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Public Utilities Commission

Annual Report 1993

Existing To Serve The Public Of Guyana

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:

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|------------------------------|---|----------|
| • 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 their continuance as viable entities. 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.

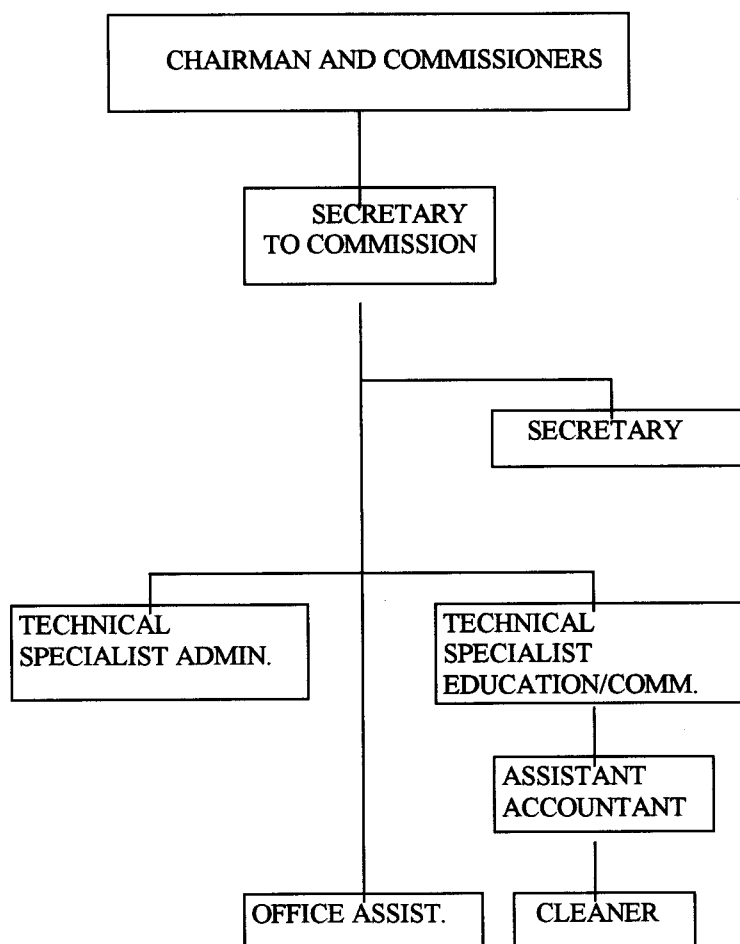
ADMINISTRATIVE ORGANISATION OF THE COMMISSION

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 1993.

In 1993 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 1993

Applications

1. Request for a Review of the PUC's Decision and Order of December 1991.

Consequent upon the issue by the PUC of the Order dated December 23, 1991, approving adjustment of 168.86% of the accounting rates in respect of Antigua, Canada, the UK and the USA, and in which adjustments for all other countries were not approved, the GT&T, in a letter dated August 20, 1993, applied for the adjustment of the collection charges for calls to foreign destinations other than Antigua, Canada, the UK and the USA. The Company submitted additional information for the Commission's consideration.

2. Application for Approval to Implement a Temporary Rate Increase or the Recovery of Uncollected Revenues

Pursuant to the Commission's decision of November 12, 1991, approving, inter alia, upward adjustments of the rates for telephone calls to Antigua, Canada, the UK and the USA, the GT&T, in a letter dated August 20, 1993, submitted proposals to the Commission for the recovery of uncollected revenues.

Hearings

1. In keeping with a Notice of Public Hearing issued on December 10, 1993, a hearing was held on December 17, 1993 at the Bidco Training Centre in Queenstown, Georgetown. The purpose of the hearing was to fix temporary rate adjustments of the collection charges for calls to foreign destinations other than the four countries for which adjustments had already been approved pending the final determination by the Commission.

The GT&T was represented by Mr. Clarence Hordatt, its General Manager, along with its finance officers and legal advisers. The Guyana Consumers Association attended but chose not to request intervenor status in response to the invitation issued in the Notice of the Public Hearing.

The hearing was held on the understanding that there would be a “fast track” approach by which the rates supplied by the Company would be accepted, without verification, to allow the Commission to set a temporary rate adjustment for a limited time, during which the Commission would seek to verify the rates that were in effect as at September 30, 1990.

The Commission was still deliberating the submissions and evidence with a view to making a temporary award as 1993 drew to a close.

2. In keeping with a Notice issued on December 10, 1993, a hearing was conducted on December 15, 1993. The purpose of the hearing was to fix temporary rate surcharges for telephone calls made to the four countries pending final determination by the Commission.

