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PUBLIC UTILITIES COMMISSION

ANNUAL REPORT 2002

Existing In The Interest Of The People Of Guyana

PUBLIC UTILITIES COMMISSION

ANNUAL REPORT 2002

Report on the Commission's Operations for the Year Ended December 31, 2002, 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 established under the Public Utilities Commission (PUC) Act No. 26 of 1990, which came into effect on the 1st October 1990. The Act was subsequently amended by Acts No. 10 of 1991, and No. 14 of 1994, which came into effect on the 22nd April 1991 and 19th September 1994 respectively.
- ◆ On 1st 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 This Act, No. 10 of 1999, repealed and replaced the 1990 Act and its amendments.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 Commissioner Bisheswar was not re-appointed nor was anyone appointed in his place.
- ◆ Commissioner Badrie Persaud has been re-appointed for three years with effect from 1st July 2001. Commissioners George and Willems terms in Office came to an end in June 30, 2002. They have not been re-appointed for three years, but instead have had temporary appointments for short periods of time, up to and including 30th June 2003.
- ◆ Since June 30, 2001 the Commission, have had only four Commissioners, including the Chairman.
- ◆ A Chairman and three Commissioners should be appointed with effect from 1st July 2003.

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 a utility earns a sufficient level of profit to guarantee its continuance as a viable entity. In terms of the licenses issued by the Government the level of profits which the utilities shall earn are therein set out.

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, it is expected that the mandate of the Commission may soon be extended to include this Sector.

In summary, the functions of the PUC, in keeping with the provisions of the Act in respect of any public utility under its jurisdiction 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:-

- 1 Secretary to the Commission
- 1 Financial Analyst
- 1 Assistant Accountant
- 3 Confidential Secretaries
- 1 Accounts Clerk
- 1 Office Clerk
- 2 Office Assistants
- 2 Cleaners

Utilities Under the Authority of the PUC in 2002

- ◆ 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 licences since 19th April 2000 and February 21, 2001 respectively, have not yet started their operations.
- ◆ The powers of the Commission under the Act No. 10 of 1999 are circumscribed by the Agreement between the Government of Guyana and a utility, which Agreement and licence shall prevail in the event of a conflict between any written law in relation to the privatization and capitalisation of the utility, or in relation to the rate of return to which the utility or investor is entitled in respect of the capital invested or dedicated for providing any service; or the principles, procedures, formulae or mechanism on the basis of which such rate of return, and thereby rates charged by a public utility is to be determined or adjusted.

OPERATIONS DURING 2002

GT&T

- ◆ The Commission held hearings with respect to the Guyana Telephone & Telegraph Co. Ltd., and made two (2) Orders as a result of those hearings.
1. On 31st December, 2001 GT&T filed with the Commission for its approval, tariffs establishing a change of rates in some instances and new rates in others, as a result of the impact of the reductions of the international settlement rate mandated by the Federal Communications Commission (FCC) of the United States of America.

The matter was heard on January 09, 2002.

- ◆ This resulted in the Commission issuing Order 1/2002 on the 18th February 2002, fixing temporary rates to take effect from 12.00 midnight between the 31st January and 1st February 2002.
 - ◆ It was ordered that, there no longer be a second off-peak for international calls; and rates for the USA and UK were lowered – all other countries rates remained the same. Local intra-exchange rates were increased and so were line rentals for telephones.
 - ◆ Hearing of this matter was resumed on the 28th May 2002.
2. On the 5th February 2002, a public hearing was scheduled by the Commission to conduct an investigation into the standard and quality of Guyana Telephone & Telegraph Co. Ltd. cellular and fixed wireless operations.
- ◆ At the request of GT&T the hearing was rescheduled for 26th February 2002 and again rescheduled to March 13, 2002.
 - ◆ At the Hearing of the Matter, many consumers were very vocal in their dissatisfaction of the service provided by GT&T. The fixed wireless system came in for a lot of criticisms. GT&T noted the complaints and most were satisfactorily resolved within two to three weeks of the hearing.
3. The Commission held public hearing on the 28th May 2002, as to whether to continue or discontinue the Cellular Call warning. The Consumer Association opposed the discontinuance of the warning on the ground that there are not enough land-lines
- ◆ The matter was continued on the 11th June and 19th August 2002.
 - ◆ On the 28th August the Commission issued an Order No. 6/ 2002, directing that GT&T discontinue the recorded notification given to land line callers seeking to access mobile CPP customers with respect to the charges to be incurred for such calls. GT&T was further ordered to make public announcements from time to time advising

consumers of the rate payable when calling a cellular phone from a land-line. They duly complied and adequate notices were made public.

GPL

- ◆ With respect to GPL the Commission held hearings on two matters, as follows.

