

PUBLIC UTILITIES REGULATORY COMMISSION BILL, 2015

EXPLANATORY MEMORANDUM

The Public Utilities Regulatory Commission Act (the “Bill”) repeals and replaces in its entirety the Public Utilities Commission Act (“PUCA”), originally enacted in 1994 concurrently with the privatisation of the Grenada electricity sector and enactment of the Electricity Supply Act, 1994. The Bill is an integral part of the larger comprehensive reform of the electricity sector, and its enactment would accompany the enactment of the Electricity Supply Bill submitted simultaneously with this Bill, which will open the sector to domestic and foreign investment in new projects for the generation of electricity, particularly from renewable energy sources (e.g., wind, solar, geothermal, biomass, wave and tidal sources). It is expected that the new Public Utilities Regulatory Commission (“Commission”) will be appointed concurrently with or shortly after the commencement date of the Bill, once enacted, with the Commission initially to regulate the electricity sector.

Because the Bill, like the PUCA, applies to all public utilities, in any sector, placed under its jurisdiction by order of the Governor General, it is not possible for the Bill itself to specify every standard and procedure governing its regulation of public utilities in every such sector. To address this challenge and, thus, achieve a desirable level of specificity for the regulation of each individual sector (e.g., electricity, water), the Bill also contains references throughout to “other written law,” to ensure that the Commission’s functions and powers will include, and harmonise with, provisions of sector-specific laws such as the anticipated new Electricity Supply Act and its assignment of electricity-sector specific functions and powers to the Commission.

Part I sets out the short title and defines terms used in the Bill. It also empowers the Governor General, on the advice of Cabinet, to appoint the Commissioners who will adjudicate all matters before the Commission.

Part II of the Bill allows a Commission of either three or five members, instead of a mandatory five members, to facilitate the prompt and cost-effective constitution of the Commission and its initiation of regulation of the electricity sector. Regardless of whether the Commission is composed of three or five members, its constitution will consist of members who bring professional expertise to the Commission’s work as well as one member (in the case of a three-member Commission) and two members (in the case of a five-member Commission) from consumer groups and/or the general public. The Bill also protects against conflicts of interest, by prohibiting a person’s service as a

Commissioner (or as an expert or other professional person) if, during the previous five years, he or she held a senior position in a public utility under the Commission's jurisdiction, as well as prohibitions on a Commissioner's engaging in discussions for employment by a regulated public utility for a period of two years after leaving the Commission. In addition, Part II, as well as section 35 in Part IV, broaden the Commission's powers to retain and compensate experts and other professional persons on a temporary basis, to ensure that the Commission can obtain the expertise necessary for its work in a cost-effective manner and its effective performance of the extensive advisory, consultative and logistical functions assigned to it under the Electricity Supply Bill.

Part III (in combination with provisions of the Electricity Supply Bill) will place the regulation of public utilities' rates under the Commission's jurisdiction, in the case of the electricity sector in accordance with rate-setting regulations to be issued under the anticipated new Electricity Supply Act. Part III also broadens the jurisdiction of the Commission that it enjoyed under the PUCA, to include matters assigned to it under laws other than the Bill and regulations made under those other laws, consistent with the Electricity Supply Bill's assignment to the Commission of regulatory functions for the electricity sector that go far beyond the Commission's authority to set rates (*e.g.*, the enforcement of the terms and conditions of licences issued to electricity suppliers).

Parts IV and V contain penalty provisions updated from the PUCA to increase, to current standards, the fines to which public utilities and their directors, officers and employees who violate the Act's requirements are subject. Finally, Part V establishes the manner in which the Commission is to be funded, in several respects. First, the Commission will be required to prepare an annual budget for its operations, to be submitted through appropriate channels to Parliament for approval. Second, the Commission's operations will be funded by an annual assessment on public utilities under its jurisdiction, up to the lesser of one percent of a public utilities' gross annual revenues from services or \$_____. Third, Part V also specifies that a public utility under the Commission's jurisdiction must fund the excess cost of specific proceedings and investigations for its regulation by the Commission, again up to the lesser of one percent of the public utility's gross annual revenues from services or \$_____.

PUBLIC UTILITIES REGULATORY COMMISSION BILL, 2015

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PUBLIC UTILITIES COMMISSION BILL, 2015

An Act to provide for a Public Utilities Commission to determine rates for public utilities and to perform certain other functions respecting public utilities.

GRENADA
Act No. of 2015

PART I

Preliminary

1. Short title

This Act may be cited as the Public Utilities Regulatory Commission Act, 2015, and shall come into force on such date as the Minister shall by notice published in the *Gazette* appoint.

