



ST. CHRISTOPHER AND NEVIS

CHAPTER 5.01 (N)

PUBLIC UTILITIES COMMISSION ORDINANCE

Revised Edition
showing the law as at 31 December 2009

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act, Cap. 1.03.

This edition contains a consolidation of the following laws—

PUBLIC UTILITIES COMMISSION ORDINANCE

Ordinance 4 of 1995 ... in force 1st May 1996

Page
3

CHAPTER 5.01 (N)

PUBLIC UTILITIES COMMISSION ORDINANCE

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY MATTERS

1. Short title
2. Interpretation

PART II

ESTABLISHMENT OF COMMISSION, FUNCTIONS AND POWERS

3. Definition of “public utility”
4. Establishment of Public Utilities Commission
5. Functions of Commission
6. Power to hold inquiry
7. Power to require measures to be taken
8. Power to require returns

PART III

RATES AND RATE-MAKING, AND REVIEWS OF RATES

9. Power to fix rates
10. Rates to be just and reasonable
11. Tariffs filing and inspection
12. Adherence to tariffs
13. Discrimination as to rates
14. Applications by public utility to fix new rates
15. Establishment of Commission as a tribunal
16. Complaint
17. Service of Complaint on parties
18. Fixing of hearing
19. Hearing of matter by Commission
20. Appearance
21. Powers of Commission when sitting as a tribunal
22. Awards
23. Review by Commission of its own decision
24. Rates fixed on complaint
25. Temporary rates
26. Burden of proof on rate inquiry

PART III

SERVICE AND FACILITIES

27. Duty to provide adequate service
28. Proper service established on complaint
29. Restriction on ceasing operation of service

30. Power to prescribe conditions of service to be contained in agreement

PART IV

OFFENCES AND PENALTIES

31. Disobedience of order of Commission
32. Obstruction of officer of Commission in discharge of duties

PART V

RESEARCH INQUIRES AND ADVICE

33. Research
34. Advisory functions of the Commission
35. Duties of public utilities to furnish reports, information etc
36. Inspection of books, accounts etc
37. Failure of public utility to furnish information
38. Making false returns

PART VI

MISCELLANEOUS PROVISIONS

39. Appraisal of powers of Commission
40. Annual Report
41. Evidence of documents
42. Fees
43. Regulations
44. Applications

SCHEDULE

CHAPTER 5.01 (N)

PUBLIC UTILITIES COMMISSION ORDINANCE

AN ORDINANCE TO MAKE PROVISION FOR THE ESTABLISHMENT, FUNCTIONS AND PROCEDURES OF A PUBLIC UTILITIES COMMISSION FOR THE ISLAND OF NEVIS; AND TO PROVIDE FOR RELATED OR INCIDENTAL MATTERS.

PART I

PRELIMINARY MATTERS

Short title.

1. This Ordinance may be cited as the Public Utilities Commission Ordinance.

Interpretation.

2. In this Ordinance—

“Chairperson” means the Chairperson of the Commission;

“Commission” means the Public Utilities Commission established under section 4;

“enabling law”, in relation to a public utility, means any enactment or regulations or instrument in writing under which it is authorised to operate a utility undertaking;

“functions” includes duties and powers;

“Minister” means the Minister responsible for public utilities;

“public utility” has the meaning assigned to it by section 3;

“rate” includes every rate, fare, toll, charge, rental or other compensation whatsoever of any public utility, and every rule, regulation, practice, measurement, classification or contract of the public utility relating thereto;

“services” includes the accommodation afforded consumers by a public utility, the supplying or furnishing of any commodity derived directly from the purposes in which a public utility is engaged and the use and accommodation afforded the public by the facilities employed by or in connection with any such service performed by a public utility, but does not include any other commodity, by-product or article produced or manufactured by a public utility that is offered for sale to the public at wholesale or retail prices;

“utility services” means services rendered by a public utility.

PART II

ESTABLISHMENT OF COMMISSION, FUNCTIONS AND POWERS

Definition of “public utility”.