1. It concluded the hearing which it commenced the previous year into the complaints filed by **Texaco West Indies Ltd., the Guyana National Co-operative Bank (GNCB) and the Guyana Bank for Trade & Industry (GBTI)** against the Guyana Power & Light Inc.

- ◆ The Commission had to determine whether:

- a. the multiplier factor in each case was correct;
- b. the alleged under-billings were due to the application of the wrong multiplicand;
- c. GPL was entitled to retroactive recovery of alleged losses for two (2) years; or any period.

- ◆ On March 20, 2002 Order No.2/2002 was issued, finding :

- from the evidence that GNCB was not indebted to GPL as the incorrect multiplicand was in use; and was allowed a credit of thirty one million six hundred and thirty thousand, nine hundred and eighty eight dollars (\$31,630,988).
- that by consent the matter involving GBTI was resolved.

- ◆ It was ordered that GPL cannot claim retroactive billing against any consumer unless it establishes that there was unauthorised interference; or where it has reasonable evidence that the consumer was not previously billed for such consumption of electricity because the meter reader was unable to read the meter due to non-access on the premises.

2. The Commission issued a notice, **on its own motion** to hold a public

hearing into the quality of standard of the operations of the GPL. The hearing specifically dealt with:

- the alleged 40% losses suffered by the Company in its operations;
 - the outages and load shedding occurring within the system, both scheduled and unscheduled;
 - to provide safe, adequate, efficient and reasonable service etc.
- ◆ Hearings on this matter were heard on March 12 and April 16, 2002.
- ◆ Resulting from the hearings, the Commission issued an Order, No. 3/ 2002 on the 23rd July 2002.
- ◆ GPL was ordered among other things, to ensure the reduction of the combined technical and commercial losses to 24% within the next six months, and to pay compensation to all consumers the sum of \$1,368,284,000.00 for loss suffered because of the Utility not providing an efficient service. They gross amount was calculated on a loss of \$4.70 per kWh on the basis of loss in excess of 29% undertaken by the Corporation.

GEC

- ◆ This year saw the conclusion of the matters brought by:
- (i) Toolsie Persaud Ltd., and
 - (ii) Republic Soda Factory Ltd., against the GEC.

The matters were heard on May 23 and May 30, 2002.

- ◆ On June 11, 2002 both parties in the Republic Soda Factory Ltd. matter reported to the Commission that they had reached a settlement. GEC undertook to pay the Company the sum of one million dollars (\$1,000,000.00), inclusive of costs. The Company accepted the offer and the Commission issued Order no. 4/ 2002 acknowledging the agreement made by the parties.

- ◆ After extensive hearings on the matter between Toolsie Persaud Ltd. (TPL) and GEC, the parties on June 11th 2002 represented to the Commission that they had reached a settlement of \$4,500,000.00 inclusive of costs. The Commission issued Order No. 5/ 2002 on June 27, 2002, confirming the settlement and ordering that the sum of \$2,000,000.00 be paid by TPL to GEC on or before the 25th July 2002, and the sum of \$208,335.00 be paid monthly for eleven months effective from or before 25th August 2003 and a final payment of \$208,315.00 be paid on or before 25th July 2003.

CTL

- ◆ CTL continued to have problems with their wish for interconnection for an extension of their cellular service at Skeldon. The Commission had issued an order in May 2001 allowing CTL to interconnect with GT&T facilities. A few days later, on an existing application by CTL, a learned Judge of the High Court issued an order in effect superceding our order. We accordingly recalled our order and directed GT&T to comply with the order of the High Court to which institution we had to defer.
- ◆ But then GT&T appealed the Judge's order and the matter is pending before the Court of Appeal.
- ◆ CTL has claimed against GT&T a sum of monies as settlement of accounts for the Skeldon operations. But each utility has accused the other of a breach of their obligation in operation and presenting proper financing information.
- ◆ The matter is still pending, with the Commission seeking to get the parties to co-operate with each other.
- ◆ CTL has not filed with the Commission any statement, audited or unaudited of their accounts, or of their officials. The Commission does not have any information as to the number of customers they have on line,

Utility Data

- ◆ We had been monitoring the activities of both the GT&T and GPL and matters connected thereto: GT&T has installed 6,332 additional land-lines, and 40,709 new cell services were in operation. At the end of 2002 there were 86,245 land-lines and 79,915 cellular phones in use.
- ◆ Regrettably during the year there was a total of 981 fires throughout the country. Three hundred and forty five (345) were electrical, seventy nine (79) accidental and twenty one (21) arson.

Legal Matters Pending

- ◆ A list of all pending legal matters, in the Courts, is attached to this report.
- ◆ Among the cases is an appeal by the Consumers' Association against an order of the Commission fixing rates for cellular telephones. The Consumers' Association explained in their application to the Court of Appeal that the order fixed the rates too low, (i.e. at a level that would make it unprofitable for new entrants), and they should be increased.