GT&T submitted information on particular arrears and actual revenues received for 5 specific periods as well as certain revenue projections. These constituted information that the Commission had requested by order since November 1991 and through reminders in February 1992 and November 1993. The Commission engaged Lynch Associates Ltd as consultants to carry out a preliminary test and analysis of the information provided by the GT&T. The report of the consultants was made available to the utility.

It was clear from the comments, responses and evidence at the hearing that much work had to be done before the Commission could have been in a position to make a final determination. There

was need for much more information and clarification. The Commission, however, held that the information then submitted by the utility, along with the comments and explanations by its representatives, as well as by the consultants, provided a reasonable basis for establishing and awarding temporary surcharges. It was therefore decided that a temporary surcharge amounting to 70% of GT&T's adjusted surcharge proposals (70% of 168.86%) was a reasonable basis on which the utility could commence its recovery pending final determination of the matter.

The Commission accordingly issued an order dated December 21, 1993.

Orders Issued During 1993

The following represent orders issued during 1993:-

1. Order dated July 29, 1993 requesting GT&T to furnish comprehensive information, as provided for under sections 22, 25, 35 and 83 of the Public Utilities Act, 1990. The order stated, in part, that "pursuant to its authority under section 25 of the PUC Act, it (had) decided to conduct an investigation into the financial operations of the GT&T with a view to determining the financial condition of the utility relative to its obligations to provide adequate, efficient and reasonable service to the public". The latter component was in keeping with the provisions of Section 26 of the Act.

Requested, among other documents, were:

- i. Contracts or other arrangements to which GT&T is a party or which has been entered into on GT&T's behalf, or which imposes any obligations with respect to the financial resources or assets of GT&T to include mortgages, insurance policies, and assignments and security agreements;
- ii. Exhibits in the Equipment Financing agreement entered into among GT&T, ATN and Northern Telecom International Finance B.V;
- iii. Copies of various documents with information provided by GT&T to lenders under the Equipment Financing Agreement;
- iv. Information on inter-company loans and other information deemed necessary for the Commission to fulfill its responsibility under section 25 of the PUC Act.

All information required on a monthly basis should continue to be furnished no later than 30 days after the end of each month and all information required on a quarterly basis should continue to be furnished thereafter no later than 30 days after the end of each quarter.

1. Order dated 21st December 1993, authorising the utility to implement temporary rate increases or surcharges in respect of telephone calls to Antigua, Canada, the U.K and the U.S.A.... To enable it to commence recovery of revenue in arrears, consequent upon the implementation of rate adjustments, pursuant to the Commission's Order dated October 12, 1991.

These temporary rate increases were to remain in effect up to March 31, 1994, unless the Commission reached a final determination before that date. The order also stipulated that the GT&T should publish an amended schedule of rates to give effect to the temporary rate increases, among other conditions.

Other Miscellaneous Matters

The work of the Commission escalated considerably in 1993 as, besides actual on-going matters with the GT&T, the status and role of the PUC became more appreciated, both by local consumers and interest groups and by overseas functionaries and institutions.

The following list of activities engaged in during the year under review indicated the nature and intensity of the Commission's business.

1. PUC met the Vice-President, Mr. Dragon, of the Overseas Private Investment Corporation (OPIC) on Wednesday 24th March, 1993 for wide-ranging discussions which included an ATN/GT&T application for a US\$55M. loan and the Commission's responsibility under Section 47 of the PUC Act.
2. Continual discussion on Amendment to Section 65 of the PUC Act to deal with the assessment of public utilities to meet the expenses of the PUC.

