

No. 8 of 1993.

*The Public Utilities (Amendment)
Act, 1993.*

ANTIGUA
AND
BARBUDA

[L.S.]

I Assent,

Wilfred Jacobs,
Governor-General.

17th February, 1993.

ANTIGUA AND BARBUDA

No. 8 of 1993.

AN ACT to amend the Public Utilities Act, 1973 (No. 10 of 1973)

[18th February, 1993.]

ENACTED by the Parliament of Antigua and Barbuda as follows —

1. This Act may be cited as the Public Utilities (Amendment) Act 1993.

Short title.

2. The Public Utilities Act, 1973, in this Act referred to as the principal Act is amended as follows —

Amendment of
section 2 of
No. 10 of 1973.

(a) in section 2, repeal the definition "electricity" or "electrical energy" or "energy" and substitute the following —

"electricity" or "electrical energy" or "energy" means energy involving the use of electricity, electric current or voltage which may be produced by mechanical, chemical or other means and which is generated, transmitted, supplied or used for any purpose except the **transmission** of a message".

(b) in section 2, insert after the word "with" in line three of the definition of "electric line" the words "or without"

(c) in section 2, insert after the definition of "chairman" the following —

"Commission" means the Commission established by section 15.

**Amendment of
section 4.**

3. Section 4 of the principal Act is amended as follows —

(a) by deleting the word "Department" in paragraph (b) of subsection (1) and wherever it occurs and substituting the word "Division".

(b) by deleting the words "of the Governor-General acting in accordance with the advice" appearing in paragraph (a) of subsection (2).

**Amendment of
section 5.**

4. Section 5 of the principal Act is amended as follows—

(a) by repealing subsection (2) and substituting the following —

"(2) The Authority may, on application, and on such terms and conditions as it thinks fit, grant a licence to any person to generate and supply electricity —

(a) at a place where the Authority does not generate or supply electricity;

(b) at a place where the authority generates and supplies electricity, but in the opinion of the Authority, there is need for additional generation to supplement the existing supply".

(b) by deleting the words "one thousand" in line four of subsection (3) and substituting the words "five thousand".

(c) by renumbering subsection (3) as subsection (6) and by inserting the following as subsection (3) —

"(3) The Authority may —

(a) refuse to grant a licence to any person under subsection 2(b) if such person owes the Authority any money in respect of charges due in respect of the installation or the supply of any utility;

(b) cancel the licence of any person who is in possession of a licence granted under subsection (2)(b) if such person's supply of electricity has been discontinued for failure to pay on demand charges due in respect of any electricity supplied.

(4) The Authority may apply to a Magistrate for an order to seize any generator or other mechanical equipment used in generating electricity by any person whose licence has been cancelled under section 3(b).

(5) The Magistrate may in any order made under this section —

(a) direct the Authority to release any generator or other mechanical equipment seized under this section to the owner if such owner pays to the Authority the amount owed to it at the time specified in the order;

(b) include in such order the conditions under which any generator or equipment ordered to be seized may be disposed of if the amount owed to the Authority is not paid within the time specified in the order;

(c) make any other directions as he may consider necessary in the circumstances."

(6) A **certificate** signed by the General Manager of the Authority stating that a person whose electricity under section 5 has been discontinued has been generating electricity shall be conclusive evidence for the purposes of subsection (5).

Amendment of section 6(2).

5. Section 6(2) of the principal Act is amended by deleting the words "five hundred" appearing therein and substituting the words "five thousand".

Amendment of section 7(2).

6. Section 7(2) of the principal Act is amended by deleting the words "five hundred" and "three months" appearing therein and substituting the words "five thousand" and "six months" respectively.

Amendment of section 8(2).

7. Section 8(2) of the principal Act is amended by inserting after the word "generating" appearing therein the following: "transmitting,"

Section 15 repealed and replaced.

8. Section 15 of the principal Act is repealed and replaced by the following —

"(1) For the purpose of determining the tariff to be paid for any utility provided or supplied under this Act, there is established a Commission with power, functions and constitution as are specified in the Fourth Schedule.