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. Ashton Chase, O.E., 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

- ◆ For the year the Commission has received 60 complaints concerning GT&T. Most concerned the long delays, in getting telephone service. The Company has responded positively when the complaints are referred to them, and they have generally co-operated with the Commission and the consumers.

- ◆ Another area of complaint was the quality of the fixed wireless service and cellular service. Hearings were held on this matter and problems experienced by the consumers have been addressed.
- ◆ The Commission has received 177 complaints relating to GPL. The nature of the complaints varied from defective meters, estimated readings, excessive back billing and requests for new consumers to pay off outstanding amounts owing by previous customers.
- ◆ Representations were made on behalf of consumers and by the end of the year most of the complaints have been resolved. Many have received credits to their accounts from GPL as a result of our intervention.
- ◆ We hope that the good working relationship that has developed between the Commission and the utilities will be maintained to facilitate quick and efficient resolution of consumer complaints.

Meetings

- ◆ The Commission had visits from overseas personnel dealing with the electricity and water sectors, as follows:

Electricity:

- ◆ Roberto Manrique, Senior Operational-Project Specialist, IBD.
- ◆ Jenniy Gregory, Senior Consultant, Keith Jarrett and Peter Beard of Power Planning Associates Ltd.
- ◆ Jerry Kaehne and Synergy Holding Ltd. concerning Hydroelectricity.
- ◆ The Chairman of the GPL Board, Mr. Adam Hedayat and Directors Griffin and Rogers called upon the Commission twice during the year. The Commission also made sites visit to GPL installations at Garden-of-Eden, Kingston and Sophia.

Water:

- ◆ Peter Smith and Greg Briffer of DFID
- ◆ Sarah Perry-Jones and Kathy Altawell of Water and Environmental Health, London.

Overview of the Year

- ◆ This year saw the Commission performing its mandated functions under difficult circumstances. Lack of funding, inadequate technical staffing, complement of Commissioners and accommodation, have all combined to adversely affect the work of the Commission.
- ◆ The constitutional motion brought by GT&T against the Government of Guyana regarding the annual assessment they have to pay to the Commission relative to what GPL has to pay, has not been resolved by the Courts as yet. In the meantime GT&T continues to pay only twenty five million dollars per year on account to the Commission, and not the one percent (1%) of their gross revenue. This together with the sum of twenty-five million dollars paid by GPL is inadequate for the proper functioning of the Commission. The situation is further exacerbated by the fact that although the PUC Act provides for the Government to provide subventions from its funds in the event that the prescribed assessments from the Utilities are insufficient to meet our budget, we have not received any assistance from the Treasury.
- ◆ Two Orders of the Commission were of great importance and significance. **Firstly**, the Order No. 1/ 2002 to increase local domestic tariffs and lower overseas call tariffs, was the first stage in rebalancing the tariffs as a consequence of the Federal Communications Commission (FCC) benchmark Order to lower international settlement rates. The Order of the Commission was a temporary one and a review of GT&T's financial performance given the new rates is being carried out, at the conclusion of which the Commission will issue its final Order in the matter. This is expected to be done very shortly.
- ◆ **Secondly**, the Order issued to GPL, No. 3/ 2002, ordering a refund to consumers of over \$1.3 billion, for its failure to achieve its targeted

Commercial and Technical loss, has served as a catalyst for a review of the performance of management of GPL by its shareholders. Whereas most of the public was pleased with this Order, having welcomed to opportunity to vent their frustration and disgust at the public hearings, the management of GPL saw this order as interfering with the rates of the Corporation, although the Commission explicitly stated that the Order did not affect the rates charged to consumers of the service. GPL appealed the Order and obtained a stay of it. Presently the matter is still pending before the Court of Appeal.

- ◆ During the year Guyana found itself at the cross-roads in the development in the telecommunication sector. The Government of Guyana has sought the assistance of the Inter-American Development Bank (IDB) to develop the information and Communication Technology aspect in the Sector. ATN however approached the American Court seeking an order to prevent the Bank from disbursing funds to this country. ATN claimed that approval of the loan would violate United States foreign assistance laws prohibiting the U.S. from giving financial assistance to countries that have repudiated or nullified contracts with U.S. citizens, which Guyana was alleged to have done. ATN later amended its lawsuit to add a breach of contract claim against the Government of Guyana. The Claim against Guyana alleged that Guyana: (1) breached the 1990 Agreement between the Government and ATN because ATN has allegedly not received its guaranteed return on investment; and (2) Guyana would use the proceeds of the IDB loan to build a competing telecommunication system, allegedly in violation of ATN's contractual rights.
- ◆ Guyana's application before the Bank was accordingly placed in limbo. There is every possibility, however, that ATN's claim would be rejected by the Courts as they are without merit.
- ◆ The move was most regrettable. Guyana was seeking to move from a monopoly regime enjoyed by GT&T to an open, competitive, free market one, and for Guyanese to be able to work in the new regime. The improved and advanced means of communication throughout the world now provide quick and unbroken links to all people even in remote areas in the world. People have been able to exchange ideas and foster greater understanding among them.

