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GRENADA

ACT NO. 20 OF 2016**I assent,**

CÉCILE E. F. LA GRENADE

*Governor-General.**8th July, 2016.*

AN ACT to provide for a Public Utilities Regulatory Commission to determine rates for public utilities and to perform certain other functions respecting public utilities.

[*By Order*].

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives and by the authority of the same as follows—

PART I**PRELIMINARY**

1. This Act may be cited as the

**PUBLIC UTILITIES REGULATORY COMMISSION
ACT, 2016**

Short title and
commencement.

and shall come into force on a date fixed by the Minister by Order published in the *Gazette*.

Interpretation.

2. In this Act—

“Appeals Tribunal” means the Public Utilities Appeals Tribunal established under section 32;

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

“claim” means a claim by a public utility for a change in rates payable to it for any of its services made to the Commission pursuant to section 18;

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

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

“compensation” includes gain or reward;

“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 18;

“complainant” means any person who brings a complaint or any other matter before the Commission;

“licensee” means a person who holds a valid licence pursuant to any enactment in respect of which the Commission has been conferred regulatory functions and powers;

“matter” includes every claim, complaint or other proceeding before the Commission or the Appeals Tribunal, as the case may be;

“Minister” 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 providing services to the public for which any compensation or payment whatsoever is required, to which this Act is made to apply by an Order made by the Minister under section 3, and shall include all licensees participating in the supply of the services provided by the private body or statutory authority;

“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; and

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

Application of Act.

3.—(1) Subject to section 46 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 Minister under subsection (2) notwithstanding any general or special power or authority vested in the public utility by any enactment or by virtue of its incorporation.

(2) The Minister 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 the Order may have reference to any particular public utility or any specified class of public utility.

PART II

ESTABLISHMENT AND ADMINISTRATION OF COMMISSION

Commission established and incorporated.

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

(2) Subject to subsection (3), the Commission shall consist of either three or five members, in the discretion of the Minister, including the Chairperson, all of whom shall be designated Commissioners and shall be appointed by the Minister, from among persons of high character and integrity as follows—

(a) in the case of a Commission comprising three members—

(i) the Chairperson and one other member appearing to the Minister to be qualified having experience and shown capacity in trade, law, finance, economics, engineering, accounting or business management; and

(ii) one member representative of the general public or consumer interests;

(b) in the case of a Commission comprising five members—

(i) the Chairperson and two other members appearing to the Minister to be qualified having experience and shown capacity in trade, law, finance, economics, engineering, accounting or business management;

(ii) one member representative of consumer organisations;

(iii) one member representative of the general public.

(3) The following persons shall be disqualified from serving on the Commission—

(a) a person who held a senior position in a public utility subject to this Act and his or her employment has been terminated less than five years;

- (b) a person who owns or otherwise holds shares or any other interests in a public utility subject to this Act, from which that person may receive dividends amounting to two thousand dollars or more or such other quantum as may be prescribed by Order;
- (c) a person who is a director in a public utility, subject to this Act.

Appointment of
Commissioners
and tenure of
office.

5.—(1) Appointment to the office of Commissioner shall, subject to subsection (2), be for the period, in no case being more than three years, as the Minister shall specify at the time of the appointment.

(2) 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.

(3) 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 submitted to the Minister.

(4) 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*.

(5) 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 a Commissioner.

(6) Each member of the Commission shall, during his or her period of service, refrain from engaging in discussions with any public utility subject to this Act regarding the

possibility of the member becoming employed by the public utility and no member shall accept employment with any such public utility for a period of five years after ceasing to be a member of the Commission.

(7) A Commissioner who contravenes sub-section (6) commits an offence and is liable on summary conviction to a fine of ten thousand dollars.

6.—(1) If a Commissioner is unable to act by reason of illness or other cause, the Minister 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.

Temporary appointments.

(2) The qualifications under section 4 (2), the disqualification under section 4 (3) and the provisions of sections 5 and 10 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.—(1) The Minister 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 the Commissioner or other person—

Termination of appointments.

- (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) engages in misconduct in relation to his or her duties or otherwise;
- (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 subject to this Act, where the shares or other interests satisfy the threshold prescribed under section 4 (3) (b);
- (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 Minister to terminate the appointment of any Commissioner shall not be questioned by any Court of Law.

