

ACT

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THE SIERRALEONE ELECTRICITY AND WATER REGULATORY COMMISSION ACT, 2011

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SIGNED this 8th day of November , 2011.

DR. ERNEST BAI KOROMA,
President.

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No. 13



2011

Sierra Leone

**THE SIERRA LEONE ELECTRICITY AND WATER
REGULATORY COMMISSION ACT, 2011.**

Short title.

**Being an Act to establish the Sierra Leone Electricity and
Water Regulatory Commission to regulate the provision of
electricity and water services and to provide for other related matters.**

[/] Date of com-
mencement.

ENACTED by the President and Members of Parliament in this
present Parliament assembled.

PART 1-PRELIMINARY

Interpretation.

1. In this Act, unless the context otherwise requires-

"Chairman" means the Chairman of the Commission appointed under section 5;

"Commission" means the Sierra Leone Electricity and Water Regulatory Commission established by section 3;

"consumer" means a person who purchases, receives or makes use of any service provided by a public utility and does not deliver or resell the service to others;

"Director-General" means the Director-General appointed under section 22;

"inspector" means an inspector appointed under section 38;

"licence" means a licence issued by the Commission under section 30(5);

"member" means a member of the Commission;

"Minister" means the Minister responsible for electricity and water ;

"public register" means the public register of the Commission;

"public utility" means any provider of electricity and water to the public;

"rate" means the tariff price per unit of services supplied by a public utility ;

"regulated service" means the supply of a commodity derived directly from the business in which a public utility is engaged;

"regulated supplier" means a person engaged in activities in a regulated sector and includes any holder of a licence issued under this Act;

"standard" includes:-

- (a) technical standards relating to the content and supply of regulated services;
- (b) standards for the terms and conditions of supply of goods and services; and
- (c) quality of service standards

"water production" means the harnessing and treatment of water.

2. (1) This Act shall not apply to the supply of water operated and managed by a community. Application of Act.

(2) In this section, community means a body of people living as a group in a locality.

PART II-ESTABLISHMENT AND FUNCTIONS OF SIERRA LEONE ELECTRICITY AND WATER REGULATORY COMMISSION

3. (1) There is hereby established a body to be known as Sierra Leone Electricity and Water Regulatory Commission . Establishment of Commission.

(2) The Commission shall be a body corporate having perpetual succession and capable of acquiring, holding and disposing of any property, whether movable or immovable, and of suing and being sued in its corporate name, and subject to this Act, performing all such acts as bodies corporate may by law perform.

4. (1) The Commission shall have a common seal the use of which shall be authenticated by the signatures of the Chairman and other member of the Commission generally or specifically authorised by the Commission for that purpose. Common seal.

(2) Every document purporting to be an instrument executed or issued by or on behalf of the Commission and to be sealed with the common seal of the Commission authenticated in the manner stated in subsection (1) shall be deemed to be so executed or issued without further proof unless the contrary is proved.

(3) In appropriate cases the seal may be affixed to documents outside of Sierra Leone.

Composition
of Commis-
sion.

5. (1) The Commission shall consist of a Chairman and the following other members:-

- (a) a representative of the Sierra Leone Institution of Engineers;
- (b) a representative of the Sierra Leone Labour Congress;
- (c) a representative of the Sierra Leone Consumer Protection Agency;
- (d) four other persons with formal qualifications, extensive knowledge and experience relevant to the functions of the Commission, two each from the electricity and water supply sectors respectively; and
- (e) the Director-General appointed under section 22.

(2) The Chairman shall be appointed by the President on the recommendation of the Minister from among persons with formal qualifications, extensive knowledge and experience relevant to the functions of the Commission with proven ability for supervising or managing a utility regulatory body, a regulated supplier or large corporation with direct impact on the general public.

(3) Members specified in paragraph (d) of subsection (1) shall be appointed by the President on the recommendation of the Minister.

