

CHAPTER 282

UTILITIES REGULATION

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CHAPTER 282

UTILITIES REGULATION

An Act to provide for the regulation of utility services.

2000-30.
2001-36.

[2nd January, 2001] Commence-
ment.
2001/1.

1. This Act may be cited as the *Utilities Regulation Act*.

Short title.

PART I

Preliminary

2. In this Act

Interpreta-
tion.

“Chief Executive Officer” means the Chief Executive Officer appointed under section 6 of the *Fair Trading Commission Act*;

Cap. 326B.

“Commission” means the Fair Trading Commission established under section 3 of the *Fair Trading Commission Act*;

Cap. 326B.

“Director” means the Director of Utility Regulation appointed under section 7 of the *Fair Trading Commission Act*;

Cap. 326B.

“Minister” means Minister responsible for Consumer Affairs;

“principles” mean the formula, methodology or framework for determining a rate for a utility service;

“rates” include

- (a) every rate, fare, toll, charge, rental or other compensation of a service provider;
- (b) a rule, practice, measurement, classification or contract of a service provider relating to a rate; and
- (c) a schedule or tariff respecting a rate;

“service provider” means

- Cap. 308. (a) a statutory corporation;
 (b) a company incorporated under the *Companies Act*; or
 (c) any other entity
 which provides a utility service;

“standards of service” means the quality and extent of the service supplied by service providers;

“statutory corporation” means a company or a corporation established by or under an enactment;

- Schedule. “utility service” means a service specified in the *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
 Schedule. which is not connected with a service specified in the *Schedule*.

PART II

Appointment and Functions

Functions
of the
Commis-
sion.

3. (1) The functions of the Commission under this Act are, in relation to service providers, to

- (a) establish principles for arriving at the rates to be charged;
 (b) set the maximum rates to be charged;
 (c) monitor the rates charged to ensure compliance;
 (d) determine the standards of service applicable;
 (e) monitor the standards of service supplied to ensure compliance; and
 (f) carry out periodic reviews of the rates and principles for setting rates and standards of service.

(2) In establishing the principles referred to in subsection 1(a) the Commission shall have regard to

- (a) the promotion of efficiency on the part of service providers;
- (b) ensuring that an efficient service provider will be able to finance its functions by earning a reasonable return on capital; and
- (c) such other matters as the Commission may consider appropriate.

(3) The Commission shall

- (a) protect the interests of consumers by ensuring that service providers supply to the public service that is safe, adequate, efficient and reasonable; and
- (b) hear and determine complaints by consumers regarding billings and the standards of service supplied.

4. In determining standards of service, the Commission shall have regard to Standards of service.

- (a) the rates being charged by the service provider for supplying a utility service;
- (b) ensuring that consumers are provided with universal access to the services supplied by the service provider;
- (c) the national environmental policy; and
- (d) such other matters as the Commission may consider appropriate.

5. The Director shall be the chief technical officer in respect of utility regulation and shall perform the functions assigned by the Chief Executive Officer appointed under section 6 of the *Fair Trading Commission Act*. Functions of the Director. Cap. 326B.

Panel of
Commissioners.
Cap. 326B.

6. (1) The panel of Commissioners referred to in section 5 of the *Fair Trading Commission Act* shall sit to hear and determine

- (a) complaints by consumers regarding billings and standards of service supplied by service providers;
- (b) applications made by service providers for increases in rates; and
- (c) any other matter relating to utility regulation.

(2) A decision of the panel is as valid and binding as if it were made by the Commission.

Employment
of Commis-
sioners.

7. No Commissioner shall accept employment with or enter into a contract of service with a service provider

- (a) whilst being a Commissioner; or
- (b) within 6 months of the date of ceasing to be a Commissioner.

Appoint-
ment and
qualifica-
tions of
Public
Counsel.

8. (1) A Public Counsel appointed by the Governor-General, acting on the recommendation of the Judicial and Legal Service Commission, by instrument in writing shall perform the functions set out in section 9.

