



PUBLIC UTILITIES REGULATORY COMMISSION ACT, 1997
(ACT 538)

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ARRANGEMENT OF SECTIONS

PART I - ESTABLISHMENT AND FUNCTIONS OF PUBLIC UTILITIES REGULATORY COMMISSION.....	5
1. Establishment of Public Utilities Regulatory Commission.....	5
2. Composition of the Commission	5
3. Functions of the Commission.....	5
4. Independence of the Commission	6
5. Tenure of Office of Members of the Commission	6
6. Filling of Vacancies	7
8. Meetings of the Commission.....	7
9. Disclosure of Interest.....	8
10. Committees of the Commission.....	8
PART II - PROVISION OF SERVICE AND RATES.....	8
11. Duty to Provide Adequate Service	9
12. Order of the Commission to Comply with Duty under Section 11	9
13. Standards of Performance of Public Utilities	9
14. Agreement with Public Utility to Supply Service	10
15. Restriction on Refusal to Provide Service.....	10
16. Guidelines for Fixing Rates.....	11
17. Cost of Production.....	11
18. Approval of Rates Chargeable for Services	11
19. Publication of Tariffs.....	12
20. Uniform Rates of Tariffs	12
21. Filing of Tariffs	13
22. New Service and Change in Existing Rates.....	13
23. Joint Use of Facilities.....	14
24. Duty of Public Utility to Furnish Return and Information	14
25. Ascertainment of Value of Property of Public Utility	15
26. Obligation to Provide Bill.....	15
27. Adjustment of Credit to Consumers	15
28. Interest to be Paid on Deposits.....	15
PART III - COMPLAINTS AND ENFORCEMENT OF DECISIONS OF THE COMMISSION.....	16

29.	Right of Complaint to the Commission	16
30.	Procedure for Complaints and Investigation.....	16
31.	Establishment of Consumer Services Committees	17
32.	Enforcement of Decisions of the Commission	17
PART IV-ADMINISTRATION AND FINANCIAL PROVISIONS.....		17
33.	Executive Secretary	17
34.	Appointment of other Staff of the Commission.....	18
35.	Funds of the Commission	18
36.	Accounts and Audit	18
37.	Annual Report	19
PART V - OFFENCES, PENALTIES AND MISCELLANEOUS PROVISIONS		19
38.	Offences and Penalties.....	19
39.	Making or Furnishing False Return or Information.....	20
40.	Obstruction of or Interference with Members and Officers of the Commission in Discharge of Duties.....	20
41.	Penalty for Continuing Offence	20
42.	Offences by Body of Persons	20
43.	Duty to Co-operate with the Commission by Licensing Authorities	21
44.	Inspectorate	21
45.	Procedures for Dealing with Complaints from Consumer	21
46.	Register of Public Utilities.....	22
47.	Exclusion of Community Water Supply from this Act.....	22
48.	Regulations.....	22
49.	Interpretation	22
50.	Consequential Amendment.....	23
51.	Transitional Provisions.....	24



THE FIVE HUNDRED AND THIRTY-EIGHTH

ACT

OF THE

PARLIAMENT OF THE REPUBLIC OF GHANA

ENTITLED

THE PUBLIC UTILITIES REGULATORY COMMISSION ACT, 1997

AN ACT to provide for the establishment of a Public Utilities Regulatory Commission to regulate and oversee the provision of utility services by public utilities to consumers and to provide for related matters.

DATE OF ASSENT: 16th OCTOBER, 1997

BE IT ENACTED by Parliament as follows:

PART I - ESTABLISHMENT AND FUNCTIONS OF PUBLIC UTILITIES REGULATORY COMMISSION

1. Establishment of Public Utilities Regulatory Commission

1. There is established by this Act a Public Utilities Regulatory Commission, in this Act referred to as "the Commission".
2. The Commission shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.
3. The Commission may for the discharge of its functions under this Act acquire and hold any movable or immovable property, dispose of the property and enter into any contract or other transaction.
4. Where there is any hindrance to the acquisition of any property under subsection (3) of this section, the property may be acquired for the Commission under the State Property and Contracts Act, 1960 (C.A. 6) or the State Lands Act, 1962 (Act 125).