6. (1) The Chairman and other members of the Commission except the Director-General shall hold office for a term of three years and shall be eligible for reappointment for another term of three years but shall not be eligible for reappointment after the expiration of a second term of office. ^{Tenure of office.}

(2) A person shall cease to be a member of the Commission on any of the following grounds:-

- (a) for his inability to perform the functions of his office by reason of infirmity of mind or body;
- (b) for proven misconduct;
- (c) if he becomes bankrupt or insolvent;
- (d) if he is convicted of an offence involving fraud or dishonesty;
- (e) if he fails to attend three consecutive meetings of the Commission without reasonable cause; or
- (f) if he resigns his office by written notice to the President.

(3) Where a vacancy occurs in the membership of the Commission, the President shall appoint a replacement who shall hold office for the remainder of the term of the person replaced and shall, subject to this Act, be eligible for reappointment.

7. The Chairman and the other members shall be paid such remunerations, fees and allowances and shall be reimbursed by the Commission for any expenses incurred in connection with the discharge of their functions as the Commission may determine. ^{Remuneration and expenses.}

Meetings of
Commission

8. The Commission shall meet for the dispatch of its business at such time and place as the Chairman may determine but shall meet at least once every three months.

(2) A special meeting of the Commission shall be summoned by the Chairman at the written request of not less than five members of the Commission.

(3) The Chairman shall preside at meetings of the Commission at which he is present and in his absence, a member elected by the members present from among their number shall preside.

(4) Each member shall have one vote but where there is equality of votes, the Chairman or other member presiding shall have a casting vote.

(5) All acts, matters or things authorised or required to be done by the Commission shall be decided at a meeting where a quorum is present and the decision is supported by the votes of the majority of the members.

(6) The quorum for a meeting of the Commission shall be five.

(7) Any proposal circulated among all members and agreed to in writing by a majority of all members shall be of the same effect as a decision made at a duly constituted meeting of the Commission and shall be incorporated in the minutes of the next succeeding meeting of the Commission:

Provided that if a member requires that such proposal be placed before a meeting of the Commission subsection (7) shall not apply to such proposal.

(8) The Commission may co-opt any person to attend and participate in its deliberations on any matter, but such person shall not vote on any matter for decision by the Commission.

(9) The Commission shall cause minutes of all its meetings to be taken and signed subsequently by the Chairman and kept in proper form as a public record.

(10) Subject to this Act, the Commission shall regulate its own procedure.

9. Any member having a personal interest, whether pecuniary or otherwise, direct or indirect through any member of his immediate family or business partner, in any matter to be considered by the Commission, shall disclose the fact of such interest and the nature thereof, and such disclosure shall be recorded in the minutes of the Commission and such member shall take no part in any deliberation or discussion of the Commission relating to such matter. Disclosure of interest

10. (1) The object for which the Commission is established is to regulate the provision of the highest quality of electricity and water services to consumers. Functions of Commission

(2) Without prejudice to the generality of subsection (1), it shall be the functions of the Commission to—

- (a) issue and as the case may be renew, amend, suspend, revoke and cancel licenses;
- (b) monitor compliance with the terms of licences;
- (c) provide guidelines on rates chargeable for provision of electricity and water services;
- (d) protect the interest of consumers and providers of electricity and water services;
- (e) monitor standards of performance for provision of electricity and water services;
- (f) initiate and conduct investigations into the quality of service given to consumers;

- (g) promote fair competition among public utilities;
- (h) conduct studies relating to economy and efficiency of public utilities;
- (i) make valuation of property of public utilities as it considers necessary for the purposes of the Commission;
- (j) collect and compile data on public utilities as it considers necessary for the performance of its functions;
- (k) advise any person or authority in respect of any public utility;
- (l) maintain a register of public utilities; and
- (m) carry out such other activities conducive to the attainment of the object of the Commission stated in subsection (1) .

Power to regulate rates and charges.

11. (1) Subject to this Act, the Commission shall have power to—

- (a) set or otherwise determine rates for electricity and water services ; and
- (b) carry out regular reviews of rates and charges for regulated and unregulated services.

(2) In making any determination, setting rates and charges or establishing the method for regulating rates and charges of services , the Commission shall take into account-

- (a) the cost of making, producing and supplying the goods or services;

- (b) the return on assets in the electricity and water sector;
- (c) any relevant benchmarks, including international benchmarks for prices, costs and return on assets in comparable industries;
- (d) the financial implications of the determination;
- (e) the desirability of establishing maximum rates and charges, and in carrying out regular reviews of rates and charges;
- (f) any other factors specified in the relevant sector legislation;
- (g) the consumer and investor interests;
- (h) the desire to promote competitive rates and attract new entrants to the market; and
- (i) any other factors the Commission considers relevant.