3. (1) In this Ordinance, “public utility” means any person, statutory authority or corporation (including the lessee, trustee, receiver or liquidator of such person,

statutory authority or corporation) who or which owns or provides the following services—

- (a) the production, generation, storage, transmission, furnishing or supplying, directly or indirectly, to or for the public, of electricity;
- (b) the distribution of television programmes by coaxial or fiber optic cable directly or indirectly to or for the public;
- (c) the carriage of passengers in public service vehicles;
- (d) any other service specified by the Minister, by Order, including any of the following services—
 - (i) airport and airline services;
 - (ii) water supply services, except retail deliveries;
 - (iii) the transmission of messages by telephone, telegraphy or wireless telegraphy.

(2) Notwithstanding anything contained in subsection (1), any person, statutory authority or corporation, who or which provides any service only to himself or itself or his or its employees or tenants, shall not, where such service is not resold to or used by others, be deemed to be a public utility.

(3) In this section, “public service vehicle” has the same meaning as in the Vehicles and Road Traffic Act.

Establishment of Public Utilities Commission.

4. (1) There is hereby established for the purposes of this Ordinance a body to be called the Public Utilities Commission.

(2) The provisions of the First Schedule shall have effect as to the constitution of the Commission and otherwise in relation thereto.

Functions of Commission.

5. (1) The Commission shall ensure that the services rendered by a public utility are satisfactory and that any charges imposed in respect of those services are reasonable, and for this purpose the Commission shall have power—

- (a) to enquire generally into the nature and extent of utility services and to determine in accordance with this Ordinance the standards which must be maintained in relation to those services;
- (b) to determine in accordance with this Ordinance the rates which may be charged in respect of utility services;
- (c) to require a public utility to prepare and put into effect such programmes of development in relation to any undertaking it operates as may be required under its enabling laws.

(2) The Commission may, with the prior approval of the Minister, by Order published in the, *Gazette*—

- (a) prescribe the standards of utility services;
- (b) prescribe the unit of measurement and the type of measuring device to be used by a public utility in relation to its utility services;
- (c) prescribe standards for the measurement of quantity, quality, pressure, initial voltage or other conditions relating to utility services;

- (d) provide for the inspection and testing of any utility services or of any equipment or measuring device used in connection therewith;
- (e) prescribe minimum standards of quality and accuracy in relation to any equipment used or any commodity supplied by a public utility;
- (f) make such provisions as the Commission considers necessary to ensure the safety of the public.

(3) The Commission shall not make an Order under subsection (2)(a), (b), and (e) except after agreement with any public utility concerned or, failing such agreement, after a public inquiry.

Power to hold inquiry.

6. (1) The Commission may, upon complaint by any person, hold or cause a public inquiry to be held into operations of any utility undertaking operated by a public utility.

(2) An inquiry before the Commission shall be open to the public, and minutes thereof, including a summary of the evidence given and a statement of all the facts taken into consideration shall be kept by the Chairperson and on application copies thereof shall upon payment of the prescribed fee be furnished to all interested parties.

Power to require measures to be taken.

7. (1) Where it appears that a public utility is not fulfilling its obligations under its enabling law the Commission may, with the approval of the Minister, and after a public inquiry in accordance with this Ordinance, by Order, require the public utility within the time specified in the Order to take such remedial measures as may be so specified.

(2) Any public utility which fails to comply with the requirements of an Order by the Commission under this section is liable, on summary conviction, to a fine in accordance with section 31 and, if the failure in respect of which it was so convicted continues after the conviction it is liable, on further summary conviction, to a fine not exceeding three hundred dollars for each day on which the failure so continues.

(3) The Court by which any public utility is convicted of an offence may fix a period it considers a reasonable period from the date of conviction for compliance by the public utility with the requirements of the Order; and where a Court has fixed such a period the daily penalty shall not be recoverable in respect of any day before the expiration thereof.

Power to require returns.

8. (1) The Commission may require any public utility to furnish such information or submit such returns at such intervals as the Commission may require in relation to its operations.

(2) A public utility which fails to comply with subsection (1) is liable, on summary conviction, to a fine not exceeding one thousand dollars, and, in the case of a continuing offence, to a further fine not exceeding one hundred dollars for each day on which the offence continues.

PART III

RATES AND RATE-MAKING, AND REVIEWS OF RATES

Power to fix rates.

9. The Commission may, upon application made by a public utility or by any person, by Order, prescribe the rates to be charged by a public utility in respect of its utility services.