2. Interpretation

In this Act —

“Cabinet” has the meaning assigned to “Cabinet of Ministers” in section 59(1) of the Constitution;

“Chairperson” means the Commissioner appointed as such under section 4;

“Commission” means the Public Utilities Regulatory Commission established by section 4;

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

“compensation” includes gain or reward;

“Constitution” means the Constitution of Grenada, Chapter 128A;

“Minister,” except as otherwise expressly indicated in this Act, means the Minister of Government to whom is assigned responsibility for public utilities;

“public officer” has the meaning assigned to it in section 111 of the Constitution;

“public utility” means a private body or statutory authority performing services to the public for which any compensation or payment whatsoever is required, and to which this Act is made to apply by an Order made by the Governor-General under section 3;

“rate” means every rate, fare, toll, charge, rental or other compensation or payment whatsoever for services rendered by a public utility or paid by a public utility directly to a person to obtain the commodity supplied or furnished by the public utility to consumers;

“services” includes the accommodation afforded consumers by a public utility, the supplying or furnishing of any commodity derived directly from the purposes in which a public utility is engaged and the use and accommodation afforded the public by the facilities employed by or in connection with any such services performed by a public utility; but does not include any other commodity, by-product or article produced or manufactured by a public utility or any associate thereof that is offered for sale to the public at retail or wholesale prices;

“statutory authority” includes any commission, board, committee, council or similar body (whether corporate, incorporated or unincorporated) established by any Act.

3. Application of Act

(1) Subject to section 44 and this section, this Act shall be read and construed as applying to a public utility to which this Act is made to apply by an Order made by the

Governor-General under subsection (2) notwithstanding any general or special power or authority vested in such public utility by any written law or by virtue of its incorporation.

(2) The Governor-General, acting on the advice of Cabinet, may by Order published in the *Gazette* declare that any public utility named in the Order is subject to the provisions of this Act or any part thereof and such Order may have reference to any particular public utility or any specified class of public utility.

PART II

Establishment of Commission

4. Commission established and incorporated

(1) A Commission is hereby established as a body corporate for the purpose of exercising such powers and performing such duties as are conferred upon it by this Act or by any other written law.

(2) The Commission shall consist of either three or five members, in the discretion of the Governor-General, acting on the advice of Cabinet, including the Chairperson, all of whom shall be designated Commissioners and shall be appointed by the Governor-General, acting on the advice of Cabinet, from among persons of high character and integrity as follows—

(a) the Chairperson and one or, in the case of a five-member Commission, two other members from among persons appearing to him or her to be qualified by reason of having had experience and shown capacity in matters relating to trade, law, finance, economics, engineering, accounting or business management or in other matters relevant to the functions of the Commission;

(b) one or, in the case of a five-member Commission, two member representatives of --

(i) the general public; and/or

(ii) consumer organisations.

(3) If there is no organisation of the type referred to in subsection (2)(b)(ii), a member referred to in subsection 2(b) shall be drawn from the category referred to in subsection (2)(b)(i).

5. Appointment of Commissioners and tenure of office

(1) Appointment to the office of Commissioner shall, subject to subsection (2), be for such period, being not more than five years, as the Governor-General shall specify at the time of the appointment:

Provided that a person shall be eligible to be re-appointed as a Commissioner on the expiration of his or her period of office as a Commissioner.

Provided further that the Commission may determine to request the approval of the Governor General, acting on the advice of Cabinet, for the Chairperson and any other member appointed under section 4(2)(a) to serve as a Commissioner on a full-time basis.

Provided further that within the five years preceding his or her appointment to any term, the Chairperson and other members shall not have held any senior position in a public utility under the jurisdiction of the Commission pursuant to this Act or any other written law.

Provided further that no person who owns or otherwise holds shares or other interest in a public utility under the jurisdiction of the Commission, where such shares or other interest has a then-current value of **[amount]** or more, shall be appointed as a Commissioner, and any person under consideration for appointment, or appointed, as a Commissioner shall promptly disclose any such share or other interest.

(2) A Commissioner may at any time resign his or her office by instrument in writing addressed to the Chairperson who shall forthwith cause it to be forwarded to the Minister to be submitted to the Governor-General.

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

(4) Every Commissioner appointed under this section or under section 6 shall make and subscribe an oath before the Governor-General that he or she will faithfully, and to the best of his or her ability, discharge the trust and perform the duties devolving upon him or her as such Commissioner.

(5) The Chairperson and any other member of the Commission shall during a period of service with the Commission, refrain from engaging in discussions with any public utility under the jurisdiction of the Commission regarding his or her employment by such public utility and shall be prohibited from accepting employment with any such public utility for a period of two years after ceasing to be a member of the Commission.

6. Temporary appointments

(1) If a Commissioner is unable to act by reason of illness or other cause, the Governor-General, acting on the advice of Cabinet, may appoint a person to act as a member of the Commission in his or her stead for that occasion or until the termination of the disability.

(2) The qualifications for service on the Commission in section 2 and the provisions of the final proviso of section 5(1) and sections 5(5) and 11 shall apply to any person appointed to act as a member of the Commission under subsection (1).

(3) A person appointed to act as a member of the Commission under subsection (1) may complete any unfinished business of the Commission in which he or she has taken part notwithstanding the resumption of duty of the Commissioner in whose place he or she was appointed under this section and in such event the Commissioner so resuming duty shall not take part in any such unfinished business.