12. (1) The Commission may, by notice in writing under the hand of the Chairman or any member, summon any person whom the Commission believes has information or documents that may assist in the performance of its functions to - Power to obtain information.

- (a) appear before it and answer orally on oath or affirmation any question relevant thereto;
- (b) furnish the information in writing signed by him or in the case of a body corporate, signed by a competent officer of the body corporate; or

(c) produce or otherwise deliver the original or copy of any document in his possession or under his control.

(2) For the purpose of subsection (1), the Chairman or a Member or the Director- General shall administer the oath or affirmation .

(3) Any person upon whom a summons is served under subsection (1) shall comply with such summons notwithstanding the provision of any law to the contrary or any oath of secrecy.

(4) Any person who without reasonable excuse neglects or fails to comply with the summons issued under subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding five million Leones.

(5) Any person who, in making any statement or furnishing any information under subsection (1) wilfully makes a false or misleading statement or any statement which he does not believe to be true commits an offence and shall be liable on conviction to a fine not exceeding five million Leones.

(6) Where the Commission has reasonable cause to believe that a person is in possession of any document that may assist it in the performance of any of its functions, the Commission may on application to a Judge obtain a warrant for the purpose of the entry and search of any property in the possession or control of that person.

(7) Where a search is effected under subsection (6), the authorised person effecting the search may—

- (a) seize and take possession of any document, computer, computer disk or other related article; or
- (b) inspect, make copies of or take extracts from any book, record or document.

(8) Where the authorised officer under subsection (7) is refused entry into or prevented from entering the premises, the Commission may, on application to a Judge, obtain a warrant authorising a police officer to forcibly enter the premises with the authorised officer to conduct the search and make copies or take extracts of documents therein.

13. (1) The Commission shall consult stakeholders where it considers it necessary or expedient to introduce or make any changes to a key policy. Consultations

(2) The Commission shall give notice of the consultation by-

- (a) publishing a notice in the *Gazette* and in newspapers circulated generally in Sierra Leone;
- (b) sending a written notice to -
 - (i) service providers whose interests are likely to be affected by the outcome of the consultation;
 - (ii) the consumer services committee referred to in subsection (2) of section 21;
 - (iii) industries and consumer organisations which the Commission considers to have interest in the matter; and
 - (iv) the Minister.

(3) The notice referred to in subsection (2) shall specify-

- (a) the purpose of the consultation;
- (b) the matters to be dealt with in submissions;
- (c) the time within which submissions should be forwarded to the Commission; and
- (d) the form in which submissions should be made.

(4) The Commission shall establish an annual programme for general consultation before the start of each year with such persons and organisations as the Commission may consider necessary to consult for the purpose of effectively carrying out its functions.

Competition
policy

14. In carrying out its functions and exercising its powers under this Act, in relation to particular markets for regulated services, the Commission shall take into account-

- (a) whether the conditions for effective competition exist in the market;
- (b) whether any exercise of power by the Commission is likely to cause any reduction of competition or additional costs in the market and is likely to be detrimental to the public;
- (c) whether any such detriment to the public is likely to outweigh any benefit to the public resulting from the exercise of the power.

Delegation.

15. The Commission may delegate to any member or employee of the Commission any power conferred on the Commission by this Act other than the power to-

- (a) grant or as the case may be renew, revoke or cancel a licence;
- (b) fix the method of calculating and reviewing rates and charges;
- (c) adopt a code of conduct;
- (d) make any rule or regulation;
- (e) make any decision to hold a consultation; or
- (f) adopt a report on the result of a consultation.

16. (1) The Commission shall maintain a public register relating to its functions which shall be available for public inspection at all times during business hours. Public register.

(2) The Commission shall determine the type of information to be placed on the register.

