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# **PUBLIC UTILITIES COMMISSION**

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## **ANNUAL REPORT 2001**

Existing In The Interest Of The People Of Guyana

## **PUBLIC UTILITIES COMMISSION**

### **ANNUAL REPORT 2001**

#### **Report on the Commission's Operations for the Year Ended December 31, 2001, In Terms of Section 85 of the Public Utilities Commission Act No. 10 of 1999.**

#### **Establishment of the Commission**

The Public Utilities Commission is a body corporate initially established under the Public Utilities Commission (PUC) Act No. 26 of 1990, which Act came into effect on the 1<sup>st</sup> October 1990. The Act was subsequently amended by Act No. 10 of 1991, and Act No. 14 of 1994, which came into effect on the 22<sup>nd</sup> April 1991 and 19<sup>th</sup> September 1994 respectively.

On 1<sup>st</sup> October 1999 a new PUC Act came into effect. This Act, No. 10 of 1999, repealed and replaced the 1990 Act and its amendments.

#### **Composition of the Commission**

The PUC Act No. 10 of 1999 states in section 5 (1) “ the Public Utilities Commission which shall consist of a Chairman and four other members to be appointed by the Minister...”.

The first Commission under the new Act was appointed by the Prime Minister, The Honourable Samuel Hinds, effective from July 01, 2000. The Commission comprised of :

Mr. Justice Prem Persaud C.C.H.      -   Chairman

|                            |                |
|----------------------------|----------------|
| Mr. Hugh George            | - Commissioner |
| Mr. John Willems A.A.      | - Commissioner |
| Mr. Chandraballi Bisheswar | - Commissioner |
| Mr. Badrie Persaud         | - Commissioner |

In accordance with the PUC Act 1999, No.10 of 1999, the terms of the Commissioners were staggered, the Chairman - three (3) years, Commissioner Willems and Commissioner George, two (2) years, Commissioner Bisheswar and Commissioner Persaud, one (1) year.

On June 30, 2001 the terms of Commissioners Bisheswar and Persaud came to an end. Commissioner Persaud was re-appointed for a further three (3) years. Commissioner Bisheswar was not re-appointed nor was anyone appointed in his place. A vacancy now exists in the Commission and remains to be filled.

### **The Functions and Responsibilities of the Commission**

#### **Quality and Cost of Service 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 the Commission regulatory, investigatory, advisory 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 provisions 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 profit to guarantee its continuance as a viable entity. This level of profit is usually agreed before hand between the Government and the Utility.

## **Utilities Affected by the PUC's Regulatory Powers**

The PUC Act currently 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 oral, written, digital or any other form of messages or communications by telephone, telegraph or wireless telegraphy, satellites, cable television, telecom service providers, pay telephone service providers, telecom resellers, internet and other telecom network service providers, radio common carriers, or cellular mobile providers or any other method of transmission, currently offered to the public or offered as common carriage in the future.
- (c) The following services can be brought under the purview of the Commission if so specified by order by the Minister:-
  - (1) carriage of passengers, in motor buses or hire cars;
  - (2) airport or airlines services;
  - (3) carriage of goods for hire or reward by goods vehicles;
  - (4) lighterage or cargo handling;
  - (5) dockage, wharfage, or related cargo services; and
  - (6) water supply services, except retail deliveries.

With the restructuring of the Water Supply Sector now ongoing the mandate of the Commission may soon be extended to include that Sector.

**In summary**, the functions of the PUC, in keeping with the provisions of the Act in respect of any relevant public utility 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 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.

### **Administrative Organisation of the Commission**

During the year the full-time staff of the Commission were as follows:-

Secretary to the Commission

- 1 Financial Analyst
- 1 Law Officer
- 1 Administrative Officer
- 1 Assistant Accountant
- 2 Confidential Secretaries
- 2 Computer Operators/Typists
- 2 Office Assistants
- 2 Cleaners
- 1 Driver

### **Utilities Under the Authority of the PUC in 2001**

The Utilities which fell under the regulatory umbrella of the Public Utilities Commission (PUC) during the year were the Guyana Telephone and Telegraph Company Ltd. (GT&T), the Caribbean Telecommunications Ltd. (CTL), the Guyana Power and Light (GPL), and Internet Service Providers. However, Caribbean Wireless Telecom, LLC, and Cel\*Star which have been granted licence since 19<sup>th</sup> April 2000 and February 21, 2001 respectively, have not yet started up their operations.

With respect to GPL, the powers of the Commission under the Act No. 10 of 1999 are circumscribed by the Agreement between the Government of Guyana and GPL, which Agreement takes precedence over the Laws of Guyana whenever there is conflict between the agreement and any written law. The Constitution is the supreme law and the agreement does not supercede it.