7. Termination of appointments

(1) The Governor-General, acting on the advice of Cabinet, may terminate the appointment of a Commissioner or any person appointed under section 6(1) for any good or sufficient cause, and in particular, if such Commissioner or other person—

(a) becomes of unsound mind or incapable of carrying out his or her duties;

(b) becomes bankrupt or compounds with his or her creditor;

(c) is convicted of any offence involving dishonesty or moral turpitude;

(d) is guilty of misconduct in relation to his or her 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;

(f) becomes the owner or other holder of shares or other interest in a public utility under the jurisdiction of the Commission, where such shares or other interest has a then-current value of **[amount]** or more;

(g) fails to carry out any of the duties or functions conferred or imposed on him or her under this Act.

(2) Any decision by the Governor-General to terminate the appointment of any Commissioner shall not be questioned by any Court of Law.

8. Meetings and procedure

(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 and such meetings shall be held at such place and time and on such days as the Commission may determine.

(2) Minutes in the proper form of each meeting shall be kept and shall be confirmed at a subsequent meeting of the Commission. Certified copies of such minutes when so confirmed shall be forwarded to the Minister.

(3) Subject to this Act and any other written law, the Commission may regulate its own procedure.

9. Appointment of committees and retention of experts and other professional persons

(1) The Commission may appoint committees and retain experts and other professional persons, including any regional body with expertise regarding a relevant public utility sector, to examine and report to it on any matter whatsoever arising out of or in connection with any of its powers and duties under this Act or any other written law.

(2) A committee appointed by the Commission under subsection (1) shall consist of at least one member of the Commission together with such other persons, whether members of the Commission or not and including any expert or other professional person retained pursuant to subsection (1), whose assistance or advice the Commission may desire.

(3) A committee appointed under this section in relation to the matter respecting which it is appointed, shall have and exercise such of the powers of the Commission under this Act or any other written law as are specified in the terms of reference of such committee but not any of the powers conferred on the Commission by sections 16 to 32:

Provided that a committee may serve in an advisory or consultative capacity to the Commission with regard to the Commission's exercise of its powers under such sections.

(4) The Commission may reject a report or recommendation of any such committee or expert or other professional person or adopt it either wholly or with such modifications, additions and adaptations as the Commission thinks fit.

(5) The provisions of section 11 shall apply, *mutatis mutandis*, to members of a committee and experts or other professional persons as those provisions apply to members of the Commission.

10. Remuneration of Commissioners etc.

(1) A Commissioner shall be paid such remuneration and allowances in respect of his or her office as the Minister may determine from time to time.

(2) A person who is appointed to act temporarily as a member of the Commission under section 6 of this Act may be paid such remuneration and allowances as the Minister may direct.

(3) A person not being a Commissioner who is a member of a committee, and any experts or other professional persons, appointed under section 9 may be paid such

remuneration and allowances as the Minister may approve or as may be provided for in the budget of the Commission under section 41A.

11. Declaration of interest

(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 public utility—

(a) shall declare the nature of his or her interest on the first opportunity at which it is practicable for him or her to do so; and

(b) shall not take part in any deliberations of the Commission thereon.

(2) Where in the course of any deliberations of the Commission upon any contract or proposed contract with, or upon any matter concerning, a public utility, it comes to the notice of a Commissioner that he or she is in any way directly or indirectly interested therein, the provisions of subsection (1) shall apply and such Commissioner shall withdraw from such deliberations.

(3) This section shall not apply to an interest in any matter relating to the terms on which the right to subscribe to or utilise any service provided by a public utility 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, where such shares or other interest has a then-current value of **[amount]** or more, or who is an employee thereof, shall be treated as having indirectly a pecuniary interest in a contract or other matter, if such 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) Any person who fails to comply with the provisions of this section is liable on summary conviction to a fine of **[amount]** dollars unless he or she proves that he or she did not know that a contract, proposed contract or other matter in which he or she had a pecuniary interest, was the subject of consideration at the meeting.

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

(7) A Commissioner shall not be disqualified from acting in any matter arising under this Act by reason only of his or her 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 benefited by any rate or fund out of which any expenses of the public utility concerned are to be defrayed.

12. Annual report of Commission

The Commission shall make an annual report of its proceedings to the Minister and the Minister shall cause such report to be laid before Parliament.

13. Appointment of staff and retention of experts and other professional persons

The Commission may appoint a Secretary and such other officer and employees, and retain such experts and other professional persons, including any regional body with expertise regarding a relevant public utility sector, on such terms and conditions as the Minister may approve or as may be provided for in the budget of the Commission under section 41A, and as the Commission may consider necessary for the due and efficient exercise and performance of its functions under this Act or any other written law.

14. Transfer and secondment of staff

(1) A public officer may, with the approval of the Commission and of the Public Service Commission, be transferred from any branch of the public service to the service of the Commission as an officer in the service of the Commission.

(2) A public officer may with the approval of the Commission and of the Public Service Commission, be transferred on secondment to the service of the Commission, and an officer in the service of the Commission may, with the approval of the Public Service Commission, be transferred on secondment to any branch of the public service.

(3) The period of transfer on secondment shall not ordinarily exceed three years.

(4) A transfer whether on secondment or otherwise under this section shall be on such terms that may be acceptable to the Minister, the Public Service Commission and the officer concerned; and the pension or superannuation rights accruing to the officer at the time of his or her transfer shall be preserved.

