

**ACT 538****PUBLIC UTILITIES REGULATORY COMMISSION ACT, 1997**

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ACT 538

**PUBLIC UTILITIES REGULATORY COMMISSION ACT, 1997<sup>1</sup>**

**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.**

*Establishment and Functions of the Commission*

**1. Establishment of the Commission**

(1) There is hereby established a Public Utilities Regulatory Commission.

(2) The Commission is 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 performance of its functions under this Act, acquire and hold movable or immovable property, dispose of the property and enter into a contract of any other transaction.

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1. The Act was assented to on 16th October, 1997 and was published in the *Gazette* on 17th October, 1997.

(4) Where there is a hindrance to the acquisition of property under subsection (3), 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. Governing body of the Commission**

(1) The governing body of the Commission is a Board consisting of

- (a) the 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, and
- (f) four other persons with knowledge in matters relevant to the functions of the Commission.

(2) The members of the Board shall be appointed by the President in accordance with article 70 of the Constitution.

## **3. Functions of the Commission**

The functions of the Commission are

- (a) to provide guidelines on rates chargeable for the provision of utility services,
- (b) to examine and approve rates chargeable for the provision of utility services,
- (c) to protect the interest of consumers and providers of utility services,
- (d) to monitor standards of performance for the 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 valuation of property of public utilities it considers necessary for the purposes of the Commission,
- (i) to collect and compile data on public utilities it considers necessary for the performance of its functions,
- (j) to advise a person or an authority in respect of a public utility,
- (k) to maintain a register of public utilities, and
- (l) to perform any other functions as are incidental to its other functions.

## **4. Independence of the Commission**

Subject to this Act, the Commission is not subject to the direction or control of a person or an authority in the performance of its functions.

**5. Tenure of office of members of the Board**

(1) A member of the Board, other than the chief executive, shall hold office for a period not exceeding five years and is eligible for re-appointment.

(2) A member other than the chief executive may by letter addressed to the President resign from office.

(3) A member who is absent from three consecutive meetings of the Board without sufficient cause ceases to be a member.

(4) The chairman or any other member of the Board may be removed from office by the President in consultation with the nominating body for inability to perform the functions of office, for stated misbehaviour or for any other just cause.

(5) The chairman of the Board shall notify the President of a vacancy that occurs in the membership of the Board within one month of the occurrence of the vacancy.

**6. Filling of vacancies**

(1) When a member, other than the chief executive, is incapacitated by illness or any other cause from performing the functions of 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 functions.

(2) A person appointed to fill a vacancy shall hold office for the remainder of the term of the previous member and is eligible, subject to this Act, for re-appointment.

**7. Allowances for members**

The chairman and the other members of the Board shall be paid the allowances determined by the President.

**8. Meetings of the Board**

(1) The Board shall meet at least once every three months for the despatch of business at the times and in the places determined by the chairman.

(2) The chairman shall, on the request of not less than one-third of the membership of the Board, convene a special meeting of the Board.

(3) The quorum at a meeting of the Board is five members including the chief executive or the person acting in that capacity.

(4) The chairman shall preside at the meetings of the Board and in the absence of the chairman a member of the Board elected by the members present from among their number shall preside.

(5) Questions before the Board shall be decided by a majority of the members present and voting.

(6) The chairman or the person presiding at the meeting of the Board shall in the event of equality of votes have a casting vote.

(7) The Board may co-opt a person to act as an adviser at a meeting of the Board but a co-opted person is not entitled to vote at the meeting.

(8) The validity of the proceedings of the Board 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 Board shall determine and regulate the procedure for its meetings.

#### **9. Disclosure of interest**

(1) A member who is directly interested in a matter being considered or dealt with by the Board shall disclose the nature of the interest at a meeting of the Board and shall not take part in a deliberation or decision of the Board with respect to that matter.

(2) A member who fails to disclose interest under subsection (1) shall cease to be a member the Board.

