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Public Utilities Commission

Annual Report 1994

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:

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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 life of the first Commission came to an end in March. A new Commission was appointed with effect from March 14, 1994 by the Minister of Trade Industry and Tourism, Mr. Shree Chan. While the four members of the outgoing Commission was reappointed, Mr. Pamadath J. Menon, A.A. was appointed as the new Chairman to replace Mr. Joseph Tyndall, A.A.

The new Commission therefore comprised of the following members:

- | | | |
|----------------------------|---|----------|
| • Mr. Pamadath J. Menon AA | - | Chairman |
| • Mr. John Willems, AA | - | Member |
| • Mr. Hugh K. George | - | Member |
| • Mr. Errol Hanoman | - | Member |
| • Mr. A.M.B. Sankies | - | Member |

Mr. Menon was sworn in on September 12, 1994 by Chief Magistrate Mr. K Juman-Yassin and assumed actual duties immediately. Mr. Hugh K. George acted as Chairman during the period March to September 1994.

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

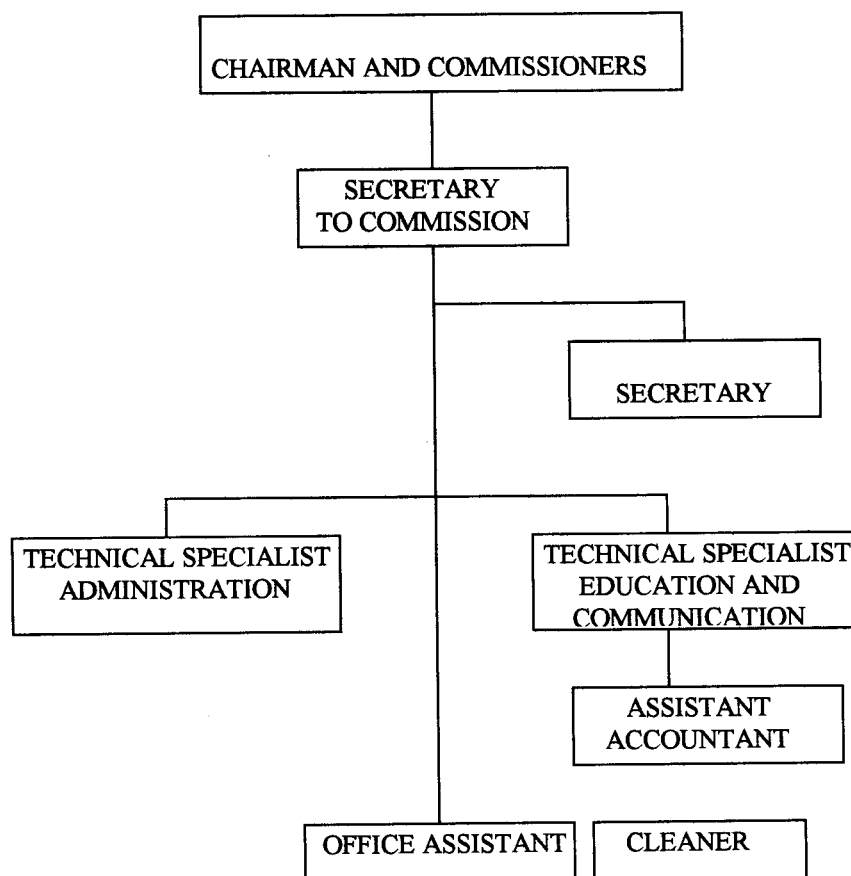
During the year the staff of the Commission continued to be the following persons:-

- 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

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 1994.

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 1994

Application

The year saw a number of applications from the GT&T as follows:-

1. By submission dated November 2, 1994 GT&T sought verification of the accounting rates as at September 30, 1990 to eighty two (82) destinations to which calls were routed to and from Guyana and not included in the PUC's previous decisions
2. By correspondence dated December 28, 1994 and accompanying memorandum of explanation, GT&T applied for approval of mobile cellular radio telephone tariffs in compliance with subsection 41(1) and clause 41(2) of the OUC Act No. 26 of 1990.