Meetings and
procedure.

8.—(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 for 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 the provisions of this Act and any other enactment, the Commission may regulate its own procedure.

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

Remuneration
of Commis-
sioners.

(2) A person who is appointed to act temporarily as a member of the Commission under section 6 of this Act may be paid 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 13 may be paid remuneration and allowances as the Minister may approve or as may be provided for in the budget of the Commission under section 14.

10.—(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—

Declaration of
interest.

- (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 the 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 the shares or other interests meet the threshold prescribed under section 4 (3) (b), or who is an employee thereof, shall be treated as having indirectly a pecuniary interest in a contract or other matter, if the company or 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 ten thousand 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 the 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.

11. The Commission may appoint, at such remuneration and on such terms and conditions as may be approved from time to time by the Commission in accordance with the budget under section 14, a Secretary and such other employees as the Commission considers necessary from time to time for the carrying out of its powers, duties and functions under this Act and any other enactment.

Appointment of staff.

12.—(1) The Commission may retain experts and other professional persons, including any regional body with expertise regarding a relevant public utility sector, on a short-term or long term basis to advise the Commission or a committee appointed under section 13 (1) on any matter whatsoever arising out of or in connection with any of the Commission's powers and duties under this Act or any other enactment.

Retention of experts and other professional persons.

(2) The Commission may pay remuneration to experts retained under subsection (1), as the Minister may approve.

13.—(1) The Commission may appoint committees 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 enactment.

Appointment of committees.

(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 whose assistance or advice the Commission may desire.

(3) A committee appointed under this section may serve in an advisory or consultative capacity to the Commission with regard to the Commission's exercise of its powers under this Act, and shall exercise such powers as are specified in the terms of reference of the committee.

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

(5) The provisions of section 10 shall apply, *mutatis mutandis*, to members of a committee and experts or other professional persons as those provisions apply to members of the Commission.

Funding of
Commission.

14.—(1) The Commission shall determine its own annual budget.

(2) The annual budget of the Commission, shall be funded by an annual assessment imposed by the Commission upon every public utility subject to this Act assessed in accordance with subsection (3).

(3) The amount assessed under subsection (2) shall not exceed two percent of the gross revenue derived from the services of any public utility subject to this Act.

(4) The Commission shall, no later than forty-five days before the beginning of the financial year of the public utility, determine with respect to each public utility subject to this Act an annual assessment pursuant to subsections (2) and (3) and notify each public utility of the annual assessment to which it is subject.

(5) Each public utility shall pay to the Commission the annual assessment made pursuant to this section in two equal installments on the fifteenth day of January and the fifteenth day of July in each year.

(6) On or before the thirty-first day of March in each year, the Commission shall prepare and make available to the Minister, in a manner not to disclose confidential financial information of the public utility with any other person, an accounting of the funding received pursuant to this section and the use or other disposition of such funding.

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

15.—(1) Not later than three months after the end of each financial year, the Commission shall cause to be prepared the following financial statements together with proper and adequate explanatory notes—

- (a) a statement of the assets and liabilities of the Commission at the end of the financial year;
- (b) a statement of the revenue and expenditure of the Commission during the financial year;

Audit by
Director of Audit
and report to
the House of
Representatives.

(c) such other financial statements for the financial year as may be specified in writing by the Minister.

(2) After the completion of the financial statements and the annual report, the Commission shall furnish a copy of each to the Director of Audit and, not later than three months after receipt of the financial statements and annual report from the Commission, the Director of Audit shall audit the financial statements in accordance with the Audit Act, Chapter 22A.

(3) Without delay after the completion of his or her audit of the Commission, the Director of Audit shall submit a copy of his or her report together with the financial statements and annual report to the Minister.

(4) The Minister shall, not later than seven days after the House of Representatives first meets after he or she has received the report together with the financial statements and the annual report of the Commission, lay it before the House of Representatives.

(5) If the Minister fails to lay the report together with the financial statements and the annual report of the Commission before the House of Representatives in accordance with subsection (4), the Director of Audit shall transmit the report, the financial statements and the annual report to the Speaker who shall, as soon as practicable, present them to the House of Representatives.