#### **10. Committees of the Board**

The Board may, for the performance of its functions, appoint a committee of the Board comprising members of the Board or non-members or both and assign to the committee any of its functions that it may determine.

### *Provision of Service and Rules*

#### **11. Provision of adequate service**

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

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

#### **12. Compliance with duty under section 11**

(1) Where the Board discovers on its own or on a complaint that the service provided by a public utility is not in accordance with section 11, the Board shall in writing direct the provision of the adequate or reasonable service that should be provided by the public utility and may include any other directions that will secure compliance with section 11.

(2) A direction under subsection (1) may include payment of compensation by the public utility to a 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 an 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 Board may in writing direct the public utility to take the measures that the Board 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, the different times may be specified to comply with each stage.

### **13. Standards of performance of public utilities**

(1) The Board 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 a required standard of performance it shall pay the compensation that the Board in consultation with the licensing authority determines to a 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 is available to the complainant;
- (b) does not preclude the Commission from taking any other measures or imposing any other sanction that the Board 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 an institution or a 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 a material respect without reasonable excuse, the institution or body may make a complaint to the Commission.

(2) Where the Board 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 Board may

- (a) direct the public utility to pay to the institution or body a sum of money that 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 any other directions that 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, a public utility shall not refuse to provide its service generally without the prior written permission of the Commission.

(2) An application for permission under subsection (1) shall be submitted to the Commission within the prescribed period.

#### **16. Guidelines for fixing rates**

(1) A public utility shall not fix a rate to be charged for a service provided by it unless the rate is in accordance with guidelines provided by the Commission.

(2) The Board 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 Board shall take into account

- (a) the interests of the consumer,
- (b) the interests of an investor,
- (c) the cost of production of the service, and
- (d) the assurance of the financial integrity of the public utility.

#### **17. Cost of production**

(1) In order to assess the cost of production of a service by a public utility for the purposes of this Act, the Board may investigate and determine whether an 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 Board 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) A public utility shall not demand a rate for the service it provides unless the rate chargeable for the service has been approved by the Board.

(2) A public utility shall not directly or indirectly demand or receive for a service provided by it a higher rate than the rate approved by the Board 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 despite subsection (2), a public utility may, with the written permission of the Board demand and receive from a consumer a special rate agreed to by the public utility and the consumer.

(4) The Board shall, before approving a rate provide as far as practicable the public utility and consumers affected by the rate a reasonable opportunity of being heard and shall take into account a representation made before it.

(5) Despite the other provisions of this section, the power to approve a rate under this section for services to which this section would otherwise have applied shall not apply to the export of the service.

**19. Publication of tariffs**

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

**20. Uniform rates of tariffs**

- (1) The Board may, having regard to matters such as
  - (a) the population distribution in the country,
  - (b) the need to make the best use of a natural resource of the country, and
  - (c) the economic development of the whole country,

fix a uniform rate throughout the country, a Region or district for a service provided by a public utility.

(2) Subsection (1) does not prevent the Board from approving different rates for different classes of consumers.

**21. Filing of tariffs**

(1) A public utility shall, within the time determined by the Board, file with the Commission in the form specified by the Board, 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 an existing rate charged by it for a service, it shall file with the Commission at least sixty 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 Board;
- (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 Board.

(3) The Board shall within thirty 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 the 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 the arrangement, a complaint may be made by any of the parties to the Commission which shall settle the dispute.

(3) Despite subsection (1) and (2), the Board may where it is satisfied after investigation that the 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 an arrangement for joint or combined use or any other arrangement on the terms, including compensation that the Board may determine, for the provision of a service; except that the Board may on a complaint from a public utility or consumer affected by the directives modify or revoke an earlier directive.

**24. Returns and information**

(1) The Board may in writing, require a public utility to furnish at the intervals specified by the Board, and at the other times that the Board may require, a detailed report of finances and operations of the public utility in the form and containing the particulars specified by the Board and the public utility shall comply with the request.