2. Composition of the Commission

The Commission shall be composed of the following persons appointed by the President in consultation with the Council of State

- a. a chairman;
- b. one person nominated by the Trades Union Congress;
- c. one person nominated by the Association of Ghana Industries;
- d. one representative of domestic consumers;
- e. the Executive Secretary appointed under section 33 of this Act; and
- f. four other persons with knowledge in matters relevant to the functions of the Commission.

3. Functions of the Commission

The functions of the Commission are as follows -

- a. to provide guidelines on rates chargeable for provision of utility services;
- b. to examine and approve rates chargeable for provision of utility services;
- c. to protect the interest of consumers and providers of utility services;
- d. to monitor standards of performance for provision of services;
- e. to initiate and conduct investigations into standards of quality of service given to consumers;
- f. to promote fair competition among public utilities;
- g. to conduct studies relating to economy and efficiency of public utilities;
- h. to make such valuation of property of public utilities as it considers necessary for the purposes of the Commission;
- i. to collect and compile such data on public utilities as it considers necessary for the performance of its functions;
- j. to advise any person or authority in respect of any public utility;
- k. to maintain a register of public utilities; and
- l. to perform such other functions as are incidental to the foregoing.

4. Independence of the Commission

Subject to the provisions of this Act, the Commission shall not be subject to the direction or control of any person or authority in the performance of its functions.

5. Tenure of Office of Members of the Commission

1. A member of the Commission other than the Chief Executive shall hold office for a period not exceeding five years and is on the expiration of that period eligible for re-appointment.
2. A member of the Commission other than the Chief Executive may at any time by letter addressed to the President resign his office.

3. A member who is absent from three consecutive meetings of the Commission without sufficient cause shall cease to be a member.
4. The Chairman or other members of the Commission may be removed from office by the President in consultation with the nominating body for inability to perform the functions of his office, for stated misbehaviour or for any other just cause.
5. The Chairman of the Commission shall notify the President of vacancies that occur in the membership of the Commission within one month of the occurrence of the vacancy.

6. Filling of Vacancies

1. When a member of the Commission other than the Chief Executive is incapacitated by illness or any other cause from performing the functions of his office for more than twelve months, the President may acting in consultation with the appropriate institution appoint another person to perform the functions of the member until the member is able to resume the performance of his duties.
2. Where a person is appointed to fill a vacancy he shall hold office for the remainder of the term of the previous member and shall, subject to the provisions of this Act, be eligible for re-appointment.

7. Allowances for Members

The Chairman and the other members of the Commission shall be paid such allowances as the President may determine.

8. Meetings of the Commission

1. The Commission shall meet for the despatch of business at such times and in such places as the Chairman may determine but shall meet at least once every three months.
2. The Chairman shall upon the request of not less than one-third of the membership of the Commission convene a special meeting of the Commission.
3. The quorum at a meeting of the Commission shall be five members and shall include the Chief Executive or the person acting in that capacity.

4. Every meeting of the Commission shall be presided over by the Chairman and in his absence by a member of the Commission elected by the members present from among their number.
5. Questions before the Commission shall be decided by a majority of the members present and voting.
6. The Chairman or the person presiding at a meeting of the Commission shall in the event of equality of votes have a second or casting vote.
7. The Commission may co-opt any person to act as an advisor at its meetings but no co-opted person is entitled to vote at the meeting.
8. The validity of the proceedings of the Commission shall not be affected by a vacancy among its members or by a defect in the appointment or qualification of a member.
9. Except as otherwise expressly provided for under this section, the Commission shall determine and regulate the procedure for its meetings.

9. Disclosure of Interest

1. A member of the Commission who is directly interested in any matter being considered or dealt with by the Commission shall disclose the nature of his interest at a meeting of the Commission and shall not take part in any deliberation or decision of the Commission with respect to the matter.
2. A member who fails to disclose his interest under subsection (1) of this section shall be removed from the Commission.