Hearings

Notices were issued by the Acting Secretary of the PUC for hearings. These were conducted as follows:-

1. A hearing to determine the final surcharges on overseas calls to Antigua, the United Kingdom, the USA and Canada for the period May 20, 1991 and December 31, 1991 was convened on Thursday September 29, 1994 at the Bidco Training Centre in Queenstown, Georgetown and continued on October 10, 24, and 31, 1994
2. A hearing to deal with increased rates on calls to eighty three destinations other than those mentioned in 1 above was held at the Georgetown Club on Monday May 10, 1994 and continued on October 24 and 31, 1994 at the Bidco Training Centre.
3. A hearing to determine increased rates on overseas calls for an additional eighty two (82) countries other than Antigua the UK, the USA and Canada and eighty three (83) countries already approved was held at the Savannah Suite of the Pegasus Hotel on November 29, 1994.

Decisions and Orders Issued by the Commission during 1994

The Commission had cause to issue various orders consequent on its original decision and supplemental decision issued in late 1991. Many of these Orders were meant to extend the periods granted to the GT&T during which it was authorised to charge certain rates. These Orders were as follows:-

1. Order issued January 21, 1994 authorising the implementation, by the Company, of temporary adjustments of the collection charges for calls to foreign destinations in respect of eighty three (83) countries with effect from February 1, 1994
2. Order dated March 31, 1994 extending the period to June 30, 1994 during which time the Company was authorised to continue to charge the temporary rates or surcharges then in effect. This was to allow the surcharge verification process by the PUC's Accounting Consultants to be completed.
3. Order dated April 25, 1994 extending the period during which the company was authorised to continue to charge temporary rates or surcharges in respect of the eighty three (83) countries.
4. Order issued on June 27, 1994 further extending the period during which the company was permitted temporary rates or surcharges for the recovery of uncollected revenue.
5. Order of July 28, 1994 further extending the period as described at (3) above.
6. Order dated September 30, 1994 further extending the period as described at (4) above.
7. Order dated October 28, 1994 extending the period as described at (3) etc above to January 31, 1995.
8. Order dated October 28, 1994 extending the period to November 7, 1994 as described at (4) above
9. Two (2) Orders issued on October 31, 1994 concerning:-
 - a. An application by GT&T for approval to implement a rate increase for the recovery of uncollected revenues in respect of telephone calls to Antigua, Canada, the USA and the UK and,
 - b. Verification of the rates for eighty three (83) destinations in respect of GT&T's application dated April 15, 1991 and as amended by a letter dated May 3, 1991 for rate increases.
10. Order of November 30, 1994 suspending for three months new rates filed by the Company. This was in relation to a notice of an application for increased rates on overseas calls for an additional eighty two countries which were already approved under section 41 of the PUC Act.
11. Order of December 20, 1994 in connection with investigations into the operations of the GT&T.

Other Matters of Significance Dealt With by the Commission during 1994.

In 1994 the Commission's role and activities attracted significant scrutiny, comment and reaction from all sections of the society, i.e. the GT&T, the Government of Guyana, the media, the consumers and their organisations. The following list of activities gives an indication of the attention shown the Commission.

1. Litigation

- i. The Appellate Court in May ruled that the Company had not proved its case and allegation of bias against the former Chairman, Mr. Joseph Tyndall.
- ii. The Court found that three Orders/clauses of the PUC's decision of November 1991 were done without authority. As a consequence the Court allowed the Company's appeal against Orders 8, 9 and 12. (GT&T had appealed against Orders 7, 8, 9, 11, 12, and 13 of the 1991 Decision).
- iii. The Court in May 1994, in accordance with Section 65(1) of the PUC Act, and in exercise of its discretion under Section 78(6), ordered that the Company pay costs of the above-mentioned appeal. These costs were to be taxed.
- iv. Matter No. 1265/1992 in respect of the Commission's claim for expenses incurred for the 1991 hearings was continued.
- v. GT&T withdrew the injunctions related to the employment of foreign nationals, foreign correspondents and the installation of call boxes.