17. The Commission shall publish in the *Gazette* as soon as practicable- Publication .

- (a) any code of conduct proposed to be adopted;
- (b) a summary of any decision by the Commission setting rates or charges for regulated goods or services;
- (c) any policy guidance or direction from the Minister; and
- (d) any other information which the Commission may decide in the public interest to publish in the *Gazette*.

18. For the purposes of section 10, the Minister shall have the responsibility to - Ministrial Support.

- (a) build and sustain an enabling environment for the operations of the electricity and water supply sectors;
- (b) ensure that the policy making , regulatory and enforcement structures have the capacity to perform their respective functions comprehensively and fairly;
- (c) formulate and review policy and its implementation accordingly;
- (d) promote universal access to electricity and water supply services; and

- (e) promote research into the development of technologies, the use of new techniques by providers of electricity and water supply services and to develop adequate human resources in collaboration with such other agencies of Government as the Commission considers appropriate.

Independence of Commission . **19.** Subject to this Act, the Commission shall not be subject to the direction or control of any person or authority in the performance of its functions .

Code of conduct. **20.** The Commission shall adopt a code of conduct prescribing standards of behaviour to be observed by members and employees of the Commission in the performance of their duties , within twelve months of the commencement of this Act.

Committees of Commission . **21.** (1) The Commission may, for the effective discharge of its functions, appoint one or more committees consisting of members of the Commission or non-members or both to perform such functions and to report thereon to the Commission as such times as the Commission may determine.

(2) Without prejudice to the generality of subsection (1), the Commission shall establish -

- (a) a review committee consisting of a High Court Judge and two legal practitioners ; and
- (b) a consumer services committee consisting of ten members nominated by the business community.

PART III-STAFF OF COMMISSION

Appointment of Director-General. **22.** (1) The Commission shall have a Director-General who shall be appointed by the Commission after consultation with the Public Service Commission.

(2) No person shall be appointed Director-General unless he has formal qualifications, extensive knowledge and experience relevant to the functions of the Commission.

(3) The Director-General shall not be removed from office except for reasons which would justify his removal from the Public Service.

(4) The Director-General shall be responsible to the Commission for-

- (a) the day-to-day administration of the Commission;
- (b) the submitting of reports, work programmes and budgets;
- (c) the arrangement of the business and the recording and keeping of the minutes of the meetings of the Commission;
- (d) the supervision and discipline of the other staff of the Commission; and
- (e) performance of such other functions as the Commission may assign to him.

(5) The Director-General shall attend all substantive meetings and deliberations of the Commission but shall not be entitled to vote.

23. (1) There shall be appointed by the Commission, on such terms and conditions as the Commission may determine, such other staff of the Commission as the Commission may require for the efficient discharge of its functions under this Act. Other staff Commission.

(2) Public officers may be seconded or otherwise give assistance to the Commission

(3) The Commission may engage the services of such consultants and advisers as it considers necessary for the efficient discharge of its functions.

24. The Commission shall have the following departments-

Departments of Commission.

- (a) administration and finance;
- (b) audit and accounting;
- (c) technical;
- (d) consumer services;
- (e) rates and tariffs;
- (f) legal; and
- (g) such other departments as the Commission may from time to time determine.

PART IV—FINANCIAL PROVISIONS

Funds of Commission. **25.** (1) The activities of the Commission shall be financed by funds consisting of-

- (a) government subventions or other monies appropriated by Parliament to the Commission for the discharge of its functions;
- (b) payments or property due to the Commission in respect of any matter incidental to its functions;
- (c) monies accruing to the Commission in the course of the performance of its functions under this Act;
- (d) grants, donations, bequests or other contribution made to the Commission by persons other than regulated suppliers or other entities operating in a regulated sector;
- (e) annual levy not exceeding one percent of the gross operating revenue of the regulated supplier from the supply of regulated services; and
- (f) such proportion of government levy on electricity, water, gas and other regulated products as may be determined by Parliament.

(2) The Commission may from time to time apply the proceeds of the funds specified in subsection (1)-

- (a) for the promotion of energy efficiency and productive use of electricity, water and related products;
- (b) for the promotion of projects to develop and utilize renewable energy resources including solar energy and mini-hydro plants;
- (c) to human resources development in the energy sector;
- (d) to enhance public knowledge, awareness and understanding of issues concerning safety, efficiency, conservation, health, gender, education, protection and preservation of the environment; and
- (e) for such other relevant purposes as may be determined by the Commission.