(2) The rates to tariff to be charged by the Authority or by any other person or body licensed by the Authority for any utilities supplied or provided by it to customers shall be as determined by Order of the Cabinet on the recommendation of the Commission.

(3) Any order made under subsection (2) shall be published in the *Gazette*."

Amendment of section 23.

9. Section 23(1)(a) of the principal Act is amended by deleting the word "injures" and substituting the word "damage".

Amendment of section 24.

10. Section 24 of the principal Act is amended by deleting the words "five hundred" and substituting the words "five thousand".

Amendment of section 26 (1).

11. Section 26 (1) of the principal Act is amended by deleting the words "five hundred" and substituting the words "five thousand".

12. Section 29 of the principal Act is amended by deleting the words "five hundred and substituting the words "five thousand.

**Amendment of
section 29.**

13. Section 30 of the principal Act is amended by deleting the words "five hundred" and substituting the words "five thousand.

**Amendment of
section 30.**

14. Section 31 of the principal Act is amended by **deleting the** words "five hundred" and substituting the words "five thousand."

**Amendment of
section 31.**

15. Section 32(1) of the principal Act is amended by deleting the words "five hundred" and substituting the words "five thousand."

**Amendment of
section 32(1).**

16. Section 33 of the principal Act is amended by deleting the words "one hundred and substituting the words "five thousand."

**Amendment of
section 33.**

17. Section 34 of the principal Act is amended by deleting the words "one hundred" and substituting the words "five thousand."

**Amendment of
section 34.**

18. Section 37A of the principal Act is amended **as follows —**

**Amendment of
section 37A.**

(a) by repealing paragraph (b) and substituting the following —

"(b) that with respect to any public utility, the Authority is for any reason unable or unwilling to act and that such conduct on the part of the Authority is contrary to the interest of the State;"

(b) by inserting after paragraph (b) the following —

"(c) that it is in the public interest so to do;"

the Cabinet may assume the control and management of the Authority for such period as the Cabinet may deem necessary and may perform **all** the functions and exercise all the rights, powers and duties appertaining thereto **as** are vested in the Authority under and by virtue of this Act."

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Insertion of
section 37B in
principal Act.

19. The principal Act is amended by inserting after section 37A the following —

"Past acts, etc.
regularised.

37B (1) Any act or thing done or omitted to be done in relation to the Authority by the Cabinet, the Minister or any public officer or a person acting by and with the authority of the Cabinet or a public officer between —

(a) ~~the~~ 23rd of June, 1979 and the day on which the Cabinet assumes control and management of the Authority under section 37A; or

(b) ~~the~~ 23rd of June, 1979 and the day on which Cabinet appoints new Directors to the Board under paragraph 1 of the First Schedule;

whichever is earlier, is hereby declared to be valid for all intents and purposes and deemed to have been lawfully done under the provisions of this Act.

(2) For the purposes of this section "act or thing" includes execution of agreements, appointment or dismissal of employees."

Amendment of
section 39.

20. Section 39(3) of the principal Act is amended by deleting the words "three hundred" and substituting the words "one thousand."

Amendment of
section 40.

21. Section 40(2) of the principal Act is amended by deleting the words "one hundred" and substituting the words "one thousand."

Amendment of
First Schedule.

22. The First Schedule to the principal Act is amended as follows —

(a) repeal paragraph 1 and substitute the following —

"The Authority shall be governed by a board of five Directors, appointed by the Cabinet from amongst persons appearing to it to be qualified by **reason** of having had experience of and shown capacity in matters relating to **trade**, law, finance, science, engineering, **management**, administration or **labour** relations".

- (b) delete from the Schedule the words "Governor-General" wherever these appear and substitute the word "Cabinet".
- (c) delete from the schedule the word "Commissioner" or "Commissioners" wherever these appear and substitute the word "Director" or "Directors".
- (d) in paragraph 4 repeal subparagraph (1) and substitute the following —
- "(1) A Director shall, subject to the provisions of this Act, hold office for three years and may, at the expiration of such term be eligible for reappointment".
- (e) in paragraph 9(4) delete the word "five" and substitute the word "three".