Rates to be just and reasonable.

10. Every rate made, demanded or received by any public utility shall be fair and reasonable and in conformity with such Regulations as the Commission may from time to time prescribe.

Tariffs filing and inspection.

11. (1) Every public utility shall file with the Commission, within sixty days of the coming into operation of this Ordinance, and in such form as the Commission may prescribe, tariffs showing all rates established by it and shall keep copies of such tariffs open to public inspection.

(2) The rates specified in such tariffs shall be the authorised rates of such public utility until changed as provided in this Ordinance.

Adherence to tariffs.

12. Any public utility which, directly or indirectly, demands or receives a greater or less rate for any service rendered than that specified in the tariffs of such public utility applicable thereto and filed in the manner prescribed in this Ordinance, is liable, on summary conviction, to a fine not exceeding three thousand dollars.

Discrimination as to rates.

13. Any public utility which supplies or furnishes any person any service at rates which are unduly preferential or discriminatory is liable, on summary conviction, to a fine not exceeding three thousand dollars.

Applications by public utility to fix new rates.

14. (1) Unless the Commission otherwise orders, any public utility which makes any change in any existing and duly established rate, except after sixty days notice to the Commission, which notice shall state the changes proposed to be made in the rates then in force and the time when the changed rates are to take effect, is liable on summary conviction to a fine not exceeding three thousand dollars.

(2) Whenever there is filed with the Commission by any public utility any tariff stating a new rate, the Commission may, upon complaint, enter upon a hearing to determine whether the rate is fair and reasonable and pending the hearing and the decision thereon the Commission upon delivering to the public utility affected thereby a statement in writing of reasons therefor may at any time before it becomes effective suspend the operation of the rate for a period not longer than six months from the time the rate would otherwise become effective.

(3) Where the operation of a new rate is suspended under subsection (2), the rate in force when the tariff stating the new rate was filed shall continue in force during the period of suspension, unless the Commission establish a temporary rate as authorised in section 25.

Establishment of Commission as a tribunal.

15. (1) For the purposes of this Part, the Commission is hereby established a public utilities tribunal which shall have and exercise jurisdiction—

- (a) to hear and determine complaints relating to rates payable for any service of a public utility;
- (b) to hear and determine claims by a public utility for an increase of the rates payable for any of its services;
- (c) to hear and determine objections to agreements with the utility;
- (d) to hear and determine disputes between public utilities as to any matter concerning the rates payable or to be payable for services provided by any of these public utilities;
- (e) at the instance of the Minister, to review and determine the rate payable for any services of a public utility whether on the registration of any agreement therefore or otherwise.

(2) The tribunal under subsection (1) shall comprise the Chairperson and two other Commissioners nominated for the purpose by the Chairperson.

(3) Where a Commissioner withdraws from any proceedings on a matter before the Commission on account of interest, illness or otherwise, the Commission shall not be disqualified for the transaction of business by reason of such vacancy among its members, save that in the case of an equality of votes the Chairperson shall have a casting vote.

Complaint.

16. (1) Any person or company having an interest in the subject-matter, may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in breach, or alleged breach, of any law which the Commission has jurisdiction to administer or of any regulation or order of the Commission.

(2) The Commission may prescribe the form of the complaint filed under this section.

(3) The Commission may require any person or company making any complaint to give security for the costs of the hearing and investigation of the said complaint.

Service of Complaint on parties.

17. Upon the filing of a complaint, the Commission shall cause a copy thereof to be served upon the public utility, accompanied by a notice from the Commission requiring the public utility to satisfy the complaint or to answer the same in writing, within such reasonable time as may be specified by the Commission in such notice.

Fixing of hearing.

18. (1) Where the public utility within the time specified by the Commission satisfies the complaint, the Commission by its order shall dismiss the complaint.

(2) Where the public utility does not satisfy the complaint within the time specified and it appears to the Commission from a consideration of the complaint and

answer, or otherwise, that reasonable ground exists for investigating such complaint, it shall be the duty of the Commission to fix a time and place for a hearing:

Provided that the Commission may dismiss any complaint without a hearing if in the opinion of the Commission a hearing is not necessary in the public interest.

