

S.I. 147/2001

CHAPTER 306

PUBLIC UTILITIES COMMISSION

PUBLIC UTILITIES COMMISSION REGULATIONS

(SECTION 23)

[Commencement 9th October, 2001]

1. These Regulations may be cited as the Public Utilities Commission Regulations, 2001. Citation.
2. In these Regulations — Interpretation.
 - “Act” means the Public Utilities Commission Act, 1993; Ch. 306.
 - “party” means any person that the Commission determines is a party to a public inquiry or other proceeding before the Commission;
 - “person” means any individual, partnership, corporation, association, joint stock company, public trust, organised group of persons, organised under the laws of The Bahamas or not, receiver or trustee of the foregoing, public entity, or any officer, employee or agent of any of the foregoing acting as such in the course of his or her official duty, or any foreign governmental entity;
 - “public inquiry” means any form of a public inquiry that the Commission initiates at its discretion following the submission of an application, petition, complaint or tariff submission, or other Commission action;
 - “response” means any protest or answer filed in response to an application, petition, complaint, motion, protest, answer or tariff submission;
 - “submission” means any one or more of the following documents: a licence application, formal complaint, and/or representations lodged in respect of a public inquiry;

“tariff submission” means any submission that is made by a controlled public utility for the purpose of initiating, changing or terminating a rate, charge, term or condition, for utility service.

Submissions.

3. (1) All submissions shall be mailed or hand delivered to the Commission and shall be deemed to be filed as of the date that the Commission receives the submission.

(2) A person who submits a submission to the Commission must provide the Commission with the original and three copies of the submission, unless otherwise specified in these Regulations or otherwise instructed by the Commission.

(3) Except as otherwise specified in these Regulations or as instructed by the Commission, a submission shall contain any information that the person submitting the submission considers necessary and any information that is required by the Commission, the Act or any other written law.

(4) All submissions must be made in writing unless the Commission determines that it is appropriate for the submission to be submitted orally.

(5) The Commission may reject a submission if the submission does not conform to any applicable requirement of the Act, any other written law, or any other requirement imposed by the Commission.

(6) The Commission shall issue a public notice in the *Gazette* of any submission that the Commission determines will initiate a public inquiry under these regulations within ten days following the date that the Commission makes such a determination. Such public notice shall provide the date by which any interested person may file a motion for leave to intervene in the public inquiry or may file any response to the submission.

(7) The Commission shall make available upon request copies of every submission and give a reasonable opportunity for parties to obtain a duplicate copy of any submission at a reasonable cost.

(8) Unless otherwise instructed by the Commission, any person submitting a submission in a public inquiry shall serve such submission on each party to the public inquiry. Service shall be by personal delivery or mail.

(9) The Commission may extend or shorten any time period which is established by these Regulations. If the Commission extends or shortens the time for filing a motion for leave to intervene or respond to an initial submission, the Commission shall issue a public notice in the *Gazette* specifying the new date.

4. (1) Any person may file a complaint at any time requesting that the Commission take action against any person who has violated any provision of the Public Utilities Commission Act, any written law, any Order issued by the Commission, or any rule, standard, requirement, obligation or prohibition otherwise established by the Commission.

Eligibility for filing a complaint, application, etc.

(2) Any person may file an application seeking a licence, permit, or similar authorisation that is required under the Public Utilities Commission Act.

(3) Any person may file a petition to request that the Commission provide specific relief, including —

- (a) issuing a declaratory Order to terminate a public inquiry or resolve any issue in a public inquiry;
- (b) revoking any licence granted by the Commission;
- (c) revoking any waiver granted by the Commission;
- (d) withdrawing or amending any submission;
- (e) initiating an investigation; or
- (f) granting reconsideration of a Commission Order.

(4) Any party to a public inquiry may file a motion at any time requesting the Commission to take any specific action.

(5) Any person who desires to participate in a public inquiry shall file a motion for leave to intervene in the public inquiry within ten days of the issuance of the public notice of the submission following the Commission's initiation of the public inquiry, and shall describe how the person will be substantially and specifically affected by the public inquiry. The Commission may grant the motion for leave to intervene based on the merits of the motion, including any responses to the motion that are filed by any party.