15. Pension of officers and employees

The Governor-General shall, in accordance with the provisions of the Pensions Act, Chapter 233, provide for the application of the Pensions Act, Chapter 233, to such officers in the service of the Commission as he or she may consider fit and proper.

PART III

Jurisdiction and Procedure as to Rates and Other Matters

16. Definitions

In this Part—

“claim” means a claim by a public utility for increase in rates payable to it for any of its services made to the Commission pursuant to section 25;

“complaint” means a complaint against the rate payable or to be payable for services, and to that extent against the quality of the services, provided by a public utility made to the Commission pursuant to section 24;

“complainant” means any consumer of a public utility, or recipient of rate payments from a public utility, who brings a complaint or any other matter before the Commission;

“matter” includes every claim, complaint or other proceeding before the Commission.

17. Commission established as a tribunal

(1) For the purposes of this Part the Commission is hereby established as a tribunal which shall have and exercise jurisdiction—

(a) to hear and determine complaints under section 24 relating to rates payable for any service of a public utility on the ground that such rates are unfair or unreasonable or contrary to law;

(b) to hear and determine claims under section 25 by a public utility for an increase of the rates payable for any of its services on the ground that such claimed rate increase would be fair and reasonable, making the increased rate a fair return upon the fair value of its property;

(c) to hear and determine objections to agreements under section 30(3);

(d) to hear and determine disputes between public utilities as to any matter concerning the rates payable or to be payable for services provided by any of those public utilities;

(e) of its own motion or at the instance of the Minister to review and determine the rate payable for any services of a public utility whether on the registration of any agreement relating thereto or otherwise;

(f) to hear and determine any other matter designated to be under the jurisdiction of the Commission, and to perform any other function and exercise any other powers designated to it, under any other written law or regulations made thereunder, including but not limited to hear and resolve disputes between consumers and/or other persons and public utilities and to enforce the terms and conditions of licences issued to public utilities, and the provisions of such other written laws and/or regulations shall govern in the event of any conflict or inconsistency with the provisions of this Act.

(2) In fixing rates, whether on complaints or on claims or on its own motion or at the instance of the Minister, the Commission shall ensure that—

(a) a public utility receives a fair return upon the fair value of its property;
and

(b) public utility rates are fair and reasonable and in accordance with the law.

In doing so, the Commission shall have regard to the following matters—

- (i) the capital employed by the relevant public utility,
- (ii) the operating expenses of such public utility,
- (iii) the annual depreciation calculated upon the capital cost of such public utility,
- (iv) such taxes and other duties as may be payable by such public utility,
- (v) the returns on the depreciated original cost rate base of such public utility,
- (vi) the requirement that the public utility provide an up-to-date and cost effective service to the public and that it keeps abreast of technological and other advances in its particular industry, and
- (vii) the quality of the service provided by the public utility.

(3) (a) If an Act or regulations issued thereunder provides the standards for, methods of and/or the procedures for determining rates payable for any service of a public utility and/or any rate payable by a public utility, the Commission shall adhere to such standards, methods and/or procedures in determining the rates of such public utility, and such standards, methods and/or procedures shall govern in the event of any conflict or inconsistency with the provisions of this Act.

(b) If any provision of such other Acts or regulations as referred in paragraph (a) is in conflict with this Act, such conflict not being concerned with rate setting, such provision of that other Act or regulations shall prevail over this Act.

(4) The tribunal under subsection (1) shall comprise of the Chairperson and at least two other Commissioners.

(5) Where a Commissioner withdraws from any proceedings on a matter before the tribunal on account of interest, illness, or otherwise, the tribunal shall not be disqualified for the transaction of business by reason of such vacancy among its members save that in the case of an equality of votes the Chairperson shall have a casting vote:

Provided that the number of members on any tribunal shall not be reduced below the Chairperson and one other Commissioner.

(6) The Commission shall not have jurisdiction to hear and determine any matter complaining about or in any way questioning any tax or levy imposed by or under any Act, not being a rate charged by any public utility. A certificate by the Speaker of the House of Representatives that a measure is such a tax or levy shall be conclusive for this purpose.

18. Hearing and determination of matters before the Commission

(1) The Commission shall expeditiously hear, inquire into, investigate and determine every matter which is before it and in particular shall hear, receive and consider statements, arguments, and evidence made, presented or tendered—

(a) by or on behalf of any complainant;

(b) by or on behalf of the public utility concerned;

(c) by or on behalf of the Minister.

(2) The Commission shall determine the periods that are reasonably necessary for the fair and adequate presentation of the matter by the respective parties thereto, and the Commission may require those matters to be presented within the respective periods so determined.

(3) The Commission may require evidence or arguments to be presented in writing and may decide the matters upon which it will hear oral evidence or arguments.

(4) All matters brought before the Commission shall be determined by a majority of the members thereof sitting as to any matter.

(5) Subject to subsection (6) no award or other determination of the Commission in any matter brought before it under this Part—

(a) shall be challenged, appealed against, reviewed, quashed or called in question in any court on any account whatever;

(b) shall be subject to prohibition, *mandamus* or injunction in any court on any account.

(6) Any party to a matter brought before the Commission shall be entitled as of right to appeal to the Court of Appeal on a point of law from any judgement, order, or award of the Commission. The decision of the Court of Appeal on any matter brought before it under this subsection shall be final.