Hearing of matter by Commission.

19. (1) The Commission shall expeditiously hear and inquire into and investigate any matter which is before it, and, in particular, shall hear, receive and consider statements, arguments and evidence made, presented or tendered—

- (a) by or on behalf of any complainant;
- (b) by or on behalf of the public utility concerned;
- (c) on behalf of the Minister.

(2) The Commission shall determine the periods that are reasonably necessary for the fair and adequate presentation of the matters by the respective parties thereto and the Commission may require those matters to be presented within the respective periods so determined.

(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.

20. Every party to a matter shall be entitled to appear at the hearing thereon, and may be represented by Counsel or any other person to assist such person in the presentation of the matter.

Powers of Commission when sitting as a tribunal.

21. The Commission shall have power to subpoena witnesses, to administer oaths, to examine witnesses, to compel the production of such books, records, papers and documents as it may deem necessary or proper for any proceeding, investigation or hearing held by it, and do all necessary and proper acts in the lawful exercise of its powers or the performance of the duties.

Awards.

22. (1) An award on any matter brought before the Commission may be made retrospective to such date not being earlier than six months before the date on which the matter was brought before the Commission.

(2) In addition to the powers conferred on the Commission by the preceding provisions of this Part, the Commission may, in relation to any matter brought before it—

- (a) make a provisional or interim order or award relating to the matters or part thereof, or give direction in pursuance of the hearing or determination;
- (b) dismiss any matter or part of a matter or refrain from further hearing or from determining the matter or part thereof if it appears that the matter

or part thereof 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.

Review by Commission of its own decision.

23. The Commission may review, vary or rescind any decision or order made by it and where under this Ordinance a hearing is required before any decisions or order is made, the decision or order shall not be altered, suspended or revoked without a hearing.

Rates fixed on complaint.

24. (1) Whenever the Commission, after a hearing finds that the existing rates of any public utility for any service are unfair or unreasonable or contrary to law, the Commission shall determine the fair and reasonable rates (including maximum or minimum rates) to be thereafter observed and shall fix the same by order to be served on the public utility and such rates shall constitute the legal rates of the public utility until changed as provided in this Ordinance.

(2) Where a public utility does not itself produce or generate that which it distributes, transmits or supplies to the public but obtains the same from another source, the Commission shall have the power and authority to investigate the cost of the production or generation in any investigation of the reasonableness of the rates of the public utility.

Temporary rates.

25. (1) The Commission may, in any proceeding involving the rates of a public utility, if it is of the opinion that the public interest so requires, immediately fix, determine and prescribe temporary rates to be charged by the public utility pending the final determination of such rate inquiry.

(2) Whenever the Commission, upon examination of any annual or other report, or of any papers, records, books or documents or of the property of any public utility, is of the opinion that any rates of such public utility are producing a return in excess of a fair return upon the fair value of the property of the public utility, used and useful in its public service, the Commission may, by Order, prescribe for a trial period not exceeding six months, the temporary rates to be observed by the public utility as in the opinion of the Commission will produce a fair return upon the fair value, and the rates so prescribed shall become effective upon the date specified in the Order of the Commission and shall become permanent at the end of the trial period, unless at any time during the trial period the public utility involved complains to the Commission that the rates so prescribed are unfair and unreasonable.

(3) Temporary rates so fixed, determined and prescribed under this section shall be effective until the final determination of the rate inquiry, unless terminated sooner by the Commission.

(4) If the rates as finally determined are in excess of the rates existing prior to the filing with the Commission by a public utility of a tariff stating a new rate under the provisions of section 14(2) or of the rates prescribed in such temporary Order,

then the public utility shall be permitted to amortise and recover by means of a temporary increase in the rates finally determined, the sum which represents the difference between the gross income actually received by the public utility during the period commencing with the date on which under the notice given to the Commission the new rate was to have come into effect, and ending on the date on which the rate finally determined became effective, and the gross income which would have been received during the same period if the rates finally determined had been in effect.

Burden of proof on rate inquiry.

26. In any proceeding involving any proposed or existing rate of any public utility, or in any proceeding upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is fair and reasonable shall be upon the public utility.

PART III

SERVICE AND FACILITIES

Duty to provide adequate service.

