

REGULATED INDUSTRIES COMMISSION ACT

CHAPTER 54:73

Act
26 of 1998
Amended by
4 of 2001

Current Authorised Pages

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Note on Subsidiary Legislation

The following Subsidiary Legislation have been omitted:

- (a) Regulated Industries Commission Electricity (Transmission and Distribution) Order, 2004 (LN 64/2004).
- (b) Regulated Industries Commission (Approval of Cess) Orders made under section 30;
- (c) Notice Requesting Review of Tariffs (LN 282/2005).

For reference to the above Orders and Notices—*see* the Current Edition of the Consolidated Index of Acts and Subsidiary Legislation.

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REGULATED INDUSTRIES COMMISSION ACT

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CHAPTER 54:73

REGULATED INDUSTRIES COMMISSION ACT

26 of 1998. **An Act to provide for a Regulated Industries Commission to perform certain functions respecting service providers; for the licensing of service providers and to make consequential amendments to related Acts.**

Commencement. [1ST JUNE 2000]
[109/2000].

Short title. **1.** This Act may be cited as the Regulated Industries Commission Act.

PART I

PRELIMINARY

Interpretation. **2.** In this Act—

“Assistant Executive Director” means an Assistant Executive Director appointed under section 16;

“Chairman” means the Commissioner appointed as such under section 5;

“Commission” means the Regulated Industries Commission established by section 4;

“Commissioner” means a member of the Commission and includes an alternate member;

“compensation” includes gain or reward;

“Deputy Executive Director” means the Deputy Executive Director appointed under section 16;

“Executive Director” means the Executive Director appointed under section 15;

Ch. 81:13. “Fair Trading Commission” means the Fair Trading Commission established under the Fair Trading Act;

Ch. 81:13. “Fair Trading Tribunal” means the Fair Trading Tribunal established under the Fair Trading Act;

“licence” means a licence granted under section 38 unless the context otherwise requires;

“licensee” means an entity to whom a licence has been granted;

“Minister” means the Minister to whom responsibility for matters affecting the Regulated Industries Commission is assigned except as otherwise provided in this Act;

“municipal corporation” means a Corporation within the meaning of the Municipal Corporations Act;

Ch. 25:04.

“principle” means the formula, method or framework for determining a rate for a service;

“rate” means every rate, fare, toll, charge, rental or other compensation or payment whatsoever for services;

“rate base” means the sum value of—

- (a) plant used and useful in providing a service;
- (b) construction work in progress directly related to providing a service;
- (c) an allowance for working capital to meet current expenses and contingencies; and
- (d) average annual interest charged in respect of construction work in progress,

less accumulated depreciation, unless otherwise specified in a licence;

“Secretary” means the Secretary appointed under section 16;

“service provider” means any entity, including a statutory authority or a company incorporated under the Companies Act, listed in the First Schedule and licensed to provide a service listed in the Second Schedule;

Ch. 81:01.
First Schedule.
Second
Schedule.

“service”, unless where the context otherwise requires, means a service specified in the Second Schedule and includes the supplying or furnishing of any commodity derived directly from the activities in which a service provider is engaged, but does not include any other activity of the service provider;

“statutory authority” means a municipal corporation and any commission, board, committee, council or similar body whether corporate or unincorporated, established by or under a public general statute.

Application of Act.

3. This Act shall be read and construed as applying to a service provider notwithstanding any general or special power or authority vested in such service provider by any written law or by virtue of the incorporation of the service provider.

PART II

THE REGULATED INDUSTRIES COMMISSION

ESTABLISHMENT OF COMMISSION

Commission established and incorporated.

4. There is hereby established for the purpose of exercising and performing such duties as are conferred upon it by this Act and by any other written law, a body corporate to be known as the Regulated Industries Commission.

Constitution of Commission.

5. (1) The Commission shall consist of not less than five nor more than seven members designated Commissioners who shall be appointed by the President from among persons appearing to him to be qualified by reason of training and extensive experience in economics, finance, engineering, law, business, human resource management or public administration.

(2) The President may appoint any two Commissioners to be Chairman and Deputy Chairman.

(3) The President shall appoint one or more Commissioners to be members of the Fair Trading Commission.

Powers and functions of Commission.