19. Appearances

(1) Every party to a matter before the Commission shall be entitled to appear at the hearing thereon and may be represented by counsel or solicitor or any other person who in the opinion of the Commission is competent to assist such person in the presentation of the matter.

(2) Persons other than parties to a matter before the Commission whom the Commission considers to be interested in the matter may be permitted by the Commission to appear at the hearing thereof and be represented by counsel or solicitor or any other person who in the opinion of the Commission is competent to assist such person in the presentation of the matter.

20. Enforcement powers of Commission

(1) Subject to this section, for the purposes of dealing with any matter brought before it, the Commission shall have all such powers as are vested in the High Court of Justice on the occasion of an action, to enforce the attendance of witnesses and examine them on oath, affirmation or otherwise, to compel the production of documents and to enforce its orders.

(2) A summons signed by the Secretary to the Commission shall have the same force and effect as any formal process capable of being issued in any action taken in the High Court for enforcing the attendance of witnesses and compelling the production of documents.

21. Awards

(1) An award made by the Commission on any matter brought before the Commission may be made retrospective to such date as may be fixed by the Commission not being earlier than the date on which the matter was brought before the Commission.

(2) In addition to the powers conferred on the Commission by the preceding provisions of this Part, the Commission may, in relation to any matter brought before it

—
(a) make a provisional or interim order or award relating to the matter or part thereof, or give a direction in pursuance of the hearing or determination;

(b) dismiss any matter or part of a matter or refrain from further hearing or from determining the matter or part thereof if it appears that the matter or part thereof is trivial or vexatious or that further proceedings are not necessary or desirable in the public interest;

(c) order any party to pay to another, such costs and expenses, including expenses of witnesses, as are specified in the order;

(d) generally give all such directions and do all such things as are necessary or expedient for the expeditious and just hearing and determination of the matter.

(3) (a) After a rate regarding a public utility service has been awarded by the Commission under section 17 and that rate has come into force, where the relevant public utility renders such service to a consumer after such awarded rate has come into force, the public utility may not, directly or indirectly, demand or receive from the consumer a greater rate for such service than the rate awarded by the Commission.

(b) Where any sum of money is paid by a consumer to a public utility in excess of the rate properly eligible in accordance with paragraph (a), such sum shall be deemed an unauthorised payment and shall be repaid by the public utility to the consumer.

(c) The provisions of subsections (a) and (b) shall apply *mutatis mutandis* to any rate paid by a public utility directly to a person to obtain the commodity supplied or furnished by the public utility to consumers.

22. Transitional as to filing and inspection of rate tariffs

(1) Within thirty days of this Act being made to apply to a public utility by an Order made by the Governor-General under section 3, such public utility shall file with the Commission in the prescribed form, tariffs showing all rates established, charged or paid by it and shall keep copies of such tariffs open to public inspection.

(2) The rates specified for such tariffs shall be the authorised rates of such public utility, and shall continue to be the authorised rates unless altered as provided by this Act or any other written law.

23. Adherence to rate tariffs

(1) Subject to this Part, a public utility may not, directly or indirectly, demand or receive a greater rate for any service rendered than the authorised rates referred to in section 22(2) or the rates agreed upon in an agreement registered pursuant to section 30, as the case may be, except as is otherwise determined by the Commission upon any matter brought before it under this Part or any other written law.

(2) Where—

(a) any amount is paid in excess of the rate properly eligible in accordance with subsection (1); or

(b) any money is paid in pursuance of an interim order or award or for temporary rates under section 28,

such sums and any such money which would not be payable upon the final order or award or the final determination in the case of temporary rates, shall be repaid or made good; and any payment made shall, so far as it is not or would not have been authorised

pursuant to subsection (1) or under the final order or award or other determination as to temporary rates, be deemed to be an unauthorised payment.

(3) Subject to the provisions of any other written law, nothing in this section or in section 22 shall apply or be deemed to apply to rates specially agreed upon between a public utility and an individual consumer for the services or facilities designed to meet the specialised requirements of such individual consumer.

24. Complaints against rates

(1) Any person who is a consumer of services provided by a public utility may make a complaint to the Commission against the rate payable or to be payable for the services, and to that extent against the quality of the services, provided by that public utility on the ground that, subject to section 17(3), the rate so payable is unfair or unreasonable or contrary to law.

(2) Every such complaint shall be in writing and may be made by the complainant in person, or by his or her counsel or solicitor or by any person authorised by him or her in writing in that behalf.

(3) Particulars of the ground or grounds upon which the complaint is made shall be supplied therewith in the prescribed form.

25. Claims for increased rates

Subject to section 17(3) --

(a) Any public utility may make to the Commission a claim for an increase in rates payable to that public utility for its service on the ground that such claimed rate increase is fair and reasonable so that such increased rate would constitute a fair return upon the fair value of its property.

(b) Where a public utility desires to make a claim for an increase in rates payable to it for any of its services it shall give a notice to the Commission not later than twenty-eight days before making any such claim and such notice shall be published in the *Gazette*.