27. Every public utility shall maintain its property and equipment in such condition as to enable it to provide and shall provide service to the public in all respects safe, adequate, efficient and reasonable and shall make all such repairs, changes, alterations, substitutions, extensions and improvements in or to such service as shall be necessary or proper for the accommodation and convenience of the public.

Proper service established on complaint.

28. Where the Commission, after a hearing, finds that the service or facilities of any public utility are unsafe, inadequate or unreasonable, or unreasonably discriminatory, the Commission shall determine and prescribe the adequate, reasonable service and facilities to be provided, including all such repairs, changes, alterations, extensions, substitutions or improvements and facilities as are reasonably necessary and proper for the accommodation and convenience of the public and shall fix the same by its order.

Restriction on ceasing operation of service.

29. (1) No public utility shall cease its operations or any part of them without first giving six months notice to the Commission.

(2) Subsection (1) shall not apply to public service vehicles.

Power to prescribe conditions of service to be contained in agreement

30. The Commission may make Regulations prescribing the conditions to be contained in and to become part of all agreements entered into by public utilities in respect of any class of service.

PART IV

OFFENCES AND PENALTIES

Disobedience of order of Commission.

31. (1) Any public utility which contravenes any provision of this Ordinance, or fails or refuses to obey an order of the Commission made under this Ordinance is liable on summary conviction to a fine not exceeding three thousand dollars.

(2) Whenever it is proved that a public utility has failed to obey any order of the Commission made under this Ordinance, every director and manager of that public utility is liable on summary conviction to a fine not exceeding one thousand dollars, unless he proves that according to his position and authority he took all necessary and proper means in his power to obey and carry out and secure obedience to the order of the Commission and that he was not at fault for the failure to obey the order.

Obstruction of officer of Commission in discharge of duties.

32. Any person who obstructs or interferes with any member of the Commission, officer or person in the exercise of the rights conferred or duties imposed by or under this Ordinance is liable on summary conviction to a fine not exceeding three hundred dollars.

PART V

RESEARCH INQUIRES AND ADVICE

Research.

33. (1) For the purposes of this Part, the Commission may appoint an officer for economic research who shall have the following functions—

- (a) to collect and compile any information which may be of assistance to the Commission in the exercise of its powers and functions under this Ordinance;
- (b) to keep information so collected and compiled up-to-date;
- (c) to conduct studies of economy and efficiency;
- (d) to make or obtain such valuations of the property of a public utility as are required by the Commission.

(2) Information collected and compiled and the results of the research carried out under this section shall be furnished, subject to the permission of the Commission, to any person or authority desiring to obtain that information or those results upon payment of the prescribed fee.

Advisory functions of the Commission.

34. The Commission shall act in an advisory capacity to the Minister in such matters concerning public utilities as are referred to it by the Minister, and for such purpose as well as any other of the purposes of the Commission under this Ordinance, the Commission shall have power to initiate and conduct investigations into the operations and standards of service of all public utilities.

Duties of public utilities to furnish reports, information etc.

35. The Chairperson, Director or Secretary of a public utility shall, on being requested by the Commission to do so—

- (a) furnish to the Commission in such form and detail as the Commission may require, all tabulations, computations and all other information required by it to carry into effect any of the provisions of this Ordinance, and shall make specific answers to all questions submitted by the Commission;
- (b) whenever required by the Commission, deliver to the Commission copies of any or all maps, contracts, agreements, franchises, reports, books, accounts, papers and records in its possession or in any way relating to its property or affecting its business and also a complete inventory of all its property in such forms as the Commission may direct;
- (c) furnish all annual reports to the Commission at such time and in such form as the Commission may require;
- (d) file such monthly reports of earnings and expenses as the Commission may require; and
- (e) file periodical or special reports or both concerning any matter about which the Commission is authorised by any law to require or to keep itself informed or which it is required to enforce.

Inspection of books, accounts etc.

36. A Commissioner or any officer or other person authorised by the Commission may at any reasonable time inspect the accounts, books, papers and documents of any public utility.

Failure of public utility to furnish information.