The Commission continued to hear matters relating to the Guyana Electricity Corporation (GEC).

### **OPERATIONS DURING 2001**

#### **GPL**

The Commission held hearings for the following matters during the year in respect of:-

1. A complaint by Guyana National Co-operative Bank (GNCB), concerning the recovery of charges where customer was allegedly underbilled by GPL, Inc.
2. A complaint by Guyana Bank for Trade & Industry (GBTI) about retroactive increase in electricity charges, by GPL.
3. A complaint by Texaco West Indies Ltd. against the charges being levied upon them for the supply of electricity by GPL ( i.e. retroactive billing).

In matters (1) to (3) above GPL stated that they had applied the incorrect multipliers and claimed sums in excess of \$31M, \$11M and \$2M respectively.

By order No. 2/2002, the Commission ruled that the Corporation was not entitled to apply the multiplier with respect to GNCB; and further, it cannot seek to bill retroactively as the businesses were not at fault and they could not seek to recover in excess of amounts which were already billed and paid.

4. A claim for damages to electrical equipment by Mr. Claude A. Raphael of

E ½ Lot 204 Charlotte Street, Bourda, against GPL.

5. In the matter of seeking clarification as to whether Consumers of electricity will be billed at the new rate for electricity consumed prior to the 1<sup>st</sup> July 2001.

GPL had issued a Press Release stating that prices for electricity would increase from the 1<sup>st</sup> July 2001. The Commission sought clarification from GPL as to whether the prices charged would be for the consumption of electricity with effect from the 1<sup>st</sup> July 2001, or would the increase be reflected in bills, for whatever period, issued in July 2001.

6. A complaint filed by Ms. Lucy Shuffler who allegedly suffered a large electrical surge from GPL and sustained damages to her UPS.
7. A complaint by the Guyana Agricultural & General Workers Union (GAWU) claiming to have suffered damages totaling \$140,000.00 on November 07, 2000, as a result of voltage fluctuation.

GPL had found that the neutral conductor on the 25 KVA transformer which supplied the building, was defective and this contributed to the fluctuation in voltage and the resulting damage to the appliances. But GPL denied liability claiming that the Company's Standard Terms & Conditions indemnified it.

### **PUC Orders – Electricity Sector**

Order 2 /2001 dated 23rd April 2001 in relation to item 3 above, states:-

That GPL pay to Mr. Raphael within 30 days of the date of the Order the agreed sum of \$242,842 in full settlement of all his claims.

Parties must notify Commission of the date on which payment was effected and matter finally settled.

Order 5 / 2001 dated 28<sup>th</sup> August 2001, states:-

- (I) GPL shall bill customers for the actual consumption of electricity up to and including January 30, 2001 at the then existing rate.
- (II) Any and all amounts collected in excess of those rates based on the July 01, 2001 rates to be credited to the account of each consumer for whom the excess or additional amounts were collected, and such credits must be reflected on bills no later than October 31, 2001.
- (III) That new rates effective from October 01, 2001 will be billed for electricity consumed with effect from October 01, 2001.
- (IV) GPL ordered to pay the cost of the hearings July 24 and August 02, 2001 of \$ 197,108.

### **GEC**

The Commission continued to hear the matter brought against GEC by Toolsie Persaud Ltd.

The Republic Soda Factory Ltd. matter has not been concluded. This was a complaint filed by Republic Soda Factory for damages, loss of revenues and other costs suffered when the Factory was forced to be closed in August 1998 because the electrical transformer that supplied electricity to the Factory was damaged.

### **TELECOMMUNICATIONS SECTOR**

Notices of public hearings were given in respect of the following:-

1. To hear and determine the matter of calculations and settlement of accounts as regards revenue sharing between GT&T and CTL due to the grant of interconnection facilities for CTL's Cellular Radio Telephone Service.
2. The recommencement of hearing on the Part Heard Application by GT&T for Cellular Service.
3. The recommencement of hearing of the following matters ,
  - a. the additional provision of land line telephone by GT&T,
  - b. International rates,
  - c. Cellular rates.