(2) A public utility shall on reasonable notice by the Board furnish to the Commission the information required by the Board and shall make specific and complete answers to the questions submitted by the Board.

(3) Where required by the Commission on reasonable notice, a public utility shall deliver to the Commission the contracts, reports of engineers, documents, books, accounts and any other records in the possession or control of the public utility and relating to its property or service or affecting its business, or copies verified in the manner specified by the Board.

**25. Ascertainment of value of property of public utility**

(1) The Board may in writing direct the ascertainment by appraisal, of the value of the property of a public utility and in that connection may enquire into a fact which it considers has a 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 an appraisal ordered by the Board, including the expenses incurred in connection with it by the public utility whose property is the subject of the appraisal, may, where the Board directs, be charged to the capital account of the public utility.

**26. Obligation to provide bill**

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

**27. Adjustment of credit to consumers**

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

**28. Interest to be paid on deposits**

(1) A public utility that requires its consumers to make cash deposits with the public utility as a condition precedent to receiving service offered by the public utility, shall pay interest on the deposit at the rate determined by the Board except that an interest shall not 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.

*Complaints and Enforcement of Decisions of the Commission***29. Complaints to the Commission**

(1) A person may submit a complaint to the Commission in respect of a matter arising under this Act.

(2) A complaint that relates to the 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 Board 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 Board does not have power to investigate a 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. Consumer services committees**

(1) The Commission may establish consumer services committees in the areas of the country that it considers necessary.

(2) The Commission shall, by legislative instrument, prescribe the membership and functions of a consumer services committee.

**32. Enforcement of decisions of the Board**

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

*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 article 195 of the Constitution. ✓

(2) The executive secretary shall be a member of the Board.

(3) The executive secretary shall hold office on the terms and conditions specified in the letter of appointment.

(4) Subject to the general directives that the Board may give, the executive secretary is responsible for the day-to-day administration of the affairs of the Commission and shall ensure the implementation of the decisions of the Board.

(5) The executive secretary may delegate the day-to-day administration of the affairs of the Commission to an officer but the executive secretary is not relieved from ultimate responsibility for the performance of a delegated function.

**34. Appointment of other staff of the Commission**

(1) The President acting in accordance with article 195 of the Constitution may appoint officers or other employees as are necessary for the effective performance of the functions of the Commission.

(2) Other public officers may be transferred or seconded to the Commission.

(3) The Commission may engage the services of experts and consultants who it considers necessary on the recommendation of the executive secretary.

**35. Funds of the Commission**

The funds of the Commission include

- (a) Government subvention,
- (b) the loans granted to the Commission,
- (c) the moneys 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 in a form approved by the Auditor-General.

(2) The books of account of the Commission shall be audited annually within three months of the end of the immediately preceding financial year by the Auditor-General.

(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 Board 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.

*Offences, Penalties and Miscellaneous Provisions***38. Offences and penalties**

A public utility which

- (a) fails to comply with the required 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 Board contrary to section 18 (1),
- (d) charges or demands a higher rate than the rate approved by the Board contrary to section 18 (2),
- (e) fails to submit within a specified period the 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 a variation in rates contrary to section 27,
- (i) fails or refuses to prepare and submit to the Commission within a specified time provided by or under this Act a return or an information
  - (i) required to be furnished by or under this Act, or
  - (ii) directed to be furnished by the Board for the purpose of the performance of its functions, or
- (j) fails or refuses to answer a question relevant to a matter which is the subject of an investigation before the Commission,

commits an offence and is liable on summary conviction to a fine not exceeding five hundred penalty units and in default of payment the principal officer or the secretary of the public utility is liable to a term of imprisonment not exceeding two years.

### **39. Making or furnishing false return or information**

A public utility which makes a return or furnishes information to the Commission which is false in a material particular commits an offence and is liable on summary conviction to a fine not exceeding five hundred penalty units.