10. Committees of the Commission

The Commission may for the discharge of its functions appoint committees of the Commission comprising members of the Commission or non-members or both and assign to any such committee such of its functions as it may determine.

PART II - PROVISION OF SERVICE AND RATES

11. Duty to Provide Adequate Service

A public utility licensed or authorised under any law to provide utility service shall -

- a. maintain its equipment and property used in the provision of the service in such condition as to enable it to effectively provide the service;
- b. make such reasonable effort as may be necessary to provide to the public service that is safe, adequate, efficient, reasonable and non-discriminatory; and
- c. make such repairs, changes, extensions and improvements in or to the service as may be necessary or proper for the efficient delivery of the service to the consumer.

12. Order of the Commission to Comply with Duty under Section 11

1. Where the Commission discovers on its own or upon a complaint that the service provided by a public utility is not in accordance with section 11, the Commission shall in writing direct the provision of the adequate or reasonable service that should be provided by the public utility and may include such other directions as to secure compliance with section 11.
2. A direction under subsection (1) may include payment of compensation by the public utility to any consumer for damage or loss suffered on account of the failure of the public utility to comply with section 11.
3. Where the technology employed by a public utility is out of date or where any advance in technology which could result in an improvement in the service or in reducing the cost of the consumer, has not been incorporated in the service within a reasonable time, the Commission may in writing direct the public utility to take such measures as the Commission considers appropriate to remedy the omission.
4. A direction under subsection (3) shall specify a reasonable time for compliance and where compliance is in stages, different times may be specified to comply with each stage.

13. Standards of Performance of Public Utilities

1. The Commission shall monitor standards of performance established by the licensing authorities of public utilities for compliance by public utilities.

2. Where a public utility fails to meet any required standard of performance, it shall pay such compensation as the Commission in consultation with the licensing authority may determine to any person adversely affected as a result of the failure.
3. The requirement for payment of compensation under this section
 - a. does not limit the right to any other remedy at law which may be available to the complainant;
 - b. does not preclude the Commission from taking any other measure or imposing any other sanction that the Commission has a right to impose in respect of the act or omission that constitutes the failure.

14. Agreement with Public Utility to Supply Service

1. Where a public utility has entered into an agreement with any institution or body corporate for the provision, development or expansion of the service to be provided or being provided by the public utility and the implementation of the agreement is not effected within a reasonable time in any material respect without reasonable excuse, the institution or body may make a complaint to the Commission.
2. Where the Commission, after giving the complainant and the public utility against which the complaint is made a reasonable opportunity of being heard, is satisfied that the public utility concerned has failed or refused to implement the terms of the agreement within a reasonable time, the Commission may-
 - a. direct the public utility to pay to the institution or body such sum as it considers reasonable in the circumstances of the case; or
 - b. recommend to the licensing authority of the public utility, the cancellation or suspension of its licence; or
 - c. give such other directions as it considers just in the circumstances of the case.

15. Restriction on Refusal to Provide Service

1. Except where a licence or authorisation given to a public utility is revoked, suspended, cancelled or expires in accordance with the terms of the licence, no public utility shall refuse to provide its service generally without prior written permission of the Commission.
2. Application for permission under subsection (1) shall be submitted to the Commission within such period as the Commission shall prescribe.

16. Guidelines for Fixing Rates

1. No public utility shall fix any rate to be charged for any service provided by it unless the rate is in accordance with guidelines provided by the Commission.
2. The Commission shall prepare and provide to public utilities guidelines on levels of rates that may be charged by the public utilities for the services provided.
3. In preparing the guidelines the Commission shall take into account
 - a. consumer interest;
 - b. investor interest;
 - c. the cost of production of the service; and
 - d. assurance of the financial integrity of the public utility.