6. (1) The Commission may have and exercise such functions, powers and duties as are imposed on it by this Act and in particular—

- (a) advise the Minister on matters relating to the operation of this Act including the granting of licences;
- (b) administer such matters as are required consequent upon the granting of licences;
- (c) ensure, as far as is reasonably practicable, that the service provided by a service provider operating under prudent and efficient

- management will be on terms that will allow the service provider to earn sufficient return to finance necessary investment;
- (d) carry out studies of efficiency and economy of operation and of performance by service providers and publish the results thereof;
 - (e) prescribe and publish in the *Gazette* and in at least one daily newspaper circulating in Trinidad and Tobago, standards for services;
 - (f) monitor service providers and conduct checks to determine their compliance with the standards referred to in paragraph (e);
 - (g) impose such sanctions as it may prescribe for non-compliance with the standards referred to in paragraph (e) and any conditions attaching to a licence;
 - (h) establish the principles and methodologies by which service providers determine rates for services;
 - (i) monitor rates charged by service providers to ensure compliance with the principles established under paragraph (h);
 - (j) carry out periodic reviews of the rating regimes of service providers;
 - (k) facilitate competition between service providers where competition is possible and desirable;
 - (l) investigate complaints by consumers, of their failure to obtain redress from service providers in respect of rates, billings and unsatisfactory service and facilitate relief where necessary;
 - (m) impose and collect fees for licences; and
 - (n) do all such things as may be necessary or expedient for the proper performance of its functions.

(2) In the performance of its functions under subsections (1)(e), (g), (h) and (j), the Commission shall consult with service providers and representatives of consumer interest groups and any other parties it considers as having an interest in the matters before it.

(3) In the performance of its functions, the Commission shall have regard to the public interest and in particular—

- (a) to maximum efficiency in the use and allocation of resources to ensure as far as is reasonably practicable, that services are reliable and provided at the lowest possible cost;
- (b) to equal access by consumers to service;
- (c) to fair treatment of consumers and of service providers similarly placed;
- (d) in respect of consumers similarly placed, to non-discrimination in relation to access, pricing and quality service;
- (e) current national environmental policy.

Custody and use of Seal.

7. (1) The Seal of the Commission shall be kept in the custody of the Secretary and may be affixed to an instrument pursuant to a resolution of the Commission in the presence of the Chairman or Deputy Chairman and of one other Commissioner and of the Secretary.

(2) The Seal of the Commission shall be attested by the signatures of the Chairman or Deputy Chairman and the Secretary.

(3) All decisions of the Commission and all documents other than those required by law to be under Seal may be signified under the hand of the Executive Director and the Secretary.

TENURE OF OFFICE

Appointment to office.

8. (1) Appointment to the office of Commissioner shall be for such period being not more than five years at any one time, as the President shall specify at the time of the appointment, but appointments of the Commissioners shall not all expire at the same time.

(2) The President may terminate the appointment of a Commissioner or a person appointed under section 9(1) where the Commissioner or other person—

- (a) becomes of unsound mind or incapable of carrying out his duties;
- (b) becomes bankrupt or compounds with his creditors;
- (c) is convicted of any offence which brings the office of Commissioner into disrepute;
- (d) is guilty of misconduct in relation to his duties;
- (e) is absent, except on leave granted by the Commission, from all meetings of the Commission held during two consecutive months or during any three months in any period of twelve months; or
- (f) fails to carry out any of the duties or functions conferred or imposed on him under this Act.

(3) The appointment of any person as Commissioner and the termination of office of any person as Commissioner whether by death, resignation, revocation, effluxion of time or otherwise, shall be notified in the *Gazette*.

(4) Every Commissioner appointed under this section shall make and subscribe to an oath before the President that he will faithfully and to the best of his ability, discharge the trust and perform the duties devolving upon him as Commissioner.

9. (1) Where a Commissioner is unable to act by reason of illness or other cause, the President may appoint a person to act as a Commissioner in his stead for that occasion or until the termination of the disability. ^{Temporary appointment.}

(2) The President may fix the remuneration of a person appointed pursuant to subsection (1), and any person so appointed may complete any unfinished business of the Commission in which he has taken part notwithstanding the resumption of duty of the Commissioner in whose place he was appointed under this section.

(3) Section 8(3) applies *mutatis mutandis* to a person appointed under subsection (1).

Remuneration
of
Commissioner.

10. (1) A Commissioner shall, in respect of his office, be paid such remuneration and allowances as the President may determine.

(2) The remuneration and allowances of a Commissioner shall not be reduced during his term of office.

Resignation
from office.

11. (1) The Chairman or Deputy Chairman may at any time resign his office as Chairman or Deputy Chairman or as a Commissioner or both, by instrument addressed to the President and forwarded through the Minister.

(2) A Commissioner may at any time resign his office by instrument in writing addressed to the Chairman who shall forthwith cause it to be forwarded to the Minister to be submitted to the President.

Personal
liability of
Commissioners.

12. (1) No personal liability shall attach to any Commissioner for—

- (a) any act or omission of the Commission; or
- (b) anything done or permitted in good faith in the course of the operations of the Commission under this Act.

(2) Any sums of money, damage or costs recovered against the Commission or any Commissioner for anything done, omitted or permitted in good faith in the course of the operations of the Commission under this Act shall be paid out of the funds of the Commission.

Declaration of
interest.

13. (1) A Commissioner who is in any way, whether directly or indirectly, interested in a contract or proposed contract with or in any other matter concerning a service provider shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the Commission, and the Commissioner—

- (a) shall not take part after the disclosure in any deliberation or decision of the Commission with respect to that contract; and

(b) shall be disregarded for the purpose of constituting a quorum of the Commission.