4. (a) the matter of 'per second billing' for telephone calls by GT&T,  
(b) to hear complaints of GT&T's billing for calls as follow
  - (i) if a customer dial your office to inquire about a balance or concerning any account he/she incurs charges for the call;
  - (ii) if a call is made in excess of 50 seconds but less than one minute the call is billed for 2 minutes;
  - (iii) if a telephone is called but it is turned off or not within the service area, or is engaged, the customer is still charged for the call;
  - (iv) security deposit.
5. To hear and determine a request by GT&T to provide a Wireline Voice Mail service to subscribers.
6. In the matter of the application by GT&T for the removal of notification for wireline callers to mobile CPP customers.
7. A complaint by I-Net Communications Inc. against the GT&T regarding provision of telephone service by GT&T to I-Net.
8. Recommencement of the part heard Tariff Notice 1/97 Application by GT&T.
9. To consider an application by CTL for interconnection facilities for their cellular service in Georgetown.

## **Orders - Telecoms Sector**

Order 1-2001 - in the matter of Rates for Mobile Cellular Service, Calling Party Pays (CPP) and Prepaid calls, as per (2) above, it was ordered:-

- That the system of CPP be introduced and interconnection charge for fixed-to-mobile and mobile-to-fixed should be at \$7.00,
- Cellular customers have the option of either CPP or RPP (receiving party pays),
- Airtime charge for a call from a fixed line to mobile cellular be at \$10.00 per minute regardless of the time of day,
- GT&T institute a mandatory notification to fixed line customer when they try to access a call, that they will incur a charge of

\$10.00 per minute and give the caller the opportunity to terminate the call at that point without incurring any charges.

- New charges for activation, re-activation and new plans were approved for the Cellular Service.
- Prepaid cellular system was also approved for value of \$1,200, \$3,000, \$5,000, \$7,000 and \$12,000 for expiry period of 6 months to 12 months.

Order 3-2001, dated May 08, 2001, in the matter of the application by CTL for interconnection arrangement with the facilities of GT&T, it was ordered as follows:-

- GT&T to grant interconnection facilities for CTL's Cellular Radio Telephone Service and allow switching of CTL in Georgetown, on or before May 31, 2001.
- GT&T to facilitate co-location of CTL's apparatus at their premises.
- Tariffs for CTL were approved. Interconnection charge of \$7.00 per minute was ordered for mobile-to fixed and fixed-to-mobile calls.
- GT&T and CTL were ordered to submit information regarding their operations to the Commission at the end of each month.

The Commission, however, on application by CTL, recalled this Order after the High Court, on an application by CTL, directed that an Order made by the Commission in 1997 covered the Georgetown area also ( in addition to the Corentyne area where CTL had been in operation since 1997). The Order of the Commission to recall was because the Order of the High Court takes precedence.

We wish to note, however, that our Order, 3/2001, was much more favourable to CTL, vis-à-vis GT&T.

Order 4-2001, dated August 02, 2001, in the matter of notification of Wireline callers to Mobile CPP customers, it was ordered:-

- That the message be shortened to say “ This is a call to a cellular number and will cost \$10.00 per minute.”

- All new subscribers be provided with a written advisory of the cost to be paid by Wireline subscribers to access a mobile CPP subscriber.
- GT&T was directed to undertake a public campaign to inform customers about the \$10.00 per minute charge and to publish the Order.

Order 6-2001 dated December 08, 2001, the Commission approved the terms of settlement arrived by GT&T and I-Net, and made an Order based on the settlement:-

- GT&T will provide two (2) lines expeditiously to I- Net.
- I-Net undertakes that the lines will not be utilised for the termination of inbound international calls that bypass GT&T's network.
- Both parties to speak to each other concerning the allocation by the respondent of additional lines to the complainant.

Order 7-2001 dated December 19, 2001, in the matter of Tariff Notice No. 1/97 submitted by GT&T, the Commission found that:-

- "GT&T's rate of return is not less than the minimum to which they are entitled at the present, and the Commission hereby orders that the current tariff be now confirmed as permanent with effect from 27<sup>th</sup> March, 1998."

### **Consultancies & Advisors**

1. The Georgetown Consulting Group Inc. of Connecticut, USA, continued to assist the Commission with its review of GT&T's tariff filing, and any other regulatory matters referred to it by the Commission.
2. Mr. Aston Chase, S.C., and his Associates entered appearances in the High Court and the Court of Appeal in matters involving the PUC and the Utilities.

### **Consumers Complaints**

The Commission continued to receive complaints from consumers about GT&T and GPL.

Over one hundred (100) complaints were received concerning GT&T. The majority of these were from persons complaining about not being able to get telephone service and transfer of service. There were also complaints about the billing of international calls, the fixed wireless service and general billing queries among others.

Where facilities were available, GT&T provided telephone service to the complainant.

GPL services attracted twice as many complaints as GT&T, with over two hundred (200) complaints being received for the year. The main areas of complaints being, billing queries and damages to equipment. Billing queries cover the rates, miscellaneous charges, the recorded units of use and retroactive billings

The response time from GPL when we write about these complaints has been very long. However towards the end of the year the management of GPL became more responsive to the complaints.