(6) Any person against whom a complaint is filed may file an answer within ten days of the date on which that person was served with the complaint. Any party to a public inquiry may file an answer in response to a motion filed in the public inquiry within ten days of the date on which that party was served with the motion.

(7) Any party to a public inquiry may file an answer in response to any other submission within ten days of the date on which that party was served with the submission, but such answer shall only be filed with the Commission's permission.

(8) Any person may file a protest to object to any complaint, petition, application or tariff submission within ten days of the date on which the public notice of such complaint, petition, application or tariff submission was issued.

Power of
Commission to
waive or change
any requirement.

5. The Commission may waive or change any requirement under these Regulations, to the extent it deems necessary or appropriate, except to the extent that such requirement is imposed by the Act or any other written law.

Tariff
submissions.

6. (1) Every controlled public utility shall file with the Commission a tariff submission including a proposed tariff showing all rates, charges, terms and conditions, established by it for the provision of any utility service that the controlled public utility provides.

(2) No controlled public utility shall —

- (a) directly or indirectly, demand or receive a rate or charge for any utility service rendered by it in excess of the rates or charges specified in its tariffs as approved by the Commission; or
- (b) provide a utility service other than under the terms and conditions specified in its tariffs as approved by the Commission.

(3) Any tariff filed by a controlled public utility, including any change in the rates or charges, or the terms and conditions, of a utility service, shall be filed pursuant to the requirements of the Act, or any other written law.

(4) Each existing controlled public utility may continue to impose rates, charges, terms and conditions

consistent with the provisions of the existing Act and Regulations that govern it until such time as the controlled public utility receives the Commission's authorisation of any new rates, charges, terms and conditions.

(5) If a controlled public utility has obtained a waiver under these Regulations, that controlled public utility may provide a utility service to the public without having filed a proposed tariff.

(6) Unless otherwise instructed by the Commission, any tariff submission shall contain a clear and specific description of all the rates, charges, terms, and conditions for any utility service proposed to be provided by the controlled public utility and any appropriate supporting documentation, and for any changes to any existing rate, charge, term or condition, a description of the reasons for such change, along with any appropriate supporting documentation.

(7) Any tariff submission made by a controlled public utility shall be filed sixty days prior to the date on which the controlled public utility proposes to commence the utility service, or on which the change in the utility service is to become effective, unless otherwise instructed by the Commission.

7. (1) The Commission may initiate a public inquiry whenever the Commission determines that such public inquiry is necessary or appropriate.

Public inquiries.

(2) Where the Commission does not find that a public inquiry is necessary or appropriate, the Commission may utilise a formal or informal review mechanism such as consultations to resolve any issues raised in any submission, provided that the Commission shall provide interested parties with adequate notice of such review and a sufficient opportunity for any Party to participate in such a review process, unless the Commission determines that such notice or participation is unnecessary.

(3) If the Commission determines that a public inquiry is necessary or appropriate, it may initiate such process by issuing an Order initiating a public inquiry.

(4) An Order initiating a public inquiry shall include, if appropriate —

(a) a description of the nature of the public inquiry;

- (b) the Commissioner or a designated officer of the Commission to preside at the public inquiry and the duties and powers of such person;
- (c) the procedural schedule for the public inquiry;
- (d) the right of the parties to present evidence in the public inquiry, the manner in which such evidence may be presented, and the admissibility of such evidence; and
- (e) any other matter that is necessary to provide the parties to the public inquiry with adequate notice of the public inquiry and any substantive issue to be addressed at such public inquiry.

(5) The Commission shall provide reasonable notice to all parties to the public inquiry by publication in the *Gazette* that the Commission is initiating a public inquiry, provided that such notice shall not be less than fourteen days prior to the start of such public inquiry, unless the Commission determines that a fourteen day notice period is unnecessary.

(6) The Commission may conduct a public inquiry in accordance with paragraph 4 of the Second Schedule to the Act.

8. (1) After a public inquiry or any other type of Commission review of a filing the Commission may issue an Order resolving any issue that was raised.