26. (1) The Commission shall keep proper books of accounts and proper records in relation to them in a form approved by the Auditor-General. Accounts and audit

(2) The books of account referred to under subsection (1) shall be audited by the Auditor-General or an auditor appointed by him within three months after the end of each financial year.

27. The financial year of the Commission shall be the same as the financial year of Government. Financial year of Commission.

28. (1) The Commission shall as soon as possible but not later than three months after the end of each financial year, submit to the Minister a report of the activities, operations, undertakings, properties and finances of the Commission for that year, including the Auditor-General's report and a list of persons granted licences in that year. Annual report.

(2) The Minister shall, within thirty days of the receipt of the report referred to in subsection (1), lay a copy of the report before Parliament.

PART V—LICENSING AND OTHER RELATED PROVISIONS

Application and authorization.

29. (1) No person shall-

- (a) sell, provide, arrange or otherwise supply access to electricity and water services;
- (b) construct, install or operate any facility for the sale, provision or supply of electricity and water services;
- (c) engage in the business of transmission, wholesale supply, distribution or sale of electricity, water or related products; or
- (d) engage in the business of water production and distribution;

unless that person holds a licence granted by the Commission .

Application for licence.

30. (1) A person who requires a licence under this Act shall make a written application to the Commission in such form as may be prescribed by the Commission.

(2) A person applying for a licence shall submit with the application -

- (a) all relevant information to support the application; and
- (b) the prescribed fee.

(3) The Commission shall within ten days of the receipt of an application, acknowledge receipt and shall within sixty days thereafter inform the applicant in writing of the decision of the Commission.

(4) In making a decision under subsection (3), the Commission may-

- (a) make such inquiry and consult such persons or authorities as it may deem necessary to ascertain whether the applicant is capable of operating or rendering the services for which he is seeking the licence;
- (b) cause a notice of the application for licence to be published in the *Gazette* or any other medium prescribed by the Commission; and
- (c) consider any written notice of objection or other representation made in relation to such application.

(5) Subject to this Act, where the Commission is satisfied with an application, it shall grant the licence to the applicant.

(6) A licence issued under subsection (5) shall-

- (a) be in the prescribed form;
- (b) authorise the licensee to undertake such activity as may be specified therein;
- (c) contain such terms and conditions as the Commission may think necessary; and
- (d) be valid for such period as specified therein.

31. The Commission shall only grant a licence to-

- (a) a citizen of Sierra Leone;
- (b) a body corporate; incorporated or registered in Sierra Leone; or
- (c) a partnership of which each member is a citizen of Sierra Leone.

Restriction of licence.

Non transfer of licence.

32. (1) A licence granted under this Act shall not be transferred except with the written approval of the Commission.

(2) A licensee who wishes to transfer his licence may apply to the Commission in the prescribed form and manner for the transfer of the licence.

(3) An application made pursuant to subsection (2) shall be accompanied by an application of the proposed transferee

(4) The Commission shall, in considering an application for transfer, have regard to the same matters as in considering the grant of a new licence and shall approve the transfer if satisfied with the application of the proposed transferee.

Renewal of licence.

33. (1) A person who wishes to renew his licence shall make a written application to the Commission in the prescribed form not later than three months before the expiry of the licence

(2) The procedure for the application for a licence shall, with the necessary modification apply to the renewal of a licence

(3) A licensee who fails to renew his licence or whose application for renewal is rejected by the Commission shall cease to function as such.

Power to modify licence.

34. (1) The Commission may, subject to this Act and any regulations made under it, modify any licence granted under this Act if the modification is permissible under the terms of the licence or is required in the public interest .

(2) No modification shall be made under subsection (1) unless the Commission has given at least sixty working days written notice-

- (a) stating that the Commission proposes to make the modification; and
- (b) setting out the effect of the modification.

Suspension or cancellation licence.