37. Any person who, being required by the Commission to do so, fails to prepare and furnish to the Commission within the time and in the manner and form and with such particulars and certifications as are required by this Ordinance or any Regulations—

- (a) any return of information required in the forms of returns furnished to the Commission; or
- (b) any answer to any question submitted by the Commission; or
- (c) any information required by the Commission which is in his possession or control,

is liable, on summary conviction, to a fine not exceeding three thousand dollars.

Making false returns.

38. (1) Any person who wilfully makes any return or furnishes any information to the Commission which is false in any particular is liable, on summary conviction, to a fine not exceeding three thousand dollars.

(2) Any person who wilfully obstructs a Commissioner or any officer or servant of the Commission in the performance of any duty imposed under this section is liable, on summary conviction, to a fine not exceeding one thousand dollars.

PART VI

MISCELLANEOUS PROVISIONS

Appraisal of powers of Commission.

39. The powers vested in the Commission by this Ordinance shall apply notwithstanding that the subject matter in respect of which the powers are exercisable is the subject matter of any Act or Ordinance or agreement and shall apply in respect of rates and service, whether fixed by or the subject of any Ordinance or agreement or otherwise and where the rates and service are fixed by or are the subject of an agreement, shall apply whether the agreement is incorporated in or ratified or made binding by any general or special Act or otherwise.

Annual Report.

40. (1) The Commission shall, on or before 1st March in each year make to the Minister a report for the preceding calendar year showing briefly—

- (a) all applications and complaints to the Commission under this Ordinance, and summaries of the findings of the Commission thereon;
- (b) summaries of the findings of the Commission in regard to any matter respecting which the Commission has acted of its own motion;
- (c) such other matters as appear to the Commission to be of public interest in connection with the public utilities subject to this Ordinance;
- (d) such matters as the Minister directs.

(2) The report shall be laid before the Nevis Island Assembly, and a copy thereof shall be issued to each member of the Assembly and shall be published in such manner and be made available to the public at such price as the Minister may direct.

Evidence of documents.

41. A copy of any Rules, Regulations, Orders or other documents in the custody of the Secretary of the Commission certified by the Secretary to be a true copy and sealed with the seal of the Commission shall be evidence of the Rules, Regulations, Order or documents without proof of the signature of the Secretary.

Fees.

42. The Commission may with the approval of the Minister make Regulations prescribing fees to be paid in respect of any matter within the jurisdiction of the Commission.

Regulations.

43. The Minister may make Regulation prescribing anything which may be or is required to be prescribed under this Ordinance or imposing on a public utility obligations in relation to the supply of information to the Commission and members of the public of the rates payable in respect of its utility services.

Applications.

44. Subject to this section, this Ordinance shall be read and construed as applying to a public utility notwithstanding any general or special power or authority vested in

such public utility by any enactment or by virtue of its incorporation.

SCHEDULE

(Section 4)

Appointment of Commission.

1. (1) The Commission shall consist of five persons appointed by the Minister, being persons appearing to the Minister to be qualified as having had experience and shown capacity in matters relating to trade, finance, economics, law, engineering or accountancy, and persons representative of the general public:

Provided that no person who is a holder of a public office shall be eligible for appointment.

(2) The Minister may appoint as Chairman a Commissioner who is a barrister of the Supreme Court.

(3) The Minister shall appoint a Secretary to the Commission.

Temporary appointment.

2. The Minister may appoint any person qualified for appointment as a member of the Commission to act temporarily in the place of any member of the Commission in the case of the absence or inability to act of such member.

Tenure of office.

3. The appointment of a member of the Commission shall, subject to the provisions of this Schedule, be for a period of not more than three years and such member shall be eligible for re-appointment.

Chairperson.

4. In the case of the absence or inability of the Chairperson to act at any meeting, the remaining members of the Commission may elect one of their number to preside at that meeting.

Termination of appointment.

5. The Minister may terminate the appointment of the Chairperson or any other member for good or sufficient cause, and in particular, if the Chairperson or other member—

- (a) becomes of unsound mind or incapable of carrying out duties;
- (b) becomes bankrupt or compounds with his or her creditors;
- (c) is convicted of any offence;
- (d) is found guilty of misconduct;
- (e) is absent, except on leave granted by the Commission, from all meetings of the Commission held during two consecutive months, or during any three months in any period of twelve months;

- (f) fails to carry out any of the duties or functions conferred or imposed on him or her by this Ordinance:

Provided that the appointment of the chairperson or other member shall not be terminated unless he or she has been given a reasonable opportunity of being heard.