23. The principal Act is amended by the insertion after the Third Schedule the following —

**Insertion of
Fourth Schedule.**

"FOURTH SCHEDULE

**Composition of
commission.**

1. (1) The Commission shall consist of the following —

- (a) A chairman;
- (b) two persons with requisite knowledge and experience in accounting or engineering or business to be appointed by the Minister;
- (c) one person representing the general public to be appointed by the Minister on the advice of the Trade unions;
- (d) one person representing the business **community** to be appointed by the Minister on the advice of the Antigua and Barbuda Chamber of **Commerce** and Industry **Limited**.
- (e) *a* barrister or solicitor of at least ten years standing to be appointed by the Minister.

(2) The **Chairman shall** be appointed by the Prime Minister from among the members of the Commission.

Tenure.

2. (1) Any person appointed as a member of the Commission shall serve for a term of three years and at the expiration of such term may be eligible for reappointment.

(2) A member of the Commission, other than the Chairman, may at any time resign his office by an instrument in writing addressed to the appointing authority and transmitted through the Chairman.

(3) The Chairman may resign his office by an instrument in writing addressed to the Prime Minister.

(4) The appointment, resignation, termination or death of a member of the Commission shall be published in the *Gazette*.

(5) Where a member is unable to act by reason of illness or other cause, another person may be appointed in accordance with paragraph 1 to act as a **member** in his place for that occasion or until the termination of the disability.

**Termination of
appointment.**

3. The Prime Minister or the Minister may, as the case may be, terminate the **ap**-pointment of the Chairman or a member for any good or sufficient cause and in particular if a member —

(a) becomes of unsound mind or incapable of carrying out his duties;

(b) becomes bankrupt or compounds with his creditors;

(c) is convicted of an offence of which the penalty is one thousand dollars or more or imprisonment exceeding three months;

(d) is guilty of misconduct in relation to his duties;

(e) is absent during three consecutive meetings of the Commission without the written approval of the Chairman of the Commission;

(f) fails to carry out any of the duties or functions conferred or imposed on him by or under this Act.

Remuneration.

4. A member shall be paid such remuneration or allowance as the Cabinet may determine.

Declaration of interest.

5. (1) A member 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 shall declare the nature of his interest on the first convenient opportunity at which it is practicable for him to do so and shall not take part in the deliberations of the Commission thereto.

(2) Where in the course of any deliberation of the Commission upon any agreement or licence concerning a public utility, it comes to the notice of a member that he is in any way directly or indirectly interested therein the provisions of subparagraph (1) shall apply and such member shall withdraw from the deliberation.

(3) This paragraph shall not apply to an interest in any matter relating to the terms on which the right to participate in any service provided by a public utility is offered to the general public.

(4) Any person who fails to comply with the provisions of this section commits an offence and is liable on conviction thereof to a fine of five thousand dollars or to imprisonment for twelve months.

**Functions of the
commission.**

6. (1) The functions of the Commission are —

- (a) to hear and determine claims by a public utility for an increase of the tariffs payable in respect of its service;
- (b) to hear and determine objections to claims by a public utility for an increase of the tariff chargeable for its service;
- (c) to hear and determine complaints in respect of tariffs payable for any service provided by a public utility;
- (d) to hear and determine objections to agreements signed by or licences granted by the Authority to a person or body for the supply of utility to the public;
- (e) to hear and determine any other complaints lodged by any person against the supply or provision of a utility to the public;
- (f) to hear and determine any matter referred to it by the Minister.

(2) For the purpose of this Schedule a public Utility includes the Authority or any person licensed by the Government or the Authority to provide any service to the public for which a tariff is charged.

**Agreement and
licences to be
registered.**

7. (1) The Authority shall, on the coming into force of this Act, submit to the Commission for registration, copies of all agreements and licences made with or granted to any person or body for the supply of utility in respect of which a tariff is charged.