(2) A person is qualified to hold or to act in the post of Public Counsel where that person is qualified to practise as an attorney-at-law and has so practised for a period of not less than 7 years, or for periods amounting in the aggregate to not less than 7 years.

(3) In this section “practise as an attorney-at-law” includes any period during which a person served as an attorney-at-law, advocate, barrister-at-law, solicitor, parliamentary counsel, magistrate or registrar of a court in some part of the Commonwealth, or as a professor or teacher of law at the University of the West Indies or at a school for legal education approved by the Judicial and Legal Service Commission.

- 9.** (1) A Public Counsel shall
- (a) advise consumers on matters relating to this Act; and
- (b) assist consumers in preparing for reviews and hearings and presenting arguments before the Commission in relation to
- (i) the setting of rates;
- (ii) the determination of principles;
- (iii) the setting of standards of service; and
- (iv) complaints regarding billing and the standards of service supplied by service providers.
- (2) For the purposes of this section “consumer” means a person using a utility service set out in the *Schedule* for domestic purposes.

Functions
of Public
Counsel.

Schedule.

PART III

Rates, Rate-making and Principles

- 10.** Every rate made by the Commission shall be
- (a) fair and reasonable; and
- (b) in accordance with the principles established by the Commission under this Act or set out in rules, orders or regulations and shall take into account
- (i) the rates being charged by competing service providers for supplying a similar utility service;
- (ii) the standards of service being offered by the service provider and by competing service providers;
- (iii) the return on the rate base;
- (iv) the rate of inflation in the economy for any preceding period as may be considered appropriate;
- (v) the prospective increases in productivity by the service provider;

Rates to be
fair and
reasonable.

(vi) ensuring that consumers are provided with universal access to the utility services supplied by service providers; and

(vii) such other matters as the Commission may consider appropriate.

Tariffs –
filing and
inspection.

11. (1) Every service provider shall file with the Commission, within such time and in such form as the Commission may prescribe, tariffs showing all rates established by the service provider, and shall keep copies of such tariffs open for public inspection.

(2) The rates specified in the tariffs shall be the authorised rates of the service provider until altered as provided in this Act.

Adherence
to tariffs.

12. A tariff established in respect of a utility service supplied by a service provider shall not exceed the maximum rate set by the Commission in accordance with this Act.

Discrimina-
tion in rates
prohibited.

13. (1) No service provider shall supply or furnish to any person any utility service at rates which are unduly preferential or unduly discriminatory.

(2) A service provider shall not

(a) in respect of a rate or a utility service, subject any person or locality, or a particular description of traffic, to any undue prejudice or undue disadvantage; or

(b) extend to any person any agreement, rule, facility or privilege unless that agreement, rule, facility or privilege is regularly and uniformly extended to all persons under substantially similar circumstances and under conditions of service of the same description.

(3) Notwithstanding subsections (1) and (2) a service provider may with the approval of the Commission supply a utility service to any charitable organisation or disadvantaged person at a reduced rate.

14. In any proceeding before the Commission involving an existing or proposed rate of a service provider, the burden of proof to show that the rate is fair and reasonable and in accordance with the principles established by the Commission shall be upon the service provider. Burden of proof.

15. (1) The Commission may fix a period of time not exceeding 5 years in respect of which Periodic reviews by Commission.

- (a) the rates for the supply of a utility service;
- (b) the principles for determining rates for the supply of a utility service; and
- (c) the standards of service,

will apply.

(2) Notwithstanding subsection (1), where upon an application by a service provider the Commission is satisfied that there has been such a fundamental change in circumstances as to warrant a review of the rates, principles or standards of service, the Commission may conduct such a review.

(3) The Commission shall not grant a request for a review by the same service provider more than once in any year.

(4) In carrying out a review, the Commission shall hold a hearing in accordance with section 33 of the *Fair Trading Commission Act*. Cap. 326B.