17. Cost of Production

1. In order to assess the cost of production of any service by a public utility for the purpose of this Act, the Commission may investigate and determine whether any expenditure incurred by the public utility is justified or reasonable.
2. Where the public utility does not itself produce or generate the service which it provides to consumers, but obtains it from another source, the Commission may investigate the cost of production or generation of the producer or generator in order to determine the reasonableness of the rate being charged or proposed to be charged for the service concerned.

18. Approval of Rates Chargeable for Services

1. No public utility shall demand any rate for the service it provides unless the rate chargeable for the service has been approved by the Commission.
2. No public utility shall directly or indirectly demand or receive for any service provided by it a higher rate than the rate approved by the Commission in relation to it and which shall be stated in the tariff filed with the Commission under section 21.
3. Subject to this Act but notwithstanding subsection (2) a public utility may with the written permission of the Commission demand and receive from a consumer any special rate agreed to by the public utility and the consumer.
4. The Commission shall before approving any rates provide as far as practicable the public utility and consumers affected by the rates a reasonable opportunity of being heard and shall take into account any representation made before it.
5. Notwithstanding the other provisions of this section, the power to approve rates under this section for services to which this section would otherwise have applied shall not apply to export of the service.

19. Publication of Tariffs

Rates approved by the Commission shall be published by the Commission in the Gazette and the mass media.

20. Uniform Rates of Tariffs

1. The Commission may, having regard to matters such as -
 - a. the population distribution in the country;
 - b. the need to make the best use of any natural resource of the country;
 - c. the economic development of the whole country;fix a uniform rate throughout the country, any region or district for any service provided by a public utility.
2. Nothing in subsection (1) prevents the Commission from approving different rates for different classes of consumers.

21. Filing of Tariffs

1. Every public utility shall within such time as maybe determined by the Commission, file with the Commission in such form as the Commission may specify, tariffs showing the rates charged by it for the service it provides.
2. Copies of the tariffs shall be made available to the public for inspection.

22. New Service and Change in Existing Rates

1. Where a public utility starts a new service for which rates are chargeable or desires to revise any existing rates charged by it for any service, it shall file with the Commission at least 60 days before the commencement of the new service or the effective date for the revised rates, notice of the proposed new rates or revised rates.
2. The notice shall state -:
 - a. where it relates to the rate for a new service -:
 - i. the new rates;
 - ii. the effective date of the rates; and
 - iii. any other particulars specified by the Commission;
 - b. where it relates to changing existing rates -:
 - i. the existing rates and the proposed rates;
 - ii. the effective date of the proposed rates;
 - iii. the reasons for the change in rates; and
 - iv. any other particulars that may be required by the Commission.
3. The Commission shall within 30 days of receipt of the required particulars take a decision on the rates.

23. Joint Use of Facilities

1. A public utility may permit the joint use of its equipment and facilities by another public utility for a reasonable compensation where such arrangement is convenient or necessary and the use will not result in damage to the owner or other users of the equipment.
2. Where a dispute arises with respect to any such arrangement, a complaint may be made by any of the parties to the Commission which shall settle the dispute.
3. Notwithstanding subsections (1) and (2) of this section, the Commission may where it is satisfied after investigation that such joint use of equipment and facilities-
 - a. is necessary to provide safe, adequate and economic service to consumers;
 - b. will not result in irreparable damage to the owners or users of the equipment or facilities; and
 - c. is just and reasonable having regard to the circumstances of the case, direct that two or more public utilities enter into such arrangement for joint or combined use or other arrangement upon such terms, including compensation, as the Commission may determine, for the provision of any service; except that the Commission may at any time upon a complaint from any public utility or consumer affected by the directives modify or revoke its earlier directives.

24. Duty of Public Utility to Furnish Return and Information

1. The Commission may in writing, require a public utility to furnish at such intervals as may be specified by the Commission, and at such other times as the Commission may require, a detailed report of finances and operations of the public utility in such form and containing such particulars as the Commission may specify and the public utility shall comply with the request.
2. A public utility shall upon reasonable notice by the Commission furnish to the Commission all information required by it and shall make specific and complete answers to all questions submitted by the Commission.