3. Review of the PUC's budgetary appropriation
4. Meeting and discussion with His Excellency the President, Dr. Cheddi Jagan in respect of proposed amendments to the PUC Act to cater for the First Addendum to the Purchase Agreement signed in June 1990.
5. Addressing consistent complaints by consumers/subscribers of Courida Park and others attached to the B.V exchange, of inadequate telephone service.
6. Consideration of correspondence from U.S Ambassador to Guyana in respect of the 1992 Economic Report on Guyana.
7. Consideration of a letter from the U.S Ambassador to the Prime Minister, Mr. Hinds, on a proposed seminar on Regulation to be considered by representatives of the Federal Communication Commission.
8. Meeting(s) with the Minister of Trade, Tourism and Industry in respect of Amendments to the PUC Act to confirm with the Purchase Agreement for the GT&T.
9. Meeting with Mr. Paul Reichler and Ms. Janis Brenner – Washington lobbyists for the Guyana Government – on June 16, 1993 in respect of ATN's complaint to the State Department against the PUC and the Government of Guyana. Areas discussed included
 - i. Potential harm to Guyana
 - ii. Signals being sent to foreign investors in respect of the treatment to ATN and GT&T.
 - iii. Insurance coverage by OPIC on possible loans to ATN and GT&T and other investors.
 - iv. Amendments to the PUC Act in keeping with the First Addendum to the Purchase Agreement.
 - v. Government's compliance with the agreement.
 - vi. Government's authority under the PUC Act.
 - vii. ATN's wish for a PUC review of its decisions in respect of the rate increases.
 - viii. GT&T's likely application for a rate increase during July.
10. Decision taken on September 7, 1993 on the retention of the Georgetown Consulting Group Inc. of the U.S.A by the PUC.
11. Consideration of GT&T's application for collection of revenues in arrears due between the period May 20, and December 31, 1991 and other rate issues dealt with earlier in this report.
12. Notification by GT&T of payment of fines to the Clerk of Courts, Georgetown Magistrates Court.
13. Consideration of correspondence from the Prime Minister to the Minister of Finance in respect of alternative housing for the PUC.
14. The issue of telephone and telex services for GNSC Ltd.
15. Detailed Proposals by Chairman followed by a detailed memorandum on amendments to the PUC Act with respect to financing the operations of the PUC, as well as other suggested Amendments. (Correspondences dated April 30, 1993; July 2, 1993 and July 21 1993 dispatched to Minister Shree Chan).
16. Correspondence dated May 5, 1993 from PUC's Chairman, J.A. Tyndall, to Minister Shree Chan in connection with a likely decision by the Minister to arrange for an audit to be conducted on the operations of GT&T in connection with the allegations made to the

former Minister of Trade (Winston Murray) of "serious improprieties in the management" of the utility.

The PUC Chairman advised the Minister of the authority and primary role of the Commission even when an audit uncovers serious financial improprieties. Pointing out that under most circumstances, it may be found that the PUC has primary jurisdiction, the Commission urged that a situation whereby two investigations (audits) are conducted, be avoided.

CONCLUSION

The role and responsibilities of the Public Utilities Commission became much clearer to the major participants i.e. the utilities, the consumers, the government, other quasi-regulatory entities, various interest groups and the general public during 1993.

Much media discourse and many meetings with prominent officials gave rise to an increased awareness, even though activities of the PUC were sometimes perceived to be negative with respect to rate increase issues initiated by the Guyana Telephone and Telegraph Company Limited (GT&T).

However slight, there seemed to have been an improved appreciation of the role of regulation in so far as the GT&T and PUC relationship was concerned. The PUC had to monitor the financial policies of the GT&T, particularly in relation to its investment programme, to ensure that GT&T and its consumers did not have to bear too great a burden of debt. The quality of a service could not be separated from the price paid since a reduction in quality by a public utility amounted to an authorised increase in rates. Another responsibility of the Commission was to make certain that financial resources obtained by the utility were used for the provision of service to consumers and obtained on reasonable terms and conditions.

It was against the background of those responsibilities that the PUC continued its work in 1993.

The substantial increase in the volume and scope of the work of the regulatory authority – the PUC – in 1993 attested to its increased determination to monitor the operation, standards and quality of service offered by the private monopoly telephone company in the interest of the public, whilst seeking to award the utility rates and conditions that were fair, reasonable and just.

As has been noted in a Memo dated July 2, 1993 to the responsible Minister, an important area of work ("which was not yet even begun") was the establishment of the rules and regulations that were necessary for the proper conduct of regulation. The basic purpose of regulatory rules and procedures was to strengthen the regulatory process, while at the same time ensuring fairness, transparency and predictability of regulatory action.

The Commission had signaled its intention to establish these institutional regulatory guidelines to inform, on a compulsory basis, the conduct of both the Commission and the utility. Some of those areas to have been subjected to precise rules and regulations are listed as:

- i. the practice and procedures of the Commission;
- ii. the systems of accounts, along with the underlying financial and other subsidiary records, to be kept by the utilities;
- iii. filing requirements for rate changes;
- iv. rules and regulations governing relations with affiliate companies and individuals;
- v. consumer complaint procedures;
- vi. annual and other reporting requirements and procedures.

The Commission had also indicated the urgent need for essential and modern office equipment along with suitably trained personnel. It had been pointed out that the deficiencies in the capacity of the Commission to have functioned speedily and to have discharged its legal responsibilities in a timely and efficient manner, resulted in the interest of the public being the unfortunate victim. To have allowed a privately-controlled public utility, which constituted a vital infra-structure facility, to operate without effective regulation could have had very damaging consequences for the country in general.

The credibility of the Commission and the purpose of regulation, as a contributor to national development, had therefore be recognised, appreciated and adequately supported.