- (5) At a hearing referred to in subsection (4),
 - (a) an interested party is entitled to appear in person or be represented by an attorney-at-law; and
 - (b) a consumer is entitled to be represented by Public Counsel.

(6) For the purposes of this section “consumer” means a person using a utility service set out in the *Schedule* for domestic purposes. Schedule.

Other reviews.

16. Where the Commission has not fixed a period of time in accordance with section 15(1) the Commission may on its own initiative or upon an application by a service provider or consumer review the rates, principles and standards of service for the supply of a utility service.

Application and statement submitted by a service provider.

17. An application by a service provider to the Commission for a change in respect of the

- (a) rates for the supply of a utility service;
- (b) principles for determining rates for the supply of a utility service; and
- (c) standards of service

shall contain a statement setting out the

- (i) existing rates, principles or standards of service;
- (ii) proposed new rates, principles or standards of service;
- (iii) justification for the review of the rates, principles or standards of service; and
- (iv) date from which the service provider proposes that the new rates, principles or standards of service, as the case may be, should take effect.

Additional information.

18. The Commission may require an applicant to provide such other information as it may consider appropriate.

Determination by Commission.

19. (1) The Commission may, after the review referred to in sections 15 and 16, determine the matter by confirming or modifying the existing rates, principles or standards of service or by establishing new rates, principles or standards of service.

(2) The period between the date of the application referred to in section 15(2) and a determination of the matter by the Commission under subsection (1) shall not exceed 6 months.

(3) Where an application to the Commission by a service provider for a review of rates under section 15(2) is based upon a fundamental change of circumstances and the Commission has not made a determination of the matter within the period prescribed in subsection (2), the proposed new rate shall take effect from the date of the expiration of the six-month period referred to in that subsection.

PART IV

Service and Facilities

20. Every service provider

(a) shall maintain its property and equipment in such condition as to enable it to provide service to the public which is safe, adequate, efficient and reasonable; and

(b) shall make such repairs, changes, alterations, substitutions, extensions and improvements to such service as shall be necessary to ensure the provision of service to the public that is safe, adequate, efficient and reasonable.

Duty to provide adequate service.

21. Where a service provider fails to meet prescribed standards of service, the service provider shall make to any person who is affected by the failure such compensation as may be determined by the Commission.

Compensation.

22. No service provider shall cease

(a) its operations; or

(b) any part of its operations

Restrictions on ceasing operations.

with respect to the provision of a regulated utility service without first obtaining the permission of the Commission in writing.

23. The Commission may make rules and regulations prescribing the conditions to be contained in and to become part of all agreements entered into by a service provider in respect of any class of utility service.

Conditions of service to be contained in agreement.

Provisions
for joint use
of equip-
ment.

24. Whenever the Commission, on an application made to it by a service provider or on its own initiative, finds that public convenience or necessity requires the use by a service provider of the conduits, subways, poles, wires, antennae masts or other equipment belonging to another service provider, and that such use will not prevent the owner or other users thereof from performing their duties, or result in any substantial detriment to the utility service and if the other service provider fails to agree with the first mentioned service provider upon such use or conditions or compensation therefor, the Commission may make such order as it deems reasonable directing that the use or joint use of the conduits, subways, poles, wires, antennae masts or other equipment be permitted and prescribing the conditions to be observed and the compensation to be paid in respect of the use so permitted.

PART V

Complaints, Procedure and Appeals

Complaints
and
procedure.
Cap. 326B.

25. The procedure described in sections 23 to 31(1)(a) and sections 31(2) to 41 of the *Fair Trading Commission Act* shall apply *mutatis mutandis* to and form part of this Act.

PART VI

Appointment and Duty of Administrator

Court-
appointed
adminis-
trator.