3. Whenever required by the Commission upon reasonable notice, a public utility shall deliver to the Commission all contracts, reports of engineers, documents, books, accounts and other records in the possession or control of the public utility and in any way relating to its property or service or affecting its business, or copies verified in such manner as the Commission may specify.

25. Ascertainment of Value of Property of Public Utility

1. The Commission may in writing direct the ascertainment by appraisal, of the value of the property of any public utility and in that connection may enquire into every fact which it considers has any bearing on that value, including the amount of money actually and reasonably expended by that public utility in order to provide service reasonably adequate to the requirements of the public served by the public utility.
2. Expenses in connection with any appraisal ordered by the Commission, including all expenses incurred in connection with it by the public utility whose property is the subject of the appraisal, may, where the Commission directs, be charged to the capital account of the public utility.

26. Obligation to Provide Bill

A public utility shall give to every consumer after every calendar month or at such other intervals as may be directed by the Commission in relation to a consumer or class of consumers, other than consumers on prepayment meters, a bill showing the sum payable by the consumer for the service provided by the public utility during the preceding month or other relevant period as may be determined by the Commission.

27. Adjustment of Credit to Consumers

Where in respect of any change in rates payable by a consumer for any service, a consumer becomes entitled to receive any sum from a public utility, the sum shall be adjusted towards any sum that may become payable by the consumer to the public utility for any further period or paid in cash to the consumer as may be agreed upon by them.

28. Interest to be Paid on Deposits

1. A public utility that requires its consumers to make cash deposit with the public utility as a condition precedent to receiving service offered by the

public utility, shall pay interest on the deposit at such rate as the Commission shall determine except that no interest shall be paid on deposits held by the public utility for less than six months.

- 2 Subject to subsection (1), where applicable, a public utility shall disclose to the consumer with its final billing statement in each calendar year, the amount of interest which has accumulated on deposits during the calendar year and the proportion which stands to the credit of the consumer.

PART III - COMPLAINTS AND ENFORCEMENT OF DECISIONS OF THE COMMISSION

29. Right of Complaint to the Commission

1. Any person may submit a complaint to the Commission in respect of a matter arising under this Act.
2. A complaint that relates to provision of utility service or rates chargeable for service provided by a public utility shall in the first instance be referred to the Commission for investigation and settlement.
3. The Commission shall investigate complaints received by it unless it is of the opinion that -
 - a. the complaint is trivial, frivolous, vexatious or not made in good faith; or
 - b. the complaint is on the same subject already under investigation.
4. The Commission does not have power to investigate any matter which is before a court.

30. Procedure for Complaints and Investigation

The Commission shall by legislative instrument prescribe for matters relating to submission of complaints to the Commission and the hearing and determination of the complaints.

31. Establishment of Consumer Services Committees

1. There may be established by the Commission in such areas of the country as it considers necessary consumer services committees.
2. The Commission shall by legislative instrument prescribe the membership and functions of a consumer services committee.

32. Enforcement of Decisions of the Commission

Where, the Commission, whether before or after any investigation, makes any decision or gives any direction, requiring any person to do or desist from doing any act, and there is failure on the part of the person to comply with the decision or direction, within a specified period, if any, or within a reasonable time, the Commission may apply to the High Court for the enforcement of the decision or direction.

PART IV-ADMINISTRATION AND FINANCIAL PROVISIONS

33. Executive Secretary

1. The Commission shall have an Executive Secretary who shall be appointed by the President in accordance with the advice of the Commission given in consultation with the Public Services Commission.
2. The Executive Secretary shall be a member of the Commission.
3. The Executive Secretary shall hold office upon such terms and conditions as shall be specified in his letter of appointment.
4. Subject to such general directives as the Commission may give, the Executive Secretary shall be responsible for the day-to-day administration of the Commission and ensure the implementation of the decisions of the Commission.
5. The Executive Secretary may delegate the day-to-day administration of the Commission to any officer but the Executive Secretary shall not be

relieved from ultimate responsibility for the discharge of any delegated function.