(3) This section does not apply to an interest in any matter relating to the terms on which the right to participate in any service is offered to the public.

(4) For the purposes of this section, a person who or any nominee or relative of whom is a shareholder or partner in a company or other body of persons other than a statutory authority or who is an employee thereof shall be treated as having indirectly, a pecuniary interest in a contract or proposed contract or other matter where the company or such other body of persons is a party to the contract or proposed contract or has a pecuniary interest in such other matter under consideration.

(5) A Commissioner who fails to comply with the provisions of this section is liable on summary conviction to a fine of twenty-five thousand dollars, unless he proves that he did not know that the contract, proposed contract or other matter in which he had a pecuniary interest was the subject of consideration at the meeting.

(6) In subsection (4) “relative” means spouse, common-law spouse, father, mother, brother, sister, son or daughter of a person and includes the spouse of a son or daughter of such person.

14. No Commissioner or former Commissioner shall accept employment or enter into a contract of service with a service provider until the expiry of two years from the termination of his appointment whether by signature, revocation, effluxion of time or otherwise.

Limitation on subsequent employment.

OFFICES OF THE COMMISSION

15. (1) The Commission shall appoint for a term not exceeding five years on such terms and conditions as the Minister may determine, an Executive Director who shall be the Chief Executive Officer of the Commission.

Executive Director.

(2) The Executive Director—

(a) shall be responsible for the supervision over and direction of the work and staff of the Commission respectively; and

(b) shall attend all meetings of the Commission and take part in its deliberations, but he shall have no right to vote.

(3) The appointment of the Executive Director and the termination of his appointment, whether by death, resignation or otherwise, shall be published in the *Gazette*.

Deputy
Executive
Director,
Secretary and
Assistant
Executive
Directors.

16. (1) The Commission shall appoint—

(a) a Deputy Executive Director who shall—

- (i) perform the duties of the Executive Director during a vacancy in that office or when the Executive Director is unable to act by the reason of illness or other cause; and
- (ii) be the immediate Supervisor of the Assistant Executive Director referred to in subsection (c);

(b) a Secretary; and

(c) such number of Assistant Executive Directors on such terms and conditions as it thinks fit and subject to such maximum limit of remuneration as the Minister may determine.

(2) Notwithstanding subsection (1)(a)(ii), the Secretary and the Assistant Executive Directors shall be responsible for such matters as the Executive Director with the approval of the Commission, may assign to them.

(3) Where the Deputy Executive Director acts in accordance with this section he—

(a) has and may exercise all the powers of the Executive Director;

(b) shall perform all of the functions and receive the same remuneration as the Executive Director.

Application of
section 13.

17. Section 13 applies *mutatis mutandis* to the Executive Director, Deputy Executive Director and the Assistant Executive Directors.

STAFF AND RELATED MATTERS

18. The Commission may appoint on such terms and conditions as it thinks fit and subject to such maximum limit of remuneration as the Minister may determine, employees as it considers necessary for the due and efficient exercise and performance of its functions under this Act.

Appointment of Staff.

19. (1) Subject to subsection (2) and to the approval of the Commission, the appropriate Service Commission and the officer, any officer in the public service may be transferred on secondment to the service of the Commission or from the service of the Commission to the public service.

Transfer on secondment.

(2) Where a transfer on secondment referred to in subsection (1) is effected, arrangements shall be made to preserve the rights of the officer so transferred to any pension, gratuity or other allowance for which he would have been eligible had he remained in the service of the Government or of the Commission, as the case may be.

(3) A period of transfer on secondment shall not in any case exceed three years.

20. (1) Subject to the approval of the Commission, the appropriate Service Commission and the officer, an officer in the public service may be transferred to the service of the Commission and upon such transfer shall become a member of any pension scheme operated for the benefit of employees of the Commission.

Transfer of officers of Government to the Commission.

(2) A transfer referred to in subsection (1) shall be on such terms that the pension or superannuation rights accruing to the officer at the time of his transfer shall be preserved.

21. (1) The Commission shall provide for the establishment and maintenance of a pension scheme or arrange for membership in a scheme for its employees upon terms to be agreed upon between the Commission and the recognised representative association or trade union.

Pension rights and scheme.

(2) Notwithstanding the provisions of the Pensions Act and subject to subsection (1), an officer who transfers to the

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Commission shall be treated, in respect of his pension and death benefits, as if he had not so transferred.

(3) Without prejudice to subsection (1), the Commission may, under a pension scheme—

- (a) establish contributory superannuation schemes and establish and contribute to superannuation funds for the benefit of its employees;
- (b) grant gratuities, pensions or superannuation allowances to the surviving spouse, families or dependants of its employees;
- (c) enter into and carry into effect, arrangements with any insurance company or other association or company for securing for any employee or surviving spouse or dependant, such gratuities, pensions or allowances authorised by this section;
- (d) give donations or subscriptions to charitable institutions, benevolent funds and other objects calculated to benefit its employees.