- ◆ Regrettably, we are one of the poor and small countries without the requisite and adequate financial resources, and it seems that for the immediate future we are to remain with the current telecommunication facilities.
- ◆ Guyana Power Light, Inc. has been providing a sort of reasonable service but at a cost – a tremendous cost to the consumers. They have not been making serious or concerted attempts to reduce the losses in the distribution system.
- ◆ In the manner in which the rates are computed, consumers are called upon to pay for what is produced or generated. Because of the line losses only about fifty-six (56) percent of what is generated reaches the consumers. In effect consumers pay for about 96% (4% being allowable for self-generation) but only get the benefit of 56%. The losses have increased from 29% to 40%, whereas GPL has undertaken to reduce same to 24%.
- ◆ The consumers are dealt a double whammy. In addition to paying for what they did not get, the Corporation had to generate additional current to satisfy the demands of consumers. And the more they generate the more is lost in the transmission, but customers still are called upon to pay for what is generated.
- ◆ We pointed out to the Corporation over and over again that consumers are called upon to pay increased rates but there has been no reduction of the losses. In their response GPL claimed that the increase in rates have been in strict accordance with the provisions of ESRA and the Licence, which provisions were designed to enable them to receive a revenue stream that covers operating expenses, allow them to repay capital and interest and provide for a return to investors; but then they go on to claim that there is no linkage between company programmes, performances and the license's tariff setting arrangements.
- ◆ In effect they demanded their pound of flesh but were not prepared to reciprocate with a service commensurate with their return. This has resulted in many large industrial and commercial customers leaving the GPL's system and employing their own self-generating sets. What this

does, is reduce GPL's revenues and causing the rates to increase further, causing more customers to come off the grid.

- ◆ Throughout the year the Commission has dealt with other matters which have not resulted in hearings and/or orders. We have diligently pursued the matter of settlement of accounts between GT&T and CTL, though unfortunately as at the end of the year the matter has still not been resolved. The matter is still pending because of their non-cooperative stand towards each other.
- ◆ As in previous years the Commissioners and staff have attended a number of overseas conferences/seminars to enhance their technical and regulatory skills. However, there were still many events to which they were invited but had to decline acceptance because of our budget constraints.
- ◆ Regulatory Commissions in the Caribbean from the Bahamas in the North to Guyana in the south, came together and joined themselves in a body called the "Organisation of Caribbean Utility Regulators" (OOCUR), in July 2002. The Secretariat is based in Port-of Spain, Trinidad. Justice Prem Persaud, Chairman of this Commission was elected Chairman of OOCUR. It is the expectation that membership of OOCUR will help this Commission to obtain training and technical and regulatory advice from its sister organisations in the Caribbean. This can only benefit the Guyanese consumers in the long run, whilst at the same time enhancing the regulatory aspect of the utilities.
- ◆ Sadly, this year saw the passing to the Great Beyond of Mr. Winston Nurse, Secretary to the Commission. He was a part of the Commission from its inception and was the "Historian" of the Commission. We wish to acknowledge the valuable contribution he has made to the Commission. He is greatly missed.
- ◆ During the year also, the Legal Officer, Mr. Allan Wilson resigned. The position was advertised, but yielded very little response from prospective persons. At the end of the year the position remained vacant.
- ◆ In spite of all the difficulties and obstacles faced by the Commission during the year, it did not flinch from executing its duties to the best of

its available resources. At all times the Commission gave effect to all agreements between the Government and private investors, and also took into consideration the interests of both the utilities and the consumers.

- ◆ It is hoped that in the year 2003 the Government will take the necessary steps to ensure the Commission has a full complement of Commissioners, and will come to appreciate the role a vibrant and effective Utilities Commission can play in the development of the utility sectors in Guyana.
- ◆ The Consumer groups also have a vital role to play in regulation. They need to be involved in all the issues being heard by the Commission, so that they can represent their members in a constructive and informed manner. To this end the Commission looks forward to working with all the stakeholders to ensure the safe, proper, adequate and financially viable regulated utilities in Guyana providing a safe and reliable service to consumers.

Plans for 2003

- ◆ The Commission intends to host a seminar in Guyana on various aspects of regulations in relation to the utilities, namely, telecommunications, electricity and water. Participants from all the Caribbean countries are expected to attend. Lecturers and presenters will be from the Caribbean and organisations further afield. We expect assistance from the International Telecommunications Union (ITU), Canadian International Development Agency (CIDA) and the National Association of Regulatory Utility Commissioners (NARUC). We are also soliciting the assistance and cooperation of the Ministry of Tourism and other related organisations.