Resignation.

6. (1) Any member of the Commission other than the Chairperson may at any time resign his or her office by instrument in writing addressed to the Minister and transmitted through the Chairperson and from the date of receipt by the Minister of the instrument such member shall cease to be a member of the Commission.

(2) The Chairperson may, at any time, resign his or her office by instrument in writing addressed to the Minister and such resignation shall take effect as from the date of the receipt of the instrument by the Minister.

Publication of membership.

7. The names of all members of the Commission as first constituted and every change of membership thereof shall be published in the *Gazette*.

Incorporation.

8. (1) The Commission shall be a body corporate having perpetual succession and a common seal and the power to acquire, hold and dispose of land and other property of whatever kind.

(2) The seal of the Commission shall be authenticated by the signatures of the Chairperson, one member of the Commission authorised to act in that behalf and the Secretary of the Commission, and shall be judicially noticed.

(3) All documents, other than these required by law to be under seal, made by, and all decisions of, the Commission may be signified under the hand of the Chairperson or any member authorised to act in that behalf or the Secretary of the Commission.

Procedure and meetings.

9. (1) The Commission shall meet at such times as may be necessary or expedient for the transaction of business and such meetings shall be held at such places and times and on such days as the Commission shall determine.

(2) The Chairperson may at any time call a special meeting of the Commission and shall call a special meeting to be held within seven days of a written request for that purpose addressed to him by any member of the Commission.

(3) The Chairperson or, in the absence or inability to act of the Chairperson, the person elected in accordance with paragraph 4, shall preside at the meetings of the Commission, and when so presiding the Chairperson or the person elected as aforesaid, as the case may be, shall have an original and a casting vote.

(4) The quorum of the Commission shall be three members.

(5) Subject to the provisions of this Ordinance, the Commission may regulate its own proceedings.

(6) The validity of any proceedings of the Commission shall not be affected by any vacancy amongst the members thereof or by any defect in the appointment of a member thereof.

Remuneration of members.

10. There shall be paid to the Chairperson and other members of the Commission such remuneration, if any, (whether by way of salaries or travelling or other allowances) as the Minister may determine.

Funds of the Commission.

11. The funds of the Commission shall consist of such monies as may from time to time be placed at its disposal for the purposes of this Ordinance by the Nevis Island Assembly.

Power to appoint officers, agents.

12. (1) Subject to sub-paragraph (2), the Commission may appoint and employ at such remuneration and on such terms and conditions as it thinks fit, such officers and servants as it deems necessary.

(2) Notwithstanding sub-paragraph (1)—

- (a) no salary in excess of such sum as the Minister may determine and notify in writing to the Commission may be assigned to any post;
- (b) no appointment whether temporary or permanent may be made to any post to which a salary is assigned by the Minister under paragraph (a); and
- (c) no person may be dismissed from any post to which this subparagraph refers,

without the prior approval of the Minister.

Disclosure of interest.

13. A member of the Commission who is interested in any company or undertaking which is an interested party in any proceedings before the Commission affecting a public utility shall disclose to the Commission the fact and nature of his interest and shall not take part in any deliberation or any decision of the Commission relating to the matter, and such a disclosure shall forthwith be recorded in the records of the Commission.

Accounts and audit.

14. (1) The Commission shall keep proper accounts and other records in relation to the business of the Commission and shall prepare annually a statement of accounts in a form satisfactory to the Minister, being a form which shall conform with the best commercial standards.

(2) The accounts of the Commission shall be audited by an auditor or auditors appointed annually by the Commission and approved by the Minister.

(3) Within four months, after the end of each financial year or within such further times as may in special circumstances be allowed by the Minister, the Commission shall send the statement of its accounts referred to in subparagraph (1) to the Minister, together with a copy of any report made by the auditor on that statement or on the accounts of the Commission.

(4) The auditor's fees and any expenses of the audit shall be paid by the Commission.

(5) The Director of Audit shall be entitled, on the direction of the Minister, at all reasonable times, to examine the accounts and other records in relation to the business of the Commission.