Employment of persons for specific tasks.

22. (1) The Commission may employ on such terms and conditions as it thinks fit and subject to such maximum limits of remuneration as the Minister may determine, persons to perform specific tasks that the Commission considers necessary for the due performance of its functions under this Act.

(2) Section 13(1) and (2) applies *mutatis mutandis* to persons appointed under subsection (1).

PROCEDURE

Meetings of the Commission.

23. (1) The Commission shall meet at such times as may be necessary or expedient for the transaction of business and in any case not less than once a month at such place and time and on such days as the Commission may determine.

(2) The Commission may by way of rules or resolutions regulate its own procedure for the conduct of its business.

(3) Minutes of each meeting shall be kept in the proper form by the Secretary and shall be confirmed at a subsequent meeting of the Commission.

(4) Certified copies of the minutes referred to in subsection (3), when confirmed pursuant to that subsection shall be forwarded to the Minister.

(5) The Chairman may at any time in his discretion or at the request of at least two other Commissioners call a special meeting of the Commission.

(6) The quorum at any meeting of the Commission shall be a majority of the members.

COMMITTEES

24. (1) The Minister may, after consultation with consumer interest groups, appoint such consumer service committees as the Minister sees fit. Consumer Service Committees.

- (2) A Consumer Service Committee shall consist of—
- (a) a Chairman who shall not be a Commissioner;
 - (b) one member nominated by the Chief Secretary of the Tobago House of Assembly; and
 - (c) three members drawn from throughout Trinidad and Tobago to represent consumer interests except that they shall not be public officers or employees of service providers or the Commission.

(3) Appointment to a Consumer Service Committee shall be for a term not exceeding three years with eligibility for reappointment.

- (4) A Consumer Service Committee shall—
- (a) meet as often as the Commission decides;
 - (b) regulate its own procedure; and
 - (c) submit to the Commission, minutes and reports at such time and in such form as the Commission may require.

(5) The functions of a Consumer Service Committee shall consist of, but not be limited to—

- (a) advising the Commission on matters relating to the type, level and quality of service provided by service providers;
- (b) assisting in ensuring that service providers implement adequate complaint procedures for the speedy and appropriate resolution of complaints made by consumers;
- (c) participating, on request, in proceedings of the Commission where the terms and conditions of licences or the bases of tariffs or rates charged by a service provider are being considered;
- (d) attending to such other matters as may be assigned to it from time to time by the Commission.

Other committees.

25. (1) The Commission may appoint committees other than those referred to in section 24 to examine and report to it on any matter whatsoever arising out of or connected with any of its functions under this Act.

(2) A committee appointed under this section shall consist of at least one Commissioner and such other persons whose assistance or advice the Commission may require.

(3) In relation to the service in respect of which it is appointed, a committee appointed under this section shall have and exercise such of the powers of the Commission under this Act as are specified in the terms of reference of the committee.

(4) The Commission is not bound by any report submitted to it by any committee appointed under this section and the Commission may reject or adopt a report wholly or partly or with such modifications, additions or adaptations as the Commission thinks fit.

Remuneration of committee members.

26. The Commission may pay to any person appointed to a Committee referred to in sections 24 and 25, such remuneration, honoraria and expenses as the Minister may determine.

Commission to defray expenses of committees.

27. The Commission shall defray the expenses of any committee which may be appointed under sections 24 and 25.

PART III

MANAGEMENT AND FINANCE

28. (1) Not later than twenty-eight days prior to the start of each financial year, the Commission shall submit to the Minister— Commission to prepare budget.

- (a) a budget showing planned expenses and revenues of the Commission;
- (b) a statement outlining the objectives and planned activities of the Commission for the coming financial year.

(2) Before the start of the financial year, the Minister shall cause the budget and statement referred to in subsection (1) to be laid before Parliament and if Parliament is not then in session, within twenty-eight days of the commencement of its next session.

29. The funds and resources of the Commission shall consist of such amounts as may be received by the Commission in respect of— Funds and resources of the Commission.

- (a) amounts as may be appropriated by Parliament until the Commission attains self-sufficiency from the cess referred to in section 30;
- (b) such amounts collected by way of the cess;
- (c) fees for licences;
- (d) all sums received by or falling due to the Commission as fees;
- (e) all other sums or property that may in any manner become lawfully payable to or vested in the Commission in respect of any matters incidental to its functions.

30. (1) Subject to the approval of the Minister and subsections (2) and (3), the Commission may impose upon service providers, a cess on rates and charges collected by the service providers. Financial power of the Commission.

(2) No cess imposed under subsection (1) shall be of any effect unless and until approved by the Minister by Order.