(2) In any Order issued the Commission may take whatever remedial measures it determines appropriate, pursuant to the Act.

(3) Unless the Commission determines otherwise, any Order issued by the Commission shall —

- (a) be in writing;
- (b) provide a statement of the reasons underlying the Commission's decisions in the Order;
- (c) specify the date on which the Order becomes effective; and
- (d) be published in the *Gazette*.

(4) Any party to a public inquiry may file with the Commission a petition seeking reconsideration of a Commission Order in such public inquiry within thirty days that the Order is published in the *Gazette*.

Commission
Orders and
request for
reconsideration.

(5) The Commission may extend the time period in which a petition seeking reconsideration may be filed. The mere filing of a petition seeking reconsideration shall not excuse any person's compliance with the Commission's Order.

(6) A petition seeking reconsideration shall set forth the particulars of the grounds on which the petitioner alleges that the Order is unlawful or erroneous.

(7) The Commission may grant or deny a petition seeking reconsideration, or may modify its Order without further reconsideration.

9. (1) The Commission may, at any time, initiate an investigation relating to any matter that is subject to its jurisdiction either on its own motion or on a petition for an investigation filed by a person. Investigations.

(2) The Commission may conduct an investigation utilising whatever procedures it determines are necessary or appropriate.

(3) The Commission may require that any person provides any information that the Commission determines necessary or appropriate to the investigation. Notwithstanding any other provision in these Regulations, the Commission shall not publicly disclose any information provided to the Commission by any person as part of any investigation, unless the Commission determines that it is necessary and appropriate for such information to be made available to the public.

(4) An investigation initiated by the Commission does not become a public inquiry unless the Commission so determines.

(5) If the Commission determines in the course of an investigation that the public interest requires that such investigation shall become a public inquiry, the Commission shall initiate a public inquiry.

(6) No person may file a petition seeking reconsideration of any Commission investigation initiated or of a decision by the Commission to initiate a public inquiry.

10. (1) Any party to a public inquiry may file with the Commission a written offer of settlement at any time to resolve the public inquiry or any issue appropriately raised in the public inquiry. Offers of settlement.

(2) Unless otherwise instructed by the Commission, the party filing such an offer of settlement shall serve such offer of settlement on all parties to the public inquiry.

(3) Unless otherwise instructed by the Commission, any offer of settlement shall contain the terms and conditions of the offer of settlement and a clear and concise explanation of the settlement along with supporting materials as necessary and appropriate.

(4) Any party to a public inquiry in which an offer of settlement has been filed may file comments on such offer of settlement within ten days of the date that such offer of settlement was served on the party.

(5) Any comments filed on an offer of settlement shall be served on all parties to the public inquiry. If a party does not file comments on an offer of settlement, that party will be deemed to have waived any objections to the offer of settlement.

(6) Any party may file reply comments on an offer of settlement within ten days from which the comments were filed on the party, but only with the permission of the Commission.

(7) The Commission may approve an offer of settlement if it finds that the offer of settlement in whole or in part and upon such terms and conditions as it finds are in the public interest.

Affiliate abuse.

11. The Commission may, if and when it deems necessary, impose certain restrictions and requirements on transactions between a controlled public utility and its affiliates.

Licensing requirements.

12. (1) No person may provide any utility service in The Bahamas without first having obtained a licence from the Commission permitting it to provide such utility service other than utility services provided by controlled public utilities which have not yet obtained licences but are otherwise authorised to provide such services.

(2) The Commission may grant an application for a licence to provide a utility service in whole or in part and upon such terms and conditions as it finds are in the public interest.

(3) Unless otherwise instructed by the Commission, any application for a licence shall contain any information that is necessary for the Commission to determine whether granting the requested licence would be in the public interest.

(4) Each existing controlled public utility that is authorised to provide utility service shall submit a licence application to the Commission for the Commission's approval to supply such utility service.

(5) The Commission shall specify the specific licences for utility services in its operational guidelines or by Order in the *Gazette*.