2. International Concerns

- i. Advertisements appeared in the American magazine, HUSTLER, regarding the availability of audiotext services to Guyana to facilitate the so-called, but lucrative, sex calls. Many countries wrote the GT&T, the National frequency Management Unit and the PUC objecting to this service being provided by Guyana , and requesting the GT&T to discontinue it. Countries involved included the UK, the USA, Norway, Hungary, Denmark and Canada.
- ii. Two visiting consultants from the International Telecommunications Union (ITU), Mr. Ponce Gonzalez and Mr. Edgar Borg, visited the Commission in September in connection with assignments related to a survey of Caribbean telecoms traffic routing patterns and the establishment of a Caribbean Telecommunications Development Fund.

3. Legislation

Consequent upon the work of a Select Committee, a much discussed Public Utilities Commission Amendment Bill 1994 was passed in Parliament on Thursday August 4, 1994. Eight of 21 clauses of the bill were altered by the Select Committee and two clauses caused some contention viz; one relating to the insurance coverage to be taken by a public utility, and the other was one shifting the burden of proof to the consumer.

4. Consultancies/Advisers

- i. Lynch Associates limited continued its assignments on behalf of the Commission throughout the year. These included verification and/or confirmation of arrears of uncollected revenues and of accounting rates to destinations other than Antigua, Canada, UK and the USA, etc., etc.
- ii. In July of 1994, Joseph A. Tyndall Associates, based in Maryland, USA, submitted a "Review of the Report of Lynch Associates Limited in connection with Proposals of the GT&T Ltd. for Temporary Rate Increases".
- iii. Two Project Proposals dealing with (a) Review of the Arrangements for the Provision of Audiotext Services by GT&T with Recommendations for dealing with the Operational and Tariff Implications of the Services and (b) Review of the Payment of Advisory fees by GT&T to ATN under the Advisory Contract,

with Recommendations in Connection with the Tariff Implications of the Expenditures, were submitted by Joseph Tyndall Associates, also in July.

- iv. The Georgetown Consulting Group Inc. of Connecticut U.S.A , at the request of the PUC, assisted the Commission with a review and analysis of the proposed amendments to the PUC Act No. 26 of 1994.
- v. The Georgetown Consulting Group Inc. was also requested to assist the Commission with other specific regulatory matters including (a) a Complete Investigation and Review of the Organisations of GT&T; (b) a Chart of Accounts for GT&T and © Filing requirements for GT&T. These assignments, however, were not commenced.
- vi. Mr. Peter Britton, SC, the PUC Legal Advisor, executed his functions throughout the year, giving advice and entering appearance on issues including Audiotext Services by GT&T, the Advisory Contract between ATN and GT&T, Amendments to the PUC Act and on Court Decisions re payment of Legal Fees and payment of expenses incurred by the PUC.

Mr. Britton was present at all Public Hearings and, towards the end of 1994, had to offer advice on how to seek redress from an errant computer supplier.

- vii. Mr. Clarence Hughes, SC of Fields, Hughes and Stoby of
- viii. Georgetown, was engaged to assist in the PUC defence of the GT&T's appeal against the Orders made by Commission. (Civil Appeal No. 90 of 1991).

5. Consumers/Consumer Representation

- i. Telephone subscribers and consumers in general heightened their interest in the work of the PUC and in regulation. They demonstrated this by numerous letters to the press in 1994 as well as participation in relevant radio and television programmes and an increased number of complaints and requests to the PUC itself.
- ii. On the other hand, the Guyana Consumers Advisory Bureau (GCA) and the newly-formed Consumers Advisory Bureau (CAB) were given increased recognition by the Commission, for besides its presence at all Public Hearings, it was granted costs, for the first time, of one hundred thousand dollars (\$100,000.00) by the Commission, at the conclusion of the Hearing which investigated two matters and whose Decision was handed down on 31st October 1994.

The GCA/CAB delegations secured a legal adviser and representation of a Mr. Dennison Smith, an attorney from California. USA

6. During October 1994, the Grenada-based Bretton Woods Reform Organisation (BWRO), headed by Dr. Davison Budhoo, convened a series of public consultations during which matters relevant to the PUC were raised. One session was titled "Privatisation and the Public Utilities Commission" and a Paper authored by a BWRO lawyer. Dennison Smith, was circulated. These activities caused much debate and assisted to focus some attention on the work of the PUC.
7. A previously-postponed Seminar on Regulation proposed by the Embassy of the United States of America in Georgetown and scheduled to be conducted by personnel from the American Federal Communications Commission principally, was discussed with the American Ambassador Mr. Flemming-Jones. This activity did not come off however.
8. The Commission dispatched correspondence to the minister of trade, Tourism and Industry concerning the Expansion and Service Improvement Plan that the GT&T should have implemented. This issue was kept in focus during the year.