- (3) For the purposes of this section, the Minister—
- (a) shall satisfy himself that the cess is fair and reasonable having regard to the needs of the Commission; and
 - (b) may have the cess assessed by the Auditor General or by an auditor authorised by the Auditor General for the purpose referred to in paragraph (a).
- (4) The cess payable shall be—
- (a) based proportionately, on the gross earnings of the service provider for the preceding calendar year or any part thereof; and
 - (b) paid to the Commission within one month of the service provider being notified by the Commission of the amount payable.

Exemption from tax.

31. The Commission is exempt from all stamp duty, taxes, duties, customs duties, levies and other imposts on its income or profit or on assets which it acquires for its own use.

Application of funds.

32. The funds of the Commission are to be applied in defraying—

- (a) the remuneration, fees and allowances of Commissioners;
- (b) the salaries, fees, allowances, and other payments due to the staff of the Commission;
- (c) operating expenses, including rent, purchase of goods and services, maintenance and insurance of any property of the Commission;
- (d) capital expenses including purchase of equipment; and
- (e) any other expenditure authorised by the Commission in the discharge of its duties, functions and contractual obligations.

Commission may make rules.

33. The Commission may, with the prior approval of the Minister with responsibility for finance, make rules for the proper control of the system of accounting and the finances of the Commission.

34. (1) The Commission shall—

Accounts, audit
and annual
report.

- (a) keep proper accounts and records in respect of its transactions and affairs; and
- (b) in respect of each financial year, prepare a financial statement in a form which reflects its income, expenditure, assets and liabilities in accordance with accepted accounting principles.

(2) The accounts of the Commission shall be audited annually by the Auditor General or by an auditor authorised by him for such purpose.

(3) The Commission shall, not later than six months after the end of the preceding financial year, submit to the Minister in respect of the preceding financial year—

- (a) a copy of the audited statement of accounts; and
- (b) an annual report in respect of the preceding year.

(4) The Minister shall cause a copy of the annual report and of the audited statement to be laid before Parliament within twenty-eight days of his receipt of the report and if Parliament is not then in session, within twenty-eight days of the commencement of its next session.

(5) The annual report shall be made available to the public as soon as possible after it is laid in Parliament pursuant to subsection (4).

35. The Commission shall not write-off bad debts except with the prior written approval of the Minister with responsibility for finance.

Bad debts.

36. (1) The financial year of the Commission shall be that determined by the Minister with responsibility for finance.

Financial year.

(2) Notwithstanding subsection (1) the Commission may, with the approval of the Minister with responsibility for finance, vary its financial year.

PART IV

LICENCES

37. (1) In relation to any service listed in the Second Schedule, no entity shall render a service to or for the use of any other person or service provider except with the authority of a licence.

Licence
required.
Second
Schedule.

(2) The Minister may by Order amend the Second Schedule except that he shall not add a service to the Schedule unless he has consulted with the Commission and he is satisfied that it would be in the public interest to so add and that—

- (a) the market for the service is not competitive; and
- (b) the benefits to the economy of regulating the provision of the service would outweigh the costs of such regulation.

Minister may grant licence.

38. (1) Subject to subsection (2), the Minister may—

- (a) on the payment of such fee as may be prescribed; and
- (b) on receipt of an application in the prescribed form,

grant to the applicant, a licence in the prescribed form for the provision of a service.

(2) Notwithstanding subsection (1), the Minister shall not grant to a service provider, a licence unless he receives the advice of the Commission and is satisfied that it would be in the public interest to so grant.

(3) Notwithstanding this Part, the Minister may grant an exemption from the requirements of this Act or any provision thereof where—

- (a) he is of the opinion that such an exemption will promote competition; and
- (b) he is satisfied that exemption will not conflict with a licence issued under subsection (2).

Applications generally.

39. (1) An application referred to in section 38(1)(b) including an application for the exclusive provision of a service shall be forwarded by the Minister to the Commission which shall, subject to subsection (2), advise the Minister on the application within sixty days of the Commission's receipt of all information that it may require for such advice.

(2) On its receipt of an application referred to in subsection (1), the Commission shall cause to be published in the *Gazette* and in at least one daily newspaper circulating in Trinidad and Tobago, a notice to the effect that it had received and was reviewing the application.

(3) A notice published pursuant to subsection (2) shall state the time which shall not be less than twenty-eight days from the date of publication of the notice, within which any comments on or objection to the application may be submitted to the Commission and the Commission shall consider the objection prior to making its recommendations to the Minister.

(4) The Minister is not bound to accept the advice or any part thereof rendered by the Commission in accordance with this section.

(5) On granting a licence, the Minister shall cause to be published in the *Gazette* and at least one daily newspaper circulating in Trinidad and Tobago, a notice to that effect and amend the First Schedule by adding thereto the name of the concerned entity.

First Schedule.

40. (1) A licence issued in accordance with this Part—

Provisions of licences.