(c) A notice required by subsection (b) shall state the particulars of such claim and also that any person who desires to object to an award or other determination allowing such claim may, before such date being not earlier than twenty-one days after the publication of the advertisement as may be specified therein, make a complaint against such claim for an award or determination.

(d) Upon the expiration of the period required for the publication of the notice under subsection (b) a public utility may make a claim in the prescribed form for an award or other determination allowing such changes in the rates then in force and fixing the time when the changed rates are to take effect, as is specified in the claim.

26. Service of claims and complaints

Upon the making of a claim or complaint or upon any other proceedings for the hearing and determination of any matters concerning which the Commission has jurisdiction under section 17, the Commission shall cause a copy thereof to be given general publicity including publication in the *Gazette* and to be served upon such persons as it considers interested in the matter or cause of the claim, complaint or other proceeding, accompanied by a notice to satisfy the claim, complaint or other proceeding or to answer the same in writing or otherwise within such time as may be specified by the Commission in such notice.

27. Proceedings open to public

(1) The proceedings of the Commission shall be open to the public and minutes thereof including a summary of the evidence given and a statement of all the facts taken into consideration, shall be kept by the direction of the Chairperson.

(2) The dates and places of hearings by the Commission shall be given such general advanced publicity including publication in the *Gazette* as the Commission considers reasonable.

28. Temporary rates

Subject to section 17(3)--

(a) The Commission may, in any matter or proceeding involving the rates of a public utility brought either of its own motion or at the instance of the Minister or upon a claim or complaint, if it is of the opinion that the public interest so requires, immediately determine temporary rates to be charged by such public utility pending the final determination of such matter or proceeding.

(b) Subject to subsection (c) whenever the Commission, in the exercise of its powers under Part IV, upon examination of any annual or other report, or of any papers, records, books or documents or of the property of any public utility, is of the opinion that any rates of such public utility are producing a return which is not a fair return upon the fair value of the property of such public utility or which is contrary to the standards for the public utility's rates established in any other written law, the Commission may, instead of holding an investigation of its own motion or otherwise, by Order, prescribe for a trial period not exceeding six months, such temporary rates to be observed by such public utility as, in the opinion of the Commission, will produce a fair return upon such fair value or comply with the standards established in such other written law, and the rates so prescribed shall become effective upon the date specified in the Order of the Commission, and the rates so prescribed shall become fixed at the end of such trial period.

(c) Where the Commission determines to make an order under subsection (b) it shall give at least six weeks' notice of its intention to do so to the public utility concerned,

who may, if aggrieved by the proposal of the Commission to exercise its powers under the said subsection (b), within such time as is prescribed, make a claim to the Commission for a revision of the rates, and the Commission shall hear and determine such claim before making any Order under this section.

(d) If the rates as finally determined are in excess of the rates existing prior to the determination of the temporary rate under subsection (a) or to the making of an Order under subsection (b), then the public utility may be authorised by the Commission to amortise and recover by means of a temporary increase in the rates finally determined, the sum which represents the difference between the gross income actually received by the public utility during the period commencing with the date on which the determination of the temporary rate or the making of the Order as aforesaid first took effect and ending on the date on which the rate as finally determined became effective, and the gross income which would have been received during the same period if the rates finally determined had been in effect.

29. Burden of proof

In any proceeding upon the motion of the Commission involving any proposed or existing rate of any public utility, or in any matter upon a claim involving any proposed increase in rates, the burden of proof to show that the rate involved is fair and reasonable or comply with the standards established in any other written law shall be upon the public utility.

30. Registration of agreements

(1) Subject to section 31, within thirty days of this Part being made to apply to a public utility, such public utility shall submit to the Commission, for registration, copies of all agreements made by it with any persons whether or not in Grenada or with other public utilities for the supply of services in respect of which a tariff is not required to be filed under section 22.

(2) After this Part is made to apply to a public utility, every agreement made by that public utility with an individual consumer or another public utility for the supply of services in respect of which a tariff is not required to be filed under section 22 shall be registered with the Commission.

(3) Any person aggrieved by the terms and conditions or other effect of any agreement submitted for registration with the Commission under this section may, if he or she is a consumer of the services supplied by the relevant public utility, by notice in writing to the Commission and to the parties concerned, object thereto; and such notice of objection shall be treated as a complaint in accordance with this Act.

31. Ratification of agreements

Where an agreement for the supply of services is submitted to the Commission for registration in accordance with section 30, in every case in which objection is made to the registration of any agreement referred to in section 30 or in which the Commission of its own motion or at the instance of the Minister determines to hold an inquiry thereon, the Commission shall hear and determine the rate payable and ratify or otherwise the terms and conditions applicable and in particular the Commission may—

- (a) ratify the agreement without amendment or modification;
- (b) ratify the agreement with such amendments and modifications as it may consider necessary or proper; or
- (c) refuse to ratify such agreement.

32. Validity of agreements

An agreement referred to in section 30(2) shall have effect only if it is ratified by the Commission in accordance with this Part and every agreement so ratified and registered in accordance with this Part shall, during its continuance, be binding on all parties thereto.

33. “Person” in sections 19(2) and 24(1)

For the avoidance of doubt it is hereby provided that in sections 19(2) and 24(1), “person” includes natural persons, artificial legal persons, groups and other bodies whom the Commission considers to be interested in the matter before the Commission or the complaint made to the Commission respectively.