9. The Commission began the process of drafting of a Tender Document for the audit of accounts, specific transactions, rates, tariffs or agreements relevant to a particular utility over a particular period, by Chartered accountants, on its behalf.
10. By mid-1994 the Commission was pursuing the issue of unauthorised zonal charges collected by the GT&T between May and December 1991. This relates to certain out-of-Georgetown overseas calls which attracted certain charges inherited by GT&T but should not have been collected. The issue was heading towards resolution by the year-end.
11. Numerous complaints from GT&T's customers and would-be subscribers were directed to the PUC. Complaints related to requests for long-overdue service, frequent disruption of service, wrongful disconnections and negligence in effecting repairs or re-connections. The Commission succeeded in persuading the company to give urgent attention to situations at such business concerns as Guyana refrigerators Limited (GRL) at Soesdyke, E.B.D.; housing projects on the East Coast of Demerara and many other commercial entities and private residences.

Towards the end of 1994 the Commission was signaling its intention to make the Company's apparent inability to satisfy customer needs - in keeping with its lawful obligations under the provisions of Section 26 and 27 of the PUC Act - the subject of a full-scale Public Enquiry

CONCLUSION

At the outset Mr. Menon signaled his intention to bring to speedy referring to applications by the Guyana Telephone and Telegraph Company Limited (G.T.&T) with regard to rate increases for calls to eighty-seven countries and for approval to collect revenue consequential on an earlier PUC Order issued since November 1991.

The new Chairman also indicated an interest in motivating the "active participation" of consumers and their representative groupings in the Hearings and deliberations of the Commission. He was of the opinion that Consumers and Private Sector representative organisations in Guyana do not come forward to "claim and assert their rights" with regard to the service and conditions offered by public utilities. Keeping his promise to resolve outstanding matters related to, GT&T, five (5) sittings of the Commission were convened between September and December 1994 as against NONE between December 1993 and August 1994.

During the year under review the public perception of the organisation changed somewhat as the Commission, under the acting chairmanship of Commissioner Mr. Hugh George and latterly the Chairman, Mr. P.J. Menon, circulated information briefs and press releases and quietly addressed issues raised by the telephone utility. The Guyana Consumers Association and the Consumers Advisory Bureau also began to regard the Commission as the agency vested, by legislation, to ensure justice and fair play for consumers whilst guaranteeing fair, reasonable and just returns for the utility, which must itself adhere to the agreements and undertakings it made to provide satisfactory and continuous service to the public.

During the final quarter of 1994 the PUC made deliberate and renewed attempts to strengthen its capability. Commission members mandated the Secretary to review and recommend changes for an expanded secretariat, to include additional technical personnel and clerical staff. Arrangements were being made to re-configure the physical accommodation available to facilitate administrative and reference convenience for Commissioners to work at the Secretariat.

Importantly, even as the Secretariat finally acquired its own photo-copying and facsimile telecommunications facilities - and with moves being renewed to accept delivery of a Computer ordered - the Commissioners involved themselves in matters related to the actual funding of the Commission. Three (3) Commissioners represented the Commission - accompanying staff members - at the

Ministry of Finance meetings to examine and finalise the agency's budgetary submissions for current and Capital Estimates for 1995. As importantly, the Utility, by December 1994, had agreed in principle to legal representations to release an undisputed portion (\$10.3M(G)) of an amount due to the PUC by the GT&T as a result of expenses incurred by the Commission, on behalf of the Utility, in previous years. It hoped that this refund would considerably augment the finance of the Commission, facilitating its ability to successfully execute its functions.

As mentioned in earlier Reports, the Regulatory entity that is the Public Utilities Commission must be afforded the financial and personnel resources required for the complex tasks the Commission must address. There must be no regulatory vacuum in the face of a current telecommunications monopoly and the reality of an open market economy, such as exists in Guyana today.

The public must be made aware and appreciative of the fact that the PUC is there to safeguard the rights of consumers, government and the utility itself.

Public Utilities Commission
Georgetown
March 1995