(2) The Authority shall, not later than thirty days after signing any agreement with, or

granting a licence to, any person or body for the supply of a utility for which a tariff is charged, submit such agreement or licence to the Commission for registration.

(3) Any person aggrieved by the terms and conditions or other effects of any agreement submitted for registration, shall by writing lodged any complaint or objection to such agreement or licence and the reasons for his objection to the Commission who shall by notice in writing informed the Authority and all parties concerned of such objections and the notice of objection shall be considered as a complaint to be dealt with by the Commission.

(4) The Commission shall, after hearing all the parties concerned in any objections lodged to the Commission make any recommendations as it considers proper to the Cabinet.

**Claim made by
public utility.**

8. (1) Where a public utility desires to make a claim for an increase in the tariffs payable to it for any of its services it shall, sixty days before such claim is submitted to the Commission publish in the *Gazette* and in at least two newspapers circulating in Antigua and Barbuda, a notice of its intention to make the claim.

(2) A notice published pursuant to subparagraph (1) shall —

- (a) specify the particulars of the claim;
- (b) invite any person who objects to an award or other determination allowing such claim;

to **make** a complaint to **the** Commission, within **thirty** days of the publication of the **claim**.

(3) A public utility may, at the end of the period of publications specified in subparagraph (1), make a claim in the prescribed form for an award or other determination allowing such changes in the existing tariffs and the date such tariffs are to come into force.

**Lodging
complaints.**

9. (1) Every complaint to the Commission shall be in writing and may be made by the complainant in person, or by his counsel or any person authorised by him in writing in that behalf.

(2) The complainant shall furnish the particulars of the grounds upon which the complaint is made in the prescribed form.

Justifying claims.

10. (1) The Commission may, on the receipt of a claim or complaint on any matter for determination, cause a copy thereof to be served upon such persons as it considers interested in the claim or the complaint and invite them to provide the Commission in writing with such evidence and arguments in support of or against making an award or other determination allowing such changes in the existing tariff.

(2) The Commission shall determine the time and place for the parties concerned to make their representation to the Commission.

(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) All matters brought before the Commission shall be determined by a majority of the members thereof.

**Appearance of
parties.**

11. Every party to a matter before the Commission is entitled to appear at the hearing of the commission and may be represented

by counsel or any other person who, in the opinion of the Commission, is competent to assist such person in the presentation of his case.

**Powers of the
commission.**

12. (1) The Commission shall, in exercising its functions under this Act, have all such powers as are vested in the High Court in enforcing the attendance of witnesses and examining them on oath, and to compel the production of documents and to enforce its orders.

(2) A summons signed by the Chairman of 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.

Recommendation.

13. (1) The Commission shall, at the end of a hearing for the determination of a claim by a public utility to increase the rate payable for any service, submit to the Cabinet without delay a recommendation of the tariffs approved by it and reasons for its recommendation.

(2) In the case of a complaint relating to any other matter between a complainant and the public utility, the Commission may —

- (a) make an interim order or award relating to the matter or give direction in pursuance of the hearing;
- (b) discuss the matter or refrain from further hearing or from determining the matter if it thinks that the matter 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, such costs and expenses, including expenses of witnesses as are specified in the order;

(d) generally give all such directions and do all such things as are necessary or expedient for the expeditious and just hearing and determination of the matter.

Transitional provisions.

14. (1) The Commission shall, on the coming into force of this Act, and as soon as it is reasonably practicable, request any public utility or a body or person holding a licence for the provision of services under this Act or any other law, to file with it within a specified time, on a prescribed form, tariffs showing all rates established by it.

(2) The Commission shall order such tariff to be printed in bold letters and post up at a conspicuous place in the offices of the public utility, any post office and such other places as may be specified by the commission."

Passed the House of Representatives
this 25th day of January, 1993.

C. L. Murray,
Speaker.

L. A. Dowe,
Clerk to the House of Representatives .

Passed the Senate this 11th
day of February, 1993.

B. T. Carrott,
President.

L. A. Dowe,
Clerk to the Senate.