(6) The Commission may revoke or amend a licence granted if the Commission determines that —

- (a) the continued provision of the utility service for which the licence was granted is contrary to the public interest; or
- (b) the person that has obtained the licence to provide a utility service has violated any term or condition that the Commission attached to the licence.

(7) Any person who has obtained a licence to provide a utility service may change any term or condition of the provision of such utility service, or any rate or charge for such utility service, only pursuant to a tariff filing made pursuant to these Regulations, unless otherwise instructed by the Commission.

(8) No person who has obtained a licence to provide a utility service shall transfer to another person such licence without first having obtained an Order by the Commission authorising it to do so.

(9) The Commission may grant an application to transfer a licence if it determines that such transfer is not contrary to the public interest.

(10) The Commission may impose reasonable fees for the granting of licences which shall be submitted to the Commission with a licence application.

(11) The Commission shall specify the applicable fees for licences by a Commission Order or through other public notices.

Off-the-record
communications.

13. (1) No party to a public inquiry may make or knowingly cause to be made to any Commission decision-maker, and no Commission decision-maker may make or knowingly cause to be made to any party to a public inquiry, any oral or written off-the-record communication on any substantive issue in that public inquiry.

(2) A written communication is considered off-the-record if it is not filed with the Commission and if it is not served on all of the parties to the public inquiry pursuant to regulation 3 of these Regulations.

(3) An oral communication is considered off-the-record if it is made without reasonable prior notice to the parties to the public inquiry and without the opportunity for such parties to be present when the communication is made.

(4) For the purposes of this regulation, a Commission decision-maker refers to any Commissioner, or any Commission employee that the Commission designates as the presiding officer over any public inquiry.

(5) The prohibition on making and receiving off-the-record communications applies —

(a) in any public inquiry or other formal Commission proceedings of any matter that has been submitted to the Commission; and

(b) until the Commission issues a final Order, or, if applicable, until the time for filing for judicial review of such final Commission Order expires.

(6) If any Commission decision-maker receives or makes an off-the-record communication in violation of this regulation that Commission decision-maker shall —

(a) inform the Commission of the nature and substance of the off-the-record communication, if the communication was oral; and

(b) provide the Commission with a copy of the off-the-record communication, if the communication was written. The Commission may require that any person that makes an off-the-record communication, and that off-the-record communication is subsequently presented to the Commission serve the off-the-record communication on all parties to the public inquiry, and each party shall have an opportunity to respond to the communication.

14. (1) The Commission may request that any controlled public utility or class of controlled public utility provide the Commission with any information with regard to a controlled public utilities operations, including any financial information, that the Commission determines is reasonable and appropriate, in the form and by the date specified by the Commission. Without limiting the foregoing, the Commission may —

- (a) impose regular, such as quarterly or annual, filing requirements on the controlled public utility or on a class of controlled public utilities; and
- (b) require a controlled public utility to provide information related to a specific transaction, public inquiry or filing.

(2) Subject to subparagraphs (3) and (4) the Commission shall make available to the public copies of every document that it has obtained from a controlled public utility.

(3) The Commission shall provide any person with a reasonable opportunity to obtain a duplicate copy of any document at a reasonable cost.

(4) The Commission may treat as confidential any document, including a part of a document, upon its own motion or upon a request by any person who may be injured by the public disclosure of information contained in the document, if and to the extent that the Commission finds such confidential treatment necessary or appropriate. The Commission may determine what information should be withheld from public disclosure, how such information is to be handled within the Commission, and how long such information should be withheld from public disclosure.

15. The Commission may summarily dispose of all or part of a public inquiry at any time if and when the Commission determines that there is no genuine issue of a material fact to the decision of a public inquiry or part of a public inquiry.

Procedures.

16. (1) The Commission shall publish in the *Gazette* a notice of any proposal to establish procedures to implement the provisions of the law governing a controlled public utility administered by the Commission.

(2) Within fourteen days from the date on which the Commission publishes notice of a proposed procedure, any interested controlled public utility may file with the Commission comments on the proposed procedure.

(3) A controlled public utility filing comments on a proposed procedure is not required to serve such comments on any person.