### **40. Obstruction of and interference with the Commission**

A person who obstructs or interferes with a member, an officer or any other person employed by the Commission in the exercise of the powers conferred or duties imposed by or under this Act commits an offence and is liable, on summary conviction, to a fine not exceeding one thousand penalty units or to a term of imprisonment not exceeding five years or to both the fine and the imprisonment.

### **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 five hundred penalty units for each day during which the offence is continued and where there is failure to pay the fine the principal officer is liable to imprisonment for a term that the High Court may determine.

### **42. Offences by body of persons**

(1) Where an offence under this Act or the Regulations 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 a member of the partnership or other person concerned with the management of the public utility commits that offence and

- (a) is liable on conviction, to a fine not exceeding five hundred penalty units for the offence, and
- (b) is liable in addition to the payment of compensation for a damage resulting from the breach.

(2) A person shall not be convicted under subsection (1) where it is proved to the satisfaction of the High Court

- (a) that due diligence was exercised to secure compliance with the provisions of the Act, and
- (b) that the offence was committed without the knowledge, consent or connivance of that person.

### **43. Co-operation by licensing authorities**

A body or an institution authorised by an enactment to grant a licence to a public utility for the provision of the relevant utility service shall assist the Board 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 Board may in writing appoint a chief inspector and any other inspectors to perform any of its functions as determined by the Board for the purpose of enforcing this Act and the Regulations.

(3) An inspector appointed under this Act may at reasonable times enter the premises of a public utility to inspect the premises or generally to perform its functions under this Act or to ensure that this Act is complied with.

**45. Complaints from consumers**

(1) A public utility shall establish procedures for dealing with complaints by its consumers or potential consumers of its service.

(2) A procedure shall not be established and a modification of the procedure shall not 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 Board.

(3) A public utility shall publicise the approved procedure in a manner that the Board may require and send copies of the procedure, free of charge, to a person who asks for it.

(4) The Board 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 the terms and conditions determined by the Board.

**47. Exclusion of community water supply**

This Act does not apply to the 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 Board may, by legislative instrument, make Regulations that it considers necessary for the implementation of this Act.

(2) Without prejudice to subsection (1) the Regulations may provide for

- (a) the procedure for submission of complaints, investigation and determination of complaints, and
- (b) any other matter to be taken into account by the Commission in approving the rate for a service provided by a public utility.

(3) Regulations issued under subsection (1) or (2) shall be under the signature of the chairman of the Board.

#### 49. Interpretation

In this Act, unless the context otherwise requires,

“**Auditor-General**” includes an auditor appointed by the Auditor-General;

“**Commission**” means the Public Utilities Commission established under section 1;

“**consumer**” means a person or the successor to that person who purchases, receives or makes use of a 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, the Volta Aluminium Company or a free zone area in the Republic;

“**licensing authority**” means a body or an authority with power under an enactment to grant licence or rights to a public utility;

“**member**” means a member of the Board;

“**prescribed**” means prescribed under this Act or the Regulations;

“**principal officer**” means the person responsible for the day to day administration of the affairs of the public utility;

“**public utility**” means a person engaged in the provision to the public for a fee, whether directly or indirectly, 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 Commission shall by legislative instrument prescribe on recommendation of the Minister with responsibility for the service;<sup>1a</sup>

“**rate**” means fee, payment or charge in the form of money for a service provided by a public utility;

“**Regulations**” means the Regulations made under this Act;

“**service**” includes the supplying or furnishing of a commodity other than a petroleum product, 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.<sup>1b</sup>

1a. Substituted by section 86 of the National Petroleum Authority Act, 2005 (Act 691).

1b. Substituted by section 86 of the National Petroleum Authority Act, 2005 (Act 691).

**50. Consequential amendment**

*Spent.*<sup>2</sup>

**51. Transitional provisions**

*Spent.*<sup>3</sup>

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2. The section provided that
    - (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)."
  3. The section provided that
    - "51. Any public utility however established and in existence at the commencement of this Act shall within fourteen 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."