26. (1) Where a service provider persists in not complying with an order of the Commission in relation to

- (a) the rates, principles or standards of service set by the Commission; or
- (b) section 22 of this Act; and
- (c) the public interest in the provision of the utility service is substantially prejudiced; or

- (d) the service provider fails to satisfy the Commission that there is reasonable cause for the non-compliance,

the Commission may apply to the High Court for an order that the court appoint an administrator to manage the business of the service provider.

(2) The Court may appoint an administrator, who shall receive such remuneration as the Court directs and the court may at any time cancel the appointment, and appoint some other person as administrator.

(3) The Court may direct how and by whom the remuneration, charges and expenses of the administrator shall be borne and may, if it thinks fit, charge that remuneration and those charges and expenses on the property of the service provider.

(4) The management of the service provider or of such part of the business of the service provider as the order of the Court directs shall on a date specified in the order vest in the administrator appointed by the Court to the exclusion of any person vested with any such management immediately before that date; but the administrator shall not enter into any new contract except with the leave of the Court.

(5) The Court shall issue directions to the administrator as to his powers and duties as it deems desirable in the circumstances of the case.

(6) The administrator shall act under the control of the Court, and may apply to the Court at any time for instructions as to the manner in which he shall conduct the management or in relation to any matters arising in the course of the administration.

(7) The administrator shall give the Commission such information as the Commission requires and shall report to the Commission whenever he intends to apply to the Court for instructions, and shall at the same time furnish to the Commission particulars of the application.

(8) The Commission shall be entitled to be heard on any application referred to under subsection (7) and may make an application to the Court with reference to the conduct of the management of the service provider.

Cancellation
of Court
order.

27. Where at any time, on the application of the administrator or of any person appearing to the Court to have an interest in the matter, it appears to the Court

- (a) that the purpose of the order for the management of the service provider or of part of the business of the service provider has been fulfilled; or
- (b) that for any reason it is undesirable that the order should remain in force,

the Court may cancel the order, and on cancellation the administrator shall be divested of the management which shall again vest in the board of directors or other governing body of the service provider.

Report by
administra-
tor.

28. (1) The administrator shall conduct the management of the service provider with the greatest economy compatible with efficiency, and shall as soon as practicable file with the court a report stating which of the following courses is in the circumstances, in his opinion, most advantageous to the general interest of the subscribers and shareholders of the service provider and seek an order accordingly for:

- (a) the carrying on of its business by the service provider either unconditionally or subject to such conditions as the administrator may suggest; or
- (b) such other course as he considers advisable.

(2) The administrator shall forthwith after filing the report furnish a copy of the report to the Chairman of the Commission.

(3) The report or a copy of the report shall be open for inspection by any person during official hours at the registry of the Court in which the report is filed or at such place as the Commission determines.

Decision of
Court on
report of
adminis-
trator.

29. (1) The Court shall on the hearing of an application made under section 27,

- (a) after hearing the Commission, the administrator and any other person who in the opinion of the Court is entitled to be heard; and

(b) after considering the report of the administrator, make an order giving effect to the course whether similar or not to any of the courses mentioned in subsection (1) of section 28 that it considers in the circumstances to be most advantageous to the interests of the subscribers and shareholders of the service provider.

(2) The order of the Court shall be binding on all persons.

30. The administrator shall not be subject to any action, claim or demand by, or liability to, any person in respect of anything done or omitted to be done in good faith in the discharge or in connection with the discharge of the functions conferred on the administrator under this Part. Indemnity.

PART VII

Offences and Penalties

31. (1) Every service provider which fails or refuses to obey an order of the Commission made under this Act is guilty of an offence and is liable on summary conviction to a fine of \$100 000 and, in the case of a continuing offence, to a further fine of \$10 000 for each day or part thereof during which the offence continues. Non-compliance with order of Commission.

(2) Whenever it is proved that a service provider has failed to obey an order of the Commission made under this Act, every director or officer of the service provider is guilty of an offence and liable on summary conviction to a fine of \$50 000 or to imprisonment for 6 months or to both unless the director or officer proves that all necessary and proper means in his power having regard to his position and authority were taken to obey and carry out the order of the Commission, and that he was not at fault for the failure to obey the order.