(6) As soon as reasonably practicable after the report together with the financial statements and the annual report of the Commission have been laid before the House of

Representatives, the Commission shall cause the report, the financial statements and the annual report to be published in the *Gazette*.

16. The Commission shall submit monthly to the Minister, not later than fourteen days after the end of the month, a report of its proceedings during the previous month.

Report to
Minister.

PART III

FUNCTIONS OF COMMISSION

17.—(1) The Commission shall—

Functions of
the Com-
mission.

- (a) hear and determine complaints under section 18 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) hear and determine claims under section 19 by a public utility for a change of the rates payable for any of its services on the ground that such claimed rate change would be fair and reasonable, making the changed rate a fair return upon the fair value of its property;
- (c) hear and resolve any dispute that may arise between parties governed by an enactment regulating the supply of services by a public utility, as may be provided by the enactment, and in accordance with the procedure under this Part;

- (d) provide advice to any other Minister with responsibility for the sector in which any public utility subject to this Act, in the performance of his or her functions, duties and powers as provided for under the enactment and any licence or permit granted under the enactment;
- (e) enforce the terms and conditions of any licence granted or issued pursuant to any enactment under which the Commission has been conferred regulatory functions and powers, and the provisions of the enactment shall apply in the event of conflict with this Act to the extent of the inconsistency; and
- (f) carry out any other function that may be assigned to it under any enactment regulating the sector in which any public utility subject to this Act operates, including 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 enactment, including to hear and resolve disputes between public utilities and consumers or other persons.

(2) Subject to the provisions of this Act, the Commission shall regulate its own procedure.

Complaints
against rates.

18.—(1) Any person who is a consumer of services provided by a public utility subject to this Act 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 the public utility on the ground that, subject to section 21 (2), the rate so payable is unfair or unreasonable or contrary to law.

(2) Every complaint under subsection (1) shall be in writing and may be made by the complainant in person, or by his or her legal counsel 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.

19.—(1) Subject to section 21 (2), any public utility subject to this Act may make to the Commission a claim for a modification in rates payable to the public utility for its service on the ground that the claimed rate modification is fair and reasonable so that the modified rate would constitute a fair return upon the fair value of its property.

Claims for
modified rates.

(2) Where a public utility desires to make a claim for a modification 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 the claim and the notice shall be published in the *Gazette*.

(3) A notice required by subsection (2) shall state the particulars of the claim and also that any person who desires to object to an award or other determination allowing the 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 the claim for an award or determination.

(4) Upon the expiration of the period required for the publication of the notice under subsection (2), 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.

Temporary
rates.

20.—(1) Subject to section 21 (2), 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 the public utility pending the final determination of such matter or proceeding.

(2) Subject to subsection (3), where the Commission—

- (a) in the exercise of its powers under Part III, upon examination of any annual or other report, papers, records, books or documents or of property of any public utility;
- (b) is of the opinion that any rates of the public utility are producing a return which is not a fair return upon the fair value of the property or which is contrary to the standards for the public utility's rates established in any other enactment,

the Commission may by Order prescribe for a trial period not exceeding six months, such temporary rates to be observed by the public utility as may be appropriate in the opinion of the Commission; and—

- (i) the rates so prescribed shall become effective upon the date specified in the Order of the Commission; and
- (ii) the rates so prescribed shall become fixed at the end of such trial period.

(3) Where the Commission determines to make an Order under subsection (2) 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 (2), 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.

(4) If the rates as finally determined are in excess of the rates existing prior to the determination of the temporary rate under subsection (1) or to the making of an Order under subsection (2), 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—

- (a) the gross income actually received by the public utility during the period commencing with the date on which the temporary rate pursuant to the Order took effect and ending on the date on which the rate as finally determined became effective; and

- (b) the gross income which would have been received during the same period if the rates finally determined had been in effect.

Matters to consider when fixing rates.

21.—(1) 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,

and shall have regard to the following matters—

- (i) the efficient capital employed by the relevant public utility, valued at the most efficient cost;
- (ii) the efficient operating expenses of the public utility;
- (iii) the annual depreciation calculated upon the efficient capital cost of the public utility;
- (iv) taxes and other duties as may be payable by the public utility;
- (v) the returns on the depreciated efficient original cost rate base of the 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 up-to-date with technological and other advances in its particular industry; and

(vii) the quality of the service provided by the public utility.