During the year there was also a change in the management's position as regards claims for damages to equipment. They have now started to compensate such claims where the Company feels there is sufficient evidence that the damage was caused by the power supply.

### **Training Seminars & Conferences**

The Commission continued to provide training for its staff and Commissioners during the year.

All the junior staff was provided with a thirteen week in-house training course conducted by Mr. Dev Sharma. The secretaries were afforded the opportunity to upgrade their computer skills.

The Chairman, Commissioners and senior staff attended various workshops, seminars and conferences during the year. These served to inform us about the latest developments in the various regulated sectors and on regulation itself. Attendances to these should be continued as the benefits to be derived outweigh the costs to attend.

Special thanks to the Inter America Development Bank for sponsorship of three persons to attend the Public Utilities Regulatory Conference held by the University of Florida.

### **Overview Of The Year**

As previous years, this year was a challenging one. The Commission endeavoured to perform its regulatory duties inspite of the constraints that it faced.

One of the main setbacks of the year was the cessation of the Government's subvention to the Commission. This only served to compound the Commission's financial problems created as a result of GT&T not paying their full assessment because they have sought legal redress over the different criteria used to assess themselves and GPL in the PUC Act.

The other setback was the none-appointment of a Commissioner to replace Mr. Bisheswar when his term came to an end in June. On two occasions the Commission had to postpone hearings because a Commissioner was out of the country and another could not attend because of unforeseen circumstances. It is easier to ensure that there is a quorum of three Commissioners when there are five Commissioners available.

Some of the highlights of the year were the lowering of cellular rates and the completion of Tariff Notice 1-97.

The lowering of cellular rates have caused a tremendous growth in cellular subscribers. This has of course been of benefit both to GT&T and the consuming public.

GT&T's Tariff Notice 1-97, a rate application, was pending before the Commission for three (3) years, but was never concluded because of various Court actions by GT&T. As soon as it became legally possible the Commission sought to conclude hearings on the matter and issue an Order. GT&T has appealed the Order.

Of serious concern to the Commission was GPL's method of increasing rates on billing period rather than on consumption period. This caused the Commission to hold a public hearing into the matter and subsequently issue

an Order. However GPL has taken the Order to Court and sought and got a stay on the Order.

The Commission notes a worrying trend for the Utilities to challenge the Orders of the Commission in the Courts. This tends to negate all the benefits that regulation seeks to bring to the regulated sectors.

In today's world there is a lot made of the concepts of "liberalisation", "competition" and "privatization" as tools to develop the electricity and telecommunications sectors. To some it may seem with these things in place, there is no need for regulation, but to the contrary with liberalisation and competition there is more need for regulation. What would change is the nature of the regulation. The Commission recognises that its role is a changing one, and is doing its best to facilitate the change.

It is expected that sometime in the not too distant future GT&T will surrender its monopoly with respect to the telecommunication services and the field will be open to competition. It is widely recognized that the benefits of competition in the supply of telecom services and facilities far outweigh any disadvantages. Telecommunications markets have been opened to varying degrees of competition in most countries around the world.

The role of the Commission will become much more onerous in a competitive environment. Regulatory involvement will be required to ensure the establishment of viable competition, since the structure of the telecommunication networks are such that regulation is required.

Among the functions will be to ensure that new competitors and existing operators comply with the terms and conditions of their licences; to ensure interconnection of networks and services and to resolve interconnection disputes; to prevent the incumbent operator from abusing its dominant position to prevent or obstruct new competition entering the market; to prevent the dominant operator from charging excessive prices for services over which they have market power, and using the proceeds to cross subsidize their services in competitive markets.

The Commission will have to ensure that objectives are achieved and its intervention is a must to achieve them, failing which competition will not produce the benefits that ought to be achieved in the competitive markets.

Over the year the Commission has continued to develop good working relationships with various regional and international bodies, namely the IDB, ITU, Canto, CTO etc. At the same time, more cordial relationships with the Utilities and consumer groups were developed as well. It is hoped that these relationships can be built on in the new year to help bring about benefits to all in the electricity and telecommunications sectors.

As the Commission moves forward it will be guided in all its endeavours to ensure the Utilities remain in business making reasonable returns on their investments and at the same time protecting the interests of the consumers who are entitled to a safe, adequate, efficient, reasonable and non-discriminatory service. To ensure this objective the Commission will at all cost maintain its neutrality in the discharge of its duties and functions.

The delay in submitting this report by 31<sup>st</sup> March is regretted.

Dated this 15<sup>th</sup> April 2002.