32. Every service provider making a return or furnishing any information to the Commission that is false in any particular is guilty of an offence and is liable on summary conviction to a fine of \$75 000. Making false return.

Obstruction of officer of Commission in discharge of duties.

33. Any person who assaults, obstructs or interferes with any Commissioner, officer or employee of the Commission in the exercise of the rights conferred or duties imposed by or under this Act is guilty of an offence and is liable on summary conviction to a fine of \$40 000 or to imprisonment for 6 months, or to both.

PART VIII

Securities

Approval of Commission to issue securities.

34. (1) No service provider shall issue any stocks, shares or any debenture or other evidence of indebtedness, payable in more than one year from the date thereof, unless it has first obtained the written approval of the Commission to the proposed issue.

(2) The Commission may grant its approval of the proposed issue in the amount applied for or in any lesser amount, and subject to such conditions as it may deem reasonable and necessary to impose.

PART IX

Miscellaneous

Service provider to keep books, accounts.

35. The Commission may by order require every service provider to keep books, proper accounts and adequate financial and other records in relation to the conduct of its business.

Minister to designate utility services.

36. (1) The Minister may by order designate the utility services to be regulated by this Act.

(2) An order made pursuant to subsection (1) shall also list the service providers supplying the designated utility services.

Exemption.

37. (1) A service provider may apply to the Commission for

- (a) the utility service that it supplies; or
- (b) any part of the utility service that it supplies,

to be exempted from the application of all or any of the provisions of this Act where the service provider can establish that the market for the utility service supplied by the service provider is effectively competitive.

(2) The Commission shall consider whether the utility service supplied by the service provider should be exempted and shall make a recommendation to the Minister.

(3) The Minister may on the recommendation of the Commission or on his own initiative exempt the utility service supplied by any service provider or part of that utility service from the application of all or any of the provisions of this Act, where the Minister is satisfied that the market for the utility service supplied by the service provider is effectively competitive.

38. The Commission may make

- (a) rules;
- (b) regulations; and
- (c) orders with respect to
 - (i) imposing penalties for non-compliance with prescribed standards of service; and
 - (ii) prescribing amounts to be paid to the person referred to in section 21 for failure to provide a utility service in accordance with the standards of service set by the Commission.

Power to
make rules,
regulations
and orders.

39. (1) The Commission may after consultation with the service providers and Minister make rules

- (a) prescribing the procedure for the conduct of reviews, the hearing of complaints and other proceedings before the Commission; and
- (b) prescribing the keeping and submission of books, accounts and financial and other records by the service provider in accordance with section 35.

(2) Every rule made by the Commission will be binding on the relevant service provider.

Regulations. **40.** (1) The Commission may with the approval of the Minister make regulations prescribing any matter or thing that is required by this Act to be prescribed.

(2) A person who contravenes any regulations made under this section is guilty of an offence and is liable on summary conviction to a fine of \$50 000 and in the case of a continuing offence is liable to a fine of \$10 000 for each day during which the offence continues or to imprisonment for 6 months or to both.

Transitional. **41.** With effect from the 2nd January, 2000

(a) all existing rates fixed by the Public Utilities Board for public utility services and so charged by the service providers shall remain in force until the rates are altered by the Commission under this Act and the *Fair Trading Commission Act*; and

(b) all existing rates fixed by the Minister responsible for Telecommunications for overseas or international telecommunication services and so charged by the service providers shall remain in force until the rates are altered by the Commission under this Act and the *Fair Trading Commission Act*.

SCHEDULE

(Section 2)

Utility Services

1. Supply or distribution of electricity.
2. Supply or distribution of water.
3. Supply of sewerage services.
4. Supply of domestic telecommunication services. 2001-36.
5. Supply of international telecommunication services.
6. Supply or distribution of natural gas.