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

(3) If any provision of another enactment as referred in subsection (3) is in conflict with this Act and the conflict is not concerned with rate setting, the provision of the other enactment shall prevail over this Act.

(4) The Commission in determining “efficient capital” and “efficient cost” under this section, and for the purposes of section 48 (2) (a), shall have regard to the lowest cost at which the required goods or services (whether capital or operating) can be acquired by the relevant public utility for meeting the required standard of service.

22.—(1) Within thirty days of this Act being made to apply to a public utility by an Order made by the Minister under section 3, the public utility shall file with the Commission,

Transitional as to filing and inspection of rate tariffs.

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 the public utility and shall continue to be the authorised rates, unless altered as provided by this Act or any other enactment.

Adherence to
rate tariffs.

23.—(1) Subject to this Part, a public utility subject to this Act shall not, directly or indirectly, demand or receive a rate for any service rendered that is greater than—

- (a) the authorised rates referred to in section 22 (2); or
- (b) the rates agreed upon in an agreement registered pursuant to section 33,

unless otherwise determined by the Appeals Tribunal upon any matter brought before it under this Part or any other enactment.

(2) Where any amount is paid in excess of the rate in accordance with subsection (1) or any money is paid in pursuance of an interim order or award or for temporary rates under section 20—

- (a) the sums and the 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

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- (b) 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.

24.—(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—

Hearing and determination of matters.

- (a) by or on behalf of any complainant;
- (b) by or on behalf of the public utility concerned; or
- (c) by or on behalf of the Minister, or any other Minister with responsibility for the sector in which any public utility subject to this Act operates.

(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 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) Every matter brought before the Commission shall be determined by a majority of the members sitting in respect of the 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.

Burden of proof.

25. In any proceeding upon the motion of the Commission involving any proposed or existing rate of any public utility subject to this Act, 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 enactment shall be upon the public utility.

Appearances.

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

27.—(1) For the purposes of dealing with any matter brought before it, the Commission shall have all powers as are vested in the High Court 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.

Enforcement
powers of
Commission.

(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.

28.—(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.

Awards.

(2) In addition to the other powers conferred on the Commission, 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, costs and expenses, including expenses of witnesses, as are specified in the order;
- (d) generally give all directions and do all things as are necessary or expedient for the expeditious and just hearing and determination of the matter.

(3) Where a rate regarding a service provided by a public utility has been awarded by the Commission under section 24 and the rate has come into force and where the public utility renders the service to a consumer after such awarded rate has come into force, the public utility shall not, directly or indirectly, demand or receive from the consumer a greater rate for the service than the rate awarded by the Commission.

(4) Where any sum of money is paid by a consumer to a public utility in excess of the rate properly eligible in accordance with subsection (3), the sum shall be deemed an unauthorised payment and shall be repaid by the public utility to the consumer.

(5) The provisions of subsections 3 and 4 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.

29. Upon the making of a claim or complaint or upon any other proceedings for the hearing and determination, the Commission shall—

Service of claims and complaints.

- (a) cause a copy thereof to be given general publicity including publication in the *Gazette*;
- (b) cause a copy thereof to be served upon persons the Commission 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 the notice.

30.—(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.

Proceedings open to public.

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

31. For the avoidance of doubt it is hereby provided that in sections 26 (2) and 18 (1), “person” includes natural persons, artificial legal persons, groups and other bodies whom the Commission considers to be interested in the matter.

“Person” in sections 26 (2) and 18 (1).

Appeals
Tribunal.

32.—(1) There is hereby established a Public Utilities Appeals Tribunal for the purpose of hearing appeals against decisions of the Commission made pursuant to this Act and any other enactment.

(2) An appeal from a decision of the Commission under this Act lies with the Appeals Tribunal.

(3) A person may within twenty-eight days of a decision appeal by notice in writing to the Appeals Tribunal against that decision.

(4) The constitution and procedure of the Appeals Tribunal shall be as specified in regulations made under this Act, including provisions with respect to appointment, tenure and remuneration of the members of the Appeals Tribunal.

(5) 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 judgment, order, or award of the Commission, and the decision of the Court of Appeal shall be final.