34. Appointment of other Staff of the Commission

1. The President acting in accordance with the advice of the Commission given in consultation with the Public Services Commission may appoint such officers or other employees as may be necessary for the effective implementation of the functions of the Commission.
2. The President may delegate the power of appointment of public officers in accordance with article 195(2) of the Constitution.
3. Other public officers may be transferred or seconded to the Commission.
4. The Commission may engage the services of such experts and consultants as it considers necessary on the recommendation of the Executive Secretary.

35. Funds of the Commission

The funds of the commission shall include -:

- a. Government subvention;
- b. any loans granted to the Commission;
- c. any monies accruing to the Commission in the course of the performance of its functions under this Act; and
- d. grants

36. Accounts and Audit

1. The Commission shall keep books of account and proper records in relation to them and the account books and records of the Commission shall be in a form approved by the Auditor-General.
2. The books of account of the Commission shall be audited annually by the Auditor-General or an auditor appointed by him within three months of the end of the immediately preceding financial year.

3. The financial year of the Commission shall be the same as the financial year of the Government.

37. Annual Report

The Chairman of the Commission shall, as soon as possible after the expiration of each financial year but within six months after the end of the year, submit to Parliament an annual report dealing generally with the activities and the operations of the Commission within that year which shall include a copy of the audited accounts of the Commission together with the Auditor-General's report on it.

PART V - OFFENCES, PENALTIES AND MISCELLANEOUS PROVISIONS

38. Offences and Penalties

Any public utility which -:

- a. fails to comply with standards of performance in the provision of utility services;
- b. refuses to provide its utility service contrary to section 15(1);
- c. charges or demands for its services rates not approved by the Commission contrary to section 18(1);
- d. charges or demands a higher rate than the rate approved by the Commission contrary to section 18(2);
- e. fails to submit within any specified period tariffs of its rates contrary to section 21;
- f. fails to submit new or revision of any existing rates for approval by the Commission contrary to section 22;
- g. fails or refuses to provide a bill to its consumers contrary to section 26;
- h. fails or refuses to make the requisite adjustment arising out of any variation in rates contrary to section 27;

- i. fails or refuses to prepare and submit to the Commission within any specified time provided by or under this Act any return or information -:
 - i. required to be furnished by or under this Act; or
 - ii. directed to be furnished by the Commission for the purpose of exercise or discharge of its functions; or
- j. fails or refuses to answer any question relevant to any matter which is the subject of any investigation before the Commission, commits an offence and is liable on summary conviction to a fine not exceeding ₦10 million and in default of payment the principal officer or the secretary of the public utility shall be liable to imprisonment for a term not exceeding 2 years.

39. Making or Furnishing False Return or Information

A public utility which makes any return or furnishes any information to the Commission which is false in any material particular commits an offence and shall be liable on summary conviction, to a fine not exceeding ₦10 million.

40. Obstruction of or Interference with Members and Officers of the Commission in Discharge of Duties

Any person, who obstructs or interferes with a member of the Commission, officer or other person employed by the Commission in the exercise of the powers conferred or duties imposed by or under this Act on him commits an offence and shall be liable, on summary conviction, to a fine not exceeding ₦10 million or imprisonment for a term not exceeding two years or to both.

41. Penalty for Continuing Offence

Where a public utility convicted of an offence under this Act continues to commit the offence after conviction there shall be imposed on the public utility a fine of not less than ₦2 million for each day that the offence is continued and where there is failure to pay the fine the principal officer shall be liable to imprisonment for such term as the court may determine.

42. Offences by Body of Persons

Where an offence under this Act or any regulation made under it is committed by a body corporate or by a member of a partnership or other firm, every director or officer of that body corporate or any member of the partnership or

other person concerned with the management of the public utility shall also be guilty of the offence and shall on conviction, be liable to a fine not exceeding €10 million for the offence and shall in addition be liable to the payment of compensation for any damage resulting from the breach unless he proves to the satisfaction of the court that -

- a. he exercised due diligence to secure compliance with the provisions of the Act; and
- b. the offence was committed without his knowledge, consent or connivance.