34. Offence to demand unauthorised payment

Where a public utility demands from a consumer a payment which by section 21(3) or 23 or any other written law is deemed an unauthorised payment, and the public utility knows that the payment which it so demands is such an unauthorised payment, the public utility and the member or employee of the public utility knowingly demanding such unauthorised payment shall be guilty of an offence and, on summary conviction, thereof shall be liable to a fine of **[amount]** dollars or to **[length]** months imprisonment, or to both such fine and imprisonment:

Provided that if that member or employee of the public utility shows that he or she was acting under the express directive of another member or employee of the public utility who is senior to him or her when this other senior member or employee knows that the payment so demanded is an unauthorised payment, the former shall not be convicted, but instead the latter senior member or employee shall be guilty of the offence and, on summary conviction thereof, shall be liable to a fine of **[amount]** dollars or to **[length]** months imprisonment, or to both such fine and imprisonment.

34A. References to the Commission

References to “the Commission” in this Part shall be references to the Commission functioning as the Tribunal established by section 17.

PART IV

Technical Assistance, Research, Inquiries and Advice

35. Technical assistance and research

Subject to the annual budget of the Commission, as approved by Parliament and the relevant Minister provided for in this section --

(a) The Commission may establish an office for technical assistance to the Minister under any written law or regulations governing a public utility which provides for the Commission to advise, consult with, make recommendations to, or otherwise carry out, or assist the Minister in carrying out, the performance of functions under such written law or regulations, which office may be staffed with such officers, employees and/or experts or other professional persons employed or retained by the Commission on a full- or a part-time basis.

(b) For the purposes of this Part and any other applicable written law, the Commission may establish an office for economic research, which may be staffed with such officers, employees and/or experts or other professional persons employed or retained by the Commission on a full- or a part-time basis, which shall have the following functions—

- (i) collecting and compiling any information which may be of assistance to the Commission in the exercise of its powers and functions under this Act or other written law;
- (ii) keeping information so collected and compiled up-to-date;
- (iii) conducting studies of economy and efficiency;
- (iv) making such valuations of the property of a public utility as are required by the Commission;
- (v) any other matter related to the Commission’s functions with regard to a public utility under its jurisdiction pursuant to this Act or any other written law.

(c) Information collected and compiled and the results of the research carried out under this section shall, subject to the permission of the Commission, be furnished to any person or authority desiring to obtain that information or those results upon payment of the prescribed fee.

36. Advisory functions of Commission

The Commission shall act in an advisory capacity to the Minister or any other Minister with responsibility for the sector in which any public utility under the jurisdiction of the Commission operates in such matters concerning public utilities as are referred to it by the Minister or by such other responsible Minister, and for such purpose as well as any other of the purposes of the Commission under this Act or any other written law, the Commission shall have power to initiate and conduct investigations into the operations and standards of service of all public utilities.

37. Duties of public utilities to furnish reports, information etc.

A public utility, and its directors, officers, employees and agents, shall, on being directed by the Commission to do so—

(a) furnish to the Commission in such form and detail as the Commission may require, all tabulations, computations and all other information required by it to carry into effect any of the provisions of this Act and/or any other written law, and shall make specific answers to all questions submitted by the Commission;

(b) whenever required by the Commission, deliver to the Commission copies of any or all maps, contracts, agreements, franchises, reports, books, accounts, papers and records in its possession or in any way relating to its property or affecting its business and also a complete inventory of all its property in such forms as the Commission may direct;

(c) furnish all annual reports to the Commission at such time and in such form as the Commission may require;

(d) file such monthly reports of earnings and expenses as the Commission may require; and

(e) file periodical or special reports or both concerning any matter about which the Commission is authorised by any law to inquire or to keep itself informed or which it is required to enforce.

Provided that, in requiring a public utility to provide any such information, the Commission shall coordinate the exercise of its powers under this section with the exercise of its powers under any other written law, so as to avoid unnecessary duplication of effort by a public utility.

38. Inspection of books, accounts, etc.

A Commissioner or any officer or other person authorised by the Commission may at any time inspect the accounts, books, papers and documents of any public utility.

39. Failure of public utility to furnish information

Any person who, being required by the Commission to do so, fails to prepare and furnish to the Commission within the time and in the manner and form and with such particulars and certifications as are required by this Act or the regulations—

- (a) any return of information required in the forms of returns furnished to the Commission;
- (b) any answer to any question submitted by the Commission; or
- (c) any information required by the Commission which is in his or her possession or control,

is liable, on summary conviction, to a fine of **[amount]** dollars.

40. Making false returns

Any person who wilfully makes any return or furnishes any information to the Commission which is false in any particular is liable, on summary conviction, to a fine of **[amount]** dollars.

PART V

Miscellaneous and General

41. Regulations

(1) Subject to the provisions of this Act and without prejudice to the power to make regulations conferred on any other Minister responsible for the administration of any other written law, which regulations shall govern in the event of any conflict or inconsistency with regulations made under this Act, the Minister may make regulations for the purpose of carrying this Act into effect and in particular—

- (a) for regulating the procedure upon the making, hearing and enforcement of awards and other determinations of the Commission;
- (b) setting out the principles on which rates chargeable by public utilities should be based including the permitted rates of return on investments;
- (c) for the procedure on the making of investigations into the operations and standards of service of any public utility and for holding inquiries under section 36;
- (d) for prescribing any matter or thing that is required by this Act to be prescribed.