PART IV

OTHER FUNCTIONS OF COMMISSION

Registration of
agreements.

33.—(1) Subject to section 34, within thirty days of this Part being made to apply to a public utility, the 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 the 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 the notice of objection shall be treated as a complaint in accordance with this Act.

34. Where an agreement for the supply of services is submitted to the Commission for registration in accordance with section 25, in every case in which objection is made to the registration of any agreement referred to in section 33 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—

Ratification of agreements.

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

Validity of
agreements.

35. An agreement referred to in section 33 (2) shall have effect if it is—

(a) ratified by the Commission in accordance with this Part; and

(b) in accordance with the enactment regulating the Public Utility,

and every agreement so ratified and registered in accordance with this Part shall, during its continuance, be binding on all parties thereto.

PART V

TECHNICAL ASSISTANCE, RESEARCH, INQUIRIES AND ADVICE

Technical
assistance and
research.

36.—(1) The Commission may establish an office for technical assistance to the Minister under any enactment 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 the enactment.

(2) The Commission may establish an office for economic research for the purposes of this Part and any other applicable enactment, which shall have the following functions—

- (a) 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 enactment;
- (b) keeping information so collected and compiled up-to-date;
- (c) conducting studies of economy and efficiency;
- (d) making valuations of the property of a public utility as are required by the Commission;
- (e) any other matter related to the Commission's functions with regard to a public utility subject to this Act pursuant to this Act or any other enactment.

(3) Where an office for technical assistance is established under subsection (1) or an office for economic research is established under subsection (2), the office for technical assistance or office for economic research as the case may be, may be staffed with officers, employees, experts or other professional persons employed or retained by the Commission on a full-time or a part-time basis.

(4) 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 the information or the results upon payment of the prescribed fee.

Advisory
functions of
Commission.

37. 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 subject to this Act 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 enactment, the Commission shall have power to initiate and conduct investigations into the operations and standards of service of all public utilities.

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

38.—(1) 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 any other enactment and shall make specific answers to all questions submitted by the Commission;
- (b) 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.

(2) In directing a public utility to provide any information under subsection (1), the Commission shall coordinate the exercise of its powers under this Act with the exercise of its powers under any other enactment, as to avoid unnecessary duplication of effort by a public utility.

39. 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.

Inspection
of books,
accounts, etc.

40. 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—

Failure of
public utility
to furnish
information.

- (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 ten thousand dollars.

Making false returns.

41. 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 ten thousand dollars.

PART VI

MISCELLANEOUS AND GENERAL

Offence to demand unauthorised payment.

42.—(1) Where a public utility demands from a consumer a payment which by section 23 or 28 (3) or any other enactment is deemed an unauthorised payment, and the public utility knows that the payment which it so demands is an unauthorised payment, the public utility knowingly demanding the unauthorised payment commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars.

(2) Subject to subsection (3), where a public utility is convicted of an offence under subsection (1), every member or employee of the public utility who knowingly demands an unauthorised payment shall be jointly and severally guilty of an offence and is liable on summary conviction to a fine of twenty-five thousand dollars or to imprisonment for twelve months, or to both the fine and imprisonment.

(3) If a member or employee of a public utility shows that he or she was acting under the express directive of a senior member or employee of the public utility who gave the directive knowing that the payment so demanded is an unauthorised payment, the former shall not be convicted of an offence, but instead the latter senior member or employee shall be guilty of the offence under subsection (2).

43. 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 commits an offence and is liable, on summary conviction, to a fine of twenty thousand dollars.

Penalty for obstructing execution of Act.

44.—(1) Where a public utility subject to this Act is investigated by the Commission, is proceeded against through the Commission or appeals a decision of the Commission, pursuant to this Act or any other enactment, the public utility shall bear the following expenses as determined and assessed by it subject to subsection (2)—

Cost of proceedings.

- (a) all expenses incurred by the Commission relating to the investigation, proceeding or appeal under this Act or any other enactment; and
- (b) all expenses of any appeals arising from the investigation or proceeding or from any order or action of the Commission,

and, upon the Commission presenting itemised statements supported by receipts where receipts are issued, the public utility shall pay the expenses to the Commission within such reasonable time as may be specified by the Commission.