(a) shall contain provisions setting out—

- (i) the term of the licence;
- (ii) the service governed by the licence;
- (iii) licence fees and cess;
- (iv) the procedure for enforcement of the terms and conditions of the licence;
- (v) the procedures, principles, and mechanisms relating to compensation of the service provider;
- (vi) entities to be employed for resolution of disputes between the service provider and the Commission or the Minister;

(b) may contain provisions setting out—

- (i)(a)(vii) the principles by which the maximum rates for the service, are determined;
- (i) the minimum quality and service standards applicable to the service;
- (a)(ix) arrangements for continuity of the service in the event of default or bankruptcy of the licensee;
- (viii) procedure for variation of the licence;

- (iii) rules concerning interconnection with other entities;
- (iv) rules promoting or limiting competition in the provision of the service;
- (v) any other matter relevant to the supply of the service which, in the opinion of the Minister, should be included in the licence in the public interest.

(2) Notwithstanding this Act or any other written law, where a licence makes provision for any of the matters listed in subsection (1), the provision shall be effective and binding.

Review of
refused
application.

41. Where an application for a licence is refused by the Minister he—

- (a) shall notify the applicant and afford the applicant a period of four weeks after the date of refusal, to make representation to the Minister; and
- (b) may, having regard to the representation, grant the application subject to such terms and conditions as he thinks necessary.

Variation of
licence.

42. (1) Subject to this section, the Minister may by instrument in writing, vary the duration of a licence or any condition for the time attached to the licence.

(2) The Minister shall not vary a licence except—

- (a) by agreement between the licensee and the Minister; or
- (b) where, in the opinion of the Minister, new circumstances have arisen which make it necessary to vary the licence in the public interest.

(3) Any compensation for a variation made pursuant to subsection (2)(b) shall be determined by the Fair Trading Commission.

(4) Before the Minister varies a licence pursuant to subsection (2)(b), he shall—

- (a) cause to be published in the *Gazette* and at least one daily newspaper circulating in Trinidad and

- Tobago, a notice of his intention to so vary and supply reasons for the proposed variation; and
- (b) allow a period of twenty-eight days after the date of publication in the *Gazette* during which representation may be made to the Minister in respect of proposed variation.

(5) Where a licence is varied pursuant to subsection (2)(b), the Minister shall cause to be published in the *Gazette*, a statement to that effect, with reasons.

43. (1) Subject to this section, the Minister after consultation with the Commission may suspend or cancel a licence for sufficient reason. Minister may suspend or cancel licence.

(2) The Minister shall, before exercising the power of suspension or cancellation conferred on him by this section—

- (a) cause the Commission to serve on the relevant service provider, a written notice to the effect that—
- (i) he is considering exercising the power and setting out the ground on which it may be exercised;
- (ii) the service provider may within thirty days of the date on which the notice was served, make written representation to the Commission; and
- (b) take into consideration any representation made to the Commission under paragraph (a)(ii).

(3) During the period that the Minister is considering exercising his power to suspend or cancel a licence, the service provider shall continue to provide the related service in accordance with the terms of its licence.

44. Where a licence is suspended or cancelled under this Act, the Minister shall amend the First Schedule by deleting therefrom, the name of the service provider. Minister shall amend First Schedule.

45. (1) An appeal by any party who is aggrieved by a decision of the Commission or the Minister shall be made to the Fair Trading Tribunal. Appeals.

- (2) The provisions of the Fair Trading Act relating to—
- (a) the procedure and jurisdiction of the Tribunal;
 - (b) notices of appeal to the Fair Trading Tribunal;
 - (c) hearing and determination of appeals; and
 - (d) appeal from a decision of the Fair Trading Tribunal,

shall apply *mutatis mutandis*, to appeals referred to in subsection (1).

Licences open to public scrutiny.

46. Licences shall be available for public scrutiny at the office of the Commission and may be reproduced by the Commission at the request of any member of the public on payment of a prescribed fee.

PART V

RATES AND TARIFFS

Adherence to tariffs.

47. Subject to this Part, a service provider shall not, in respect of any service it provides directly or indirectly, demand or receive a rate greater than—

- (a) the maximum rates permitted—
 - (i) under the principles established by Regulations made under this Act; or
 - (ii) by a licence; or
- (b) any other rate determined by the Commission in accordance with this Act.

Periodic reviews by Commission.

48. The Commission shall review the principles for determining rates and charges for services every five years or, where the licence issued to the service provider prescribes otherwise, at such shorter interval as it may determine.

Review of principles.

49. (1) Notwithstanding section 48, where it is the opinion of a service provider that there has been such a fundamental change in circumstances as to warrant a review of the principle for determining rates for the service which it provides, it may give written notice to the Commission requesting a review of the principle except that it may not request a review more than once in any year.