(2) Where the Minister makes regulations under subsection (1)(b), he or she shall have regard to the following matters—

- (a) the capital employed by the relevant public utility;
- (b) the operating expenses of such public utility;
- (c) the annual depreciation calculated upon the capital cost of such public utility;
- (d) such taxes and other duties as may be payable by such public utility;
- (e) the returns on the depreciated original cost rate base of such public utility;
- (f) the requirement that the public utility provide an up-to-date and cost effective service to the public and that it keeps abreast of technological and other advances in its particular industry;
- (g) the quality of the service provided by the public utility;
- (h) the need for a public utility to receive a fair return upon the fair value of its property; and
- (i) the need for public utility rates to be fair and reasonable and in accordance with the law.

(3) Regulations made under this Act may contain provisions for imposing on any person contravening the regulations a fine, recoverable on summary conviction, of **[amount]** dollars in respect of each offence and in the case of a continuing offence, a further fine of **[amount]** dollars for each day during which the offence continues after conviction therefor.

41A. Funding of Commission and cost of proceedings

- (1) (a) The Commission shall determine its own annual budget for submission to the Minister of Finance for inclusion in the annual budget presented to Parliament for approval.
- (b) The annual budget of the Commission, as approved by Parliament, shall be funded by an annual assessment by the Commission upon the public utilities under its jurisdiction.

(2) The annual assessment imposed pursuant to subsection (1)(b) shall be one percent of the gross revenue derived from the services of each public utility under the jurisdiction of the Commission by virtue of an order issued under section 3(2).

(3) The Commission shall, on the basis of the budget that it shall submit to the Ministry of Finance pursuant to subsection (1)(a) and no later than forty-five days before the beginning of the financial

year to which such budget relates, determine and notify each public utility under its jurisdiction, and that is subject to an annual assessment pursuant to subsection (1)(b), of the annual assessment upon such public utility and of the annual assessment upon each other public utility under the Commission's jurisdiction.

(4) A public utility shall pay over to the Commission the annual assessment made pursuant to this section in two equal installments on the fifteenth day of January and on the fifteenth day of July in each year, and the first installment shall be paid irrespective of the date on which the Parliament approves the national budget, save that such payment shall be adjusted if necessary based on the amount of the first installment approved by Parliament.

(5) On or before the thirty-first day of March in each year, the Commission shall prepare and make available to each public utility to the public, and to the Minister, an accounting of the funding received pursuant to this section and the use or other disposition of such funding.

(6) To (6) The expenses incurred by the Commission, and determined and assessed by it, in connection with any investigation or proceeding under this Act or any other written law involving any public utility, and all expenses of any appeals arising from any such investigation or proceedings or from any order or action of the Commission, shall be borne by the public utility investigated or proceeded against or that is appealing a decision of the Commission, and upon the Commission's presentation of itemized statements supported by receipts, where such receipts are issued, shall be paid by the public utility to the Commission within such reasonable time as may be specified by the Commission:

Provided that the amount so determined and assessed in any one year by the Commission shall not exceed:

- (i) in respect of any proceedings or investigation relating to rates, one percent of gross revenues derived from services, or **[dollar amount]** dollars, whichever is less; and
- (ii) in respect of any other proceeding or investigation, one percent of gross revenues derived from services, or **[dollar amount]** dollars, whichever is less,

or such sum as may be specified in, or determined in accordance with any other written law.

(7) The amounts determined and assessed to, and paid by, a public utility under this section shall be taken into account in determining its operating costs for the purposes of this Act and any other applicable written law:

Provided that if a consumer bring a complaint against a public utility and such public utility is found to be at fault, the amount assessed to such public utility for such proceeding shall not be taken into account in determining the operating costs of the public utility for purposes of this Act and any other applicable written law.

(8) The costs of, and incidental to, any proceedings before or investigation by the Commission incurred by the parties thereto shall be in the discretion of the Commission, and the Commission may

make an appropriate order in respect thereof while deciding the matter that is the subject of the proceeding or investigation.

(9) For purposes of this section, “gross annual revenues derived from services” means the gross revenue derived in the most recently-ended financial year.

42. Penalty for obstructing execution of Act

A person who wilfully obstructs any person acting in the execution of his or her duties under this Act, or under any regulation, order or award, made or issued thereunder is liable, on summary conviction, to a fine of **[amount]** dollars.

43. Evidence of documents

A copy of any regulation, order or award or other document made by or 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 regulation, order, award or other document without proof of the signature of the Secretary.

44. Saving

Nothing in this Act shall affect any provision in the Telecommunications Act, Chapter 315C.

45. Repeal

The Public Utilities Commission Act, 1994 is hereby repealed.

Passed in the House of Representatives this ____ day of _____, 2015.

Clerk to the House of Representatives

Passed in the Senate this ____ day of _____, 2015.

Clerk to the Senate