

PUBLIC UTILITIES REGULATORY COMMISSION ACT, 1997 (ACT 538)

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**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

Section 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).

Section 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.

Section 3—Functions of the Commission.

The functions of the Commission are as follows^{3/4}

(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 a services;
- (e) to initiate and conduct investigations into standards of quality of service given to consumer;
- (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.

Section 4—Independence of the Commission.

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

Section 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.

Section 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.

Section 7—Allowances for Members.

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

Section 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 adviser 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.

Section 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.

Section 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

Section 11—Duty to Provide Adequate Service.

A public utility licensed or authorised under any law to provide utility service shall³/₄

(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.

Section 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.

Section 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 section³/₄

(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.

Section 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.

Section 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.

Section 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^{3/4}

(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.

Section 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.

Section 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.