- (2) A notice given under subsection (1) shall—
- (a) state—
- (i) the existing duly established rate or formula;
 - (ii) the proposed new rate or formula;
 - (iii) the justification for the review of the principle;
 - (iv) the date from which the service provider proposes that the new rate or formula, as the case may be, should take effect; and
 - (v) any other particulars which the Commission may from time to time specify; and
- (b) be published in the *Gazette* and at least one daily newspaper in circulation in Trinidad and Tobago.
- (3) The justification referred to in subsection (2)(a)(iii) shall set out, *inter alia*—
- (a) projected revenues as against projected expenditure and reasons for any significant changes thereof; and
 - (b) the results of any actions taken by the service provider to meet the projections of any preceding review.
- (4) The Commission shall consult with the parties referred to in section 6(2) not later than three months after its receipt of the notice referred to in subsection (1).
- (5) Where the Commission is of the opinion that the rates proposed by the service provider do not accord with any principle established pursuant to section 6(1)(h), the Commission shall notify the service provider in writing that a review is not warranted.

50. (1) The Commission may, after the consultations referred to in section 49(4), determine the matter by modifying the existing principle or establishing a new principle and it is a condition of every licence that the licensee shall accept the determination of the Commission.

Determination
by Commission.

(2) The period between the date of the notice referred to in section 49(1) and a determination by the Commission under subsection (1) shall not exceed six months.

Rate deemed approved.

51. If on the expiration of the period for the determination referred to in section 50(2), the Commission has failed to make the determination in accordance with section 50(1), the proposed new rate or formula referred to in section 49(2)(a)(ii) is deemed to be the new rate or formula, as the case may be, determined by the Commission.

Special contracts.

52. (1) Every contract or agreement made after the commencement of this Act by a service provider with any consumer for the supply of a service designed to meet the requirements of the consumer that is not included in an existing tariff shall be registered with the Commission and shall be open for public inspection at the offices of the Commission at the discretion of the Commission.

(2) It is a condition of every licence that the licensee shall comply with subsection (1).

PART VI

COMPLAINTS AND REVIEW

Review of complaints.

53. (1) Subject to this section, the Commission may on its own motion or in consequence of a complaint made by any person in respect of—

- (a) the rate charged for a service;
- (b) a disputed billing for a service; and
- (c) the standard or conditions of supply of a service,

review such complaint or any other matter related to its powers, duties or functions under this Act and where it thinks fit, consult with the parties concerned.

(2) Every complaint shall be in writing and may be made by the complainant in person or by his Attorney-at-law or by any person authorised by him in writing in that behalf.

(3) A complaint to the Commission against the rate referred in subsection (1)(a) shall be on the ground that the rate is contrary to law or the provisions of a licence.

(4) A complaint against the standard or conditions of supply of a service shall be entertained by the Commission only where the complainant satisfies the Commission that he has failed to obtain reasonable redress from the service provider.

54. Nothing in Part V or in this Part shall be construed as precluding the Commission from dealing at the same time with an application for a review referred to in section 49 and a related complaint made under section 53(1). Joint review.

55. It is a condition of every licence that a licensee shall not discontinue service to a consumer where, in respect of the service provided to the consumer, a complaint made under section 53 remains unresolved. Non-discontinuance of service.

PART VII

RESEARCH AND INQUIRIES

56. (1) For the purposes of this Part, the Commission shall establish an office for research which shall— Research.

- (a) collect and compile any information which may be of assistance to the Commission in the exercise of its functions under this Act;
- (b) conduct the reviews referred to in sections 48 and 49;
- (c) keep information referred to in paragraph (a) up-to-date; and
- (d) monitor service providers for compliance with the provisions of this Act.

(2) Information collected and compiled and the results of the research carried out under this section shall be furnished upon written request to any person upon payment of the prescribed fee.

57. It is a condition of every licence that the Chairman or the Chief Executive Officer of a service provider or any other person so authorised by the Chairman or the Chief Executive Officer shall, on Service provider to furnish reports, etc.

being requested by the Commission so to do furnish to the Commission at such time and in such form as the Commission may require—

- (a) all tabulations, computations and all other information required by the Commission to carry into effect any provision of this Act;
- (b) all annual reports.

Inspection of books, accounts, etc.

58. It is a condition of every licence that—

- (a) a service provider shall allow a Commissioner or any officer or other person authorised by the Commission to inspect the accounts, books, papers, records and documents of the service provider at any reasonable time;
- (b) any authorised representative of the Commission shall, upon presentation of his official identification, be allowed entry into the premises of a service provider for any of the purposes of this Act.

Furnishing of information.

59. It is a condition of every licence that—

- (a) any return of information required to be furnished to the Commission;
- (b) any answer to any question submitted by the Commission; and
- (c) any information required by the Commission which is in the possession or control of a service provider,

shall be prepared and furnished to the Commission within the time and in the manner and form and with such particulars and certification as are required by this Act.

Making false returns.

60. Any person who wilfully makes any return or furnishes any information to the Commission which is false is liable to a fine of fifty thousand dollars.

