim injunction to restrain the PUC from proceeding with the hearing scheduled for June 18, 1992 in connection with direct telecommunications services arrangements to USA, Canada and the UK and the installation of public call boxes regarding these services.
2. An ex parte application by way of affidavit for an interim injunction to restrain the Commission from instituting legal proceedings to recover the amount of \$13,321,233.69 in the absence of a breakdown of expenses from the PUC.
3. An ex parte application by way of affidavit filed by GT&T for an interim injunction to restrain the PUC from proceeding with the hearing in connection with the employment of foreign nationals by the GT&T which was scheduled for June 10, 1992.

### **Subsidiary Matters and Issues**

Many subsidiary but significant issues deriving from formal applications and complaints were attended to during the year. Administrative and procedural matters crucial to the normal functioning of the Commission were also examined and dealt with. These included:

- a. Request from the GT&T for a breakdown of expenses arising out of the 1991 rate application hearings.
- b. The assignment to have been executed by the financial consultants, Lynch and Associates, to prepare a standard format on which GT&T was to maintain its accounts and submit periodical data to the PUC was discussed.
- c. The employment of foreign nationals by the GT&T was fully considered by the Commission. As a result a letter was sent from the Secretary of the Commission, on the authority of the Chairman, to Mr. J. Taylor, GT&T's consultant, in connection with his assignment.
- d. A management and staffing structure for the PUC was agreed during the first half of 1992. This included the proposed functions and emoluments of the Secretary of the Commission.
- e. It was also agreed that the existing accounting system of the Secretariat should be continued until adequate accounting staff was available and bank accounts opened in the name of the Commission at one of the local commercial banks. In this connection the Auditor General informed the Commission that he would have been sending a representative to audit the Secretariat's financial transactions for 1991, and to advise on the preparation of its accounts on a standardised format.
- f. Members continued to examine a document prepared by the Acting Secretary on the actions required under the various sections of the PUC Act.
- g. The preparation of the administrative procedures of the Commission and rules to govern its relations with affiliates was begun.
- h. Meetings were held between the PUC and the Guyana Consumers' Association at the invitation of the Commission.
- i. As in 1991, the Chairman of the Commission, Mr. Tyndall, took the opportunity to discuss with the Deputy Prime Minister with responsibility for public utilities, Mr. Murray, a variety

of matters relevant to the proper functioning of the Commission, especially as they relate to the GT&T.

#### **Correspondences and Other Matters**

The Commission also dealt with correspondences and other matters during the period. An indicative sampling of these are as follows:-

- Letter to the Deputy Prime minister, Mr. Winston Murray, dated June 19, 1992 concerning the question of the GT&T's Financial Statements for 1991, including such issues as retained earnings and the Company's failure to provide a Cashflow or Sources and Uses of Funds Statement.
- Letter to President Cheddi Jagan dated December 21, 1992 responding to allegations made by Mr. Jeffrey Prosser, Chairman of GT&T.
- Letter to Senior Minister, Mr. Shree Chan, dated December 18, 1992 with respect to allegations of non-cooperation from the PUC regarding GT&T's audit.

#### **Conclusion**

##### **The Perception of Regulation**

As might be garnered from the foregoing, the concept of public utility regulation in Guyana was such a recent development that it was almost alien in 1992, the second year of operation since the PUC was established on March 14, 1991.

It was observed that while the PUC Act could not be divorced from the legal context, it had to be interpreted in a such a way as to have preserved the integrity of the Commission and prevent any neutralisation of its authority and powers of discretion which might have led to an impairment of its effective functioning, except where such interpretation was in conflict with and had to yield to the provisions of any other law or any over-riding legal principle.

During the year much litigation was initiated by the GT&T. Its actions, however, pointed to the perception that regulation was regarded as hostility to private ownership and/or independent management of the resources owned by the mainly foreign telecommunication entity. That was not so.

The Commission proceeded in all matters strictly in accordance with the PUC Act. The Law ensured that certain procedures governed the Commission's function of monitoring, hearing an application or complaint, deliberating and coming to fair, reasonable and just decisions.

It followed that in the future the Commission would have had to be more aggressive in its efforts to educate consumers, other interest groups and the utilities themselves of its role and functions. It had to make a special effort to convince all concerned that justice and the highest standards could have been best served and attained if mutual trust was developed even as both parties - regulator and regulated - followed the law and honoured the agreements.