(2) An amount determined and assessed by the Commission under subsection (1) in any one year with respect to a public utility shall not exceed—

- (a) in respect of any investigation or proceeding relating to rates, two percent of gross revenues derived from services, or two million dollars, whichever is less; and
- (b) in respect of any other investigation or proceeding, two percent of gross revenues derived from services, or two million dollars, whichever is less,

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

(3) An amount determined and assessed to, and paid by, a public utility under this section shall be taken into account in determining the operating costs of the public utility for the purposes of this Act and any other applicable enactment, unless the amount relates to a complaint brought by a consumer and the public utility is found to be at fault.

(4) 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.

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

45. No action lies against the Crown, the Minister, the Commission, the Appeals Tribunal, any officer or employee of the Commission or the Appeals Tribunal or any person acting under the direction of the Commission or the Appeals Tribunal for anything done or omitted to be done in good faith in the administration or discharge of any power, duty or function that under this or any other enactment is intended or authorised to be executed or performed. No liability.

46.—(1) Subject to subsection (2), an officer or employee of the Commission or the Appeals Tribunal shall not disclose any information relating to— Confidentiality.

- (a) the business or affairs of the Commission or the Appeals Tribunal;
- (b) any investigation, proceedings or appeal conducted by the Commission under this Act or any enactment; or
- (c) the business or affairs of any public utility subject to this Act,

that the officer or employee has acquired in the course of his or her duties or in the exercise of the functions of the Commission or the Appeals Tribunal under this Act or any other enactment.

(2) Subsection (1) does not apply to a disclosure—

- (a) lawfully required or permitted by any court of competent jurisdiction in Grenada;

- (b) for the purpose of assisting the Commission or the Appeals Tribunal to exercise any function conferred on it by this Act or any other enactment;
- (c) in respect of the business and affairs of a public utility subject to this Act or of a consumer of a public utility subject to this Act, with the consent of the person or the consumer, which consent has been voluntarily given;
- (d) for the purpose of enabling or assisting the Minister to exercise any function conferred on him or her under this Act or in connection with any dealings between the Minister and the Commission when the Commission exercises a function under this Act or any other enactment;
- (e) if the information disclosed is or has been available to the public from any other source;
- (f) where the information disclosed is in a summary or in statistics expressed in a manner that does not enable the identity of any public utility subject to this Act or of any consumer of a public utility subject to this Act, to which the information relates, to be ascertained; or
- (g) lawfully made to a person with a view to the institution of, or for the purpose of—

- (i) criminal proceedings;
- (ii) disciplinary proceedings, whether within or outside Grenada, relating to the exercise by an attorney-at-law, auditor, accountant, valuer or actuary of his or her professional duties; or
- (iii) disciplinary proceedings relating to the discharge by a public officer or a member or employee of the Authority of his or her duties.

47. 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.

Evidence of documents.

48.—(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 enactment, the Minister may make regulations for the purpose of carrying this Act into effect and in particular—

Regulations.

- (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 37;
- (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, valued at the most efficient cost;
- (b) the efficient operating expenses of the public utility;
- (c) the annual depreciation calculated upon the capital cost of the public utility, valued at the most efficient cost;
- (d) taxes and other duties as may be payable by the public utility;
- (e) the returns on the depreciated original efficient cost rate base of the 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 and reliability 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) In the event of any conflict or inconsistency between regulations made by any other Minister under any other Act and regulations made under this Act, the regulations made under the other Act shall prevail.

(4) Regulations made under this Act may contain provisions for imposing on any person contravening the regulations a fine, recoverable on summary conviction, of five thousand dollars in respect of each offence and in the case of a continuing offence.

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

50.—(1) The Public Utilities Commission Act No. 13 of 1994 is hereby repealed. Repeal and transitional.

(2) No agreement registered under section 30 of the Public Utilities Commission Act No. 13 of 1994 or ratified under section 31 of the Public Utilities Commission Act No. 13 of 1994 shall have effect, unless it is registered and ratified by the Commission in accordance with sections 33 and 34 of this Act.

Passed by the House of Representatives this 11th day of May, 2016.

WILLAN A. THOMPSON
Clerk to the House of Representatives.

Passed by the Senate this 25th day of May, 2016.

WILLAN A. THOMPSON
Clerk to the Senate.