PART VIII

MISCELLANEOUS AND GENERAL

61. Subject to section 55, a service provider shall, before discontinuing service to a consumer, give to the consumer notice in writing of its intention to discontinue the service stating the reason for the proposed discontinuance and the date when the discontinuance is to be effected except that the service provider shall not effect discontinuance before thirty calendar days from the date of the notice have elapsed.

Service provider to give notice of discontinuance.

62. The Commission and every person concerned with the administration of this Act shall regard as secret and confidential, all documents, information or matters disclosed in the administration of this Act except that disclosures—

Confidentiality.

- (a) made by the Commission or any other person in a review under Part VI of this Act;
- (b) which the Commission considers necessary in the discharge of its functions,

shall not be deemed inconsistent with any duty imposed under this section.

63. A Commissioner shall not be disqualified from acting in any matter arising under this Act by reason only of his being one of several ratepayers, or as one of any other class of persons liable in common with the others to contribute to, or be benefitted by any rate or fund out of which any expenses of the service provider concerned are to be defrayed.

Commissioners not disqualified by liability to rates.

64. A copy of any document made by or which is in the custody of the Commission, certified by the Secretary of the Commission to be a true copy thereof, shall, in any Court be evidence of the document without proof of the signature of the Secretary.

Evidence of documents.

65. A person who wilfully obstructs any person acting in the execution of his duties under this Act or under any Regulations made thereunder is liable on summary conviction to a fine of fifty thousand dollars.

Penalty for obstructing execution of Act.

General penalty. **66.** A person who contravenes or fails to comply with any of the provisions of this Act is guilty of an offence and except where the provision by or under which the offence is created provides the penalty to be imposed, is liable on summary conviction to a fine of three hundred thousand dollars and in the case of a continuing offence, to a further fine of sixty thousand dollars for each day that the offence continues after conviction.

Regulations. **67.** (1) The Minister may, on the advice of the Commission, make Regulations prescribing—

- (a) the procedure for making applications for licences;
- (b) for the issue, suspension and cancellation of licences;
- (c) terms, and conditions of licences generally;
- (d) forms and fees.

(2) The Commission may, after consultation with the relevant service providers and with the approval of the Minister, make Regulations for the purpose of carrying this Act into effect and in particular may make Regulations—

- (a) setting out the principles on which rates chargeable by service providers should be based;
- (b) for prescribing the procedure for the conduct of reviews under Parts V and VI of this Act;
- (c) establishing and monitoring standards of services;
- (d) prescribing forms of accounts and records to be kept by service providers;
- (e) prescribing sanctions for non-compliance with terms and conditions attaching to licences;
- (f) prescribing any matter or thing that is required by this Act to be prescribed.

(3) Where the Commission makes Regulations under subsection (2)(a), it shall have regard to—

- (a) the funding and ability of the service provider to perform its functions;
- (b) the interest of shareholders of the service provider;

- (c) the ability of consumers to pay rates;
- (d) the results of studies of economy and efficiency effected under section 6(1)(d);
- (e) rates charged by competing service providers for providing an alternative service;
- (f) the standard of service being offered by the service provider;
- (g) the rate of inflation in the economy for any preceding period as may be considered appropriate;
- (h) future prospective increases in productivity by the service provider; and
- (i) current national environmental policy.

(4) In pursuance of subsection (3), the Commission shall have regard to the following matters, *inter alia*:

- (a) replacement capital cost expended;
- (b) least-cost operating expenses which may be incurred;
- (c) annual depreciation;
- (d) return on the rate base.

(5) Regulations made under this Act may contain provisions for imposing on any person contravening the Regulations, a fine recoverable on summary conviction, of one hundred and fifty thousand dollars in respect of each offence and in the case of a continuing offence, a further fine of thirty thousand dollars for each day during which the offence continues after conviction therefor.

68. (1) Until licences are granted under this Act or provisions are made under some other written law for the provision of a service, any entity which immediately before the commencement of this Act lawfully operated under—

- (a) the former Act;
- (b) the Trinidad and Tobago Telephone Act; Ch. 47:30.
- (c) the Water and Sewerage Act; or Ch. 54:40.
- (d) the Trinidad and Tobago Electricity Commission Act, Ch. 54:70.

Transitional arrangements.

to provide what would under this Act be a service, is deemed to be licensed for the purposes of this Act and the rates charged by that entity is deemed to be authorised by this Act until provision is made therefor under this Act.

Ch. 54:01. (2) In this section, “former Act” means the Public Utilities Commission Act repealed this Act.

(Sections 2 and 39).
[4 of 2001].

FIRST SCHEDULE

SERVICE PROVIDERS

1. The Water and Sewerage Authority.
2. The Trinidad and Tobago Electricity Commission.
3. The Power Generation Company of Trinidad and Tobago Limited.
4. InnCogen Limited.

(Sections 2 and 37).
[4 of 2001].

SECOND SCHEDULE

SERVICES

1. Supply of electricity.
2. Distribution of electricity.
3. Supply of water.
4. Distribution of water.
5. Provision of sewerage and waste-water services.