43. Duty to Co-operate with the Commission by Licensing Authorities

Every body or institution authorised by any enactment to grant a licence to a public utility for the provision of the relevant utility service shall assist the Commission in the performance of its function under this Act.

44. Inspectorate

1. For the purpose of giving effect to this Act the Commission shall establish an Inspectorate Division.
2. The Commission may in writing appoint a Chief Inspector and other inspectors to carry out such functions as the Commission may determine for the purpose of enforcing this Act and regulations made under this Act.
3. An inspector appointed under this Act may at all reasonable times enter any premises of a public utility to inspect the premises or generally to carry out any function imposed upon him under this Act or to ensure that the provisions of this Act are complied with.

45. Procedures for Dealing with Complaints from Consumer

1. Every public utility shall establish procedures for dealing with complaints by its consumers or potential consumers of its service.
2. No procedure shall be established and no modification of the procedure shall be made, unless -:
 - a. the public utility has consulted persons or bodies that constitute a fair representation of consumers for whom it provides the service; and

- b. the proposed procedure or modification has been approved by the Commission.
3. A public utility shall publicise the approved procedure in such a manner as the Commission may require and send copies of the procedure, free of charge, to any person who asks for it.
4. The Commission may direct the public utility to review its procedures or the manner in which it operates and makes modifications to the procedures.

46. Register of Public Utilities

1. The Commission shall keep a register in which shall be recorded particulars of public utilities.
2. The register shall be open to the public on such terms and conditions as the Commission shall determine.

47. Exclusion of Community Water Supply from this Act

This Act shall not apply to supply of water provided in a community, where the supply of the water is operated and managed by the community concerned.

48. Regulations

1. The Commission may by legislative instrument make such regulations as it considers necessary for the implementation of this Act.
2. Without prejudice to subsection (1) regulations may be made in respect of all or any of the following -:
 - a. the procedure for submission of complaints, investigation and determination of complaints; and
 - b. any matter to be taken into account by the Commission in approving the rate for any service provided by a public utility.
3. Regulations issued under subsections (1) or (2) shall be under the signature of the Chairman of the Commission.

49. Interpretation

In this Act unless the context otherwise requires -:

- "Commission" means the Public Utilities Commission established under section 1 of this Act;
- "consumer" means a person or his successor who purchases, receives or makes use of any service provided by a public utility and does not deliver or resell the service to others;
- "export" means the provision of the service to any other country, VALCO or a free zone area in Ghana;
- "licensing authority" means any body or authority with power under any enactment to grant licence or rights to a public utility;
- "principal officer" means the person responsible for the day-to-day administration of the public utility;
- "public utility" means any person engaged in the provision for a fee, whether directly or indirectly, of any of the following services to the public -
 - a. the supply, transmission or distribution of electricity;
 - b. the supply, transmission or distribution of water;
 - c. other public utility services **excluding a service involving or related to a petroleum product**, that the Commission shall by legislative instrument prescribe on recommendation of the Minister with responsibility for the service";
- "rate" means fee, payment or charge in the form of money for any service provided by a public utility;
- "service" includes the supplying or furnishing of any commodity derived directly from the business in which a public utility is engaged to the consumer and the placing at the disposal of the consumer the facilities employed in or connected with the supply of that commodity.

50. Consequential Amendment

1. The Ghana Water and Sewerage Corporation Act, 1965 (Act 310) is amended by the repeal of section 2(2)(f) and section 14(b) and (d).

2. The Volta River Development Act, 1961 (Act 46) is amended by the repeal of section 21(4).

51. Transitional Provisions

Any public utility however established and in existence at the commencement of this Act shall within 14 days of the appointment of the Commission established under this Act submit to the Commission its existing and proposed tariffs of rates chargeable for the utility service it provides for the approval of the Commission and shall submit such other information as the Commission may in writing require.

Date of Gazette Notification: 17th October, 1997.