35. (1) The Commission may suspend or cancel a licence where it is of satisfied that-

- (a) the licensee has contravened a term or condition of his licence;
- (b) the licensee has given information to the Commission which is false or misleading in any material particular; or
- (c) it is in the public interest to do so.

(2) A licence shall not be suspended or cancelled unless the Commission has given written notice of its intention to the licensee together with the reasons for doing so

(3) The Commission may in a notice under subsection (2) require the licensee to show cause in writing, within such time as may be specified in the notice why the licence should not be suspended or cancelled.

(4) The Commission shall, after considering the explanation of the licensee, inform the licensee in writing of its decision and reasons therefore.

(5) In determining whether it is necessary to suspend or cancel a licence granted under this Act, the Commission shall consider the extent to which the licensee is likely to sustain loss or damage as a result of the suspension or cancellation.

(6) A licence which is not utilised within one year from the date of its grant may be cancelled by the Commission after notice of not less than 30 days has been served on the licensee.

36. (1) The Commission shall maintain a register and shall record in it-

- (a) licenses issued under this Act and relevant terms and conditions;
- (b) licences granted prior to the enactment of this Act;
- (c) suspended and cancelled licences;

- (d) such other information relating to public utilities as the Commission considers appropriate and not being contrary to public interest or the commercial interest of any person.

(2) A person who wishes to obtain an extract from the register shall do so in accordance with conditions stipulated by the Commission.

Prior operators.

37. Any person operating a public utility prior to the commencement of this Act who wishes to continue with his operations shall apply for a licence under this Act within three month of commencement of this Act and shall cease operation if he has not secured a licence within six months of such commencement.

PART VI- INSPECTION

Inspectors

38. (1) The Commission shall appoint inspectors to ensure that the provisions of this Act are complied with.

(2) No person shall be appointed as an inspector unless that person is suitably qualified and possesses the necessary expertise to enable him to perform the functions of an inspector in an efficient manner.

(3) An inspector shall at any reasonable time, with the necessary equipment, enter any premises of a public utility to inspect the premises or carry out any function imposed upon him under this Act or regulations made under this Act.

(4) Where an inspector is refused or prevented from gaining entry to any premises of a public utility, the Commission may, on application to a Judge, obtain a warrant for the purpose of the entry and inspection of the premises.

(5) An inspector shall submit a report of his inspection or investigation to the Commission for necessary or appropriate action.

(6) No person shall-

- (a) knowingly make a false or misleading statement to an inspector; or

- (b) deliberately obstruct or hinder or attempt to hinder or obstruct an inspector carrying out his functions under this Act or regulations made under this Act.

PART VII-SERVICE, RATES AND OTHER RELATED PROVISIONS

39. (1) A public utility licensed under this Act shall-

Duty to provide adequate service.

- (a) maintain the equipment and property used in the provision of the service in such a condition as to enable it to effectively provide the service;
- (b) make such reasonable effort as may be necessary to provide the public with 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.

(2) Where a public utility contravenes this section, the Commission shall in writing direct that public utility to the level of service that should be provided and may include such other direction as to secure compliance with subsection (1).

(3) A direction issued under this section 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 subsection (1).

(4) Where the technology employed by a public utility is out of date or where any advancement in technology which should result in an improvement in the service or in reducing the cost to the consumer is not 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.

(5) A direction issued by the Commission under this section shall specify a reasonable time for compliance and where compliance is in stages, different times may be specified to comply with each stage.

Standards of performance

40. (1) A public utility shall meet the required standard of performance outlined in its licence.

(2) The Commission shall monitor the standard of performance of the public utility.

(3) Where a public utility contravenes this section, it shall pay such compensation as the Commission may determine to any person adversely affected as a result of that contravention.

(4) The requirement for payment of compensation under this section does not -

- (a) limit the right to any other remedy at law which may be available to the complainant; or
- (b) 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.

Agreement to supply services

41. (1) Where a public utility has entered into an agreement with any institution or body corporate for the provision, development or expansion of a service and the implementation of the agreement is not effected within a reasonable time, the institution or body may submit a written complaint to the Commission.

(2) The Commission shall, after receipt of complaint made under subsection (1) send a notice of such complaint to the public utility concerned and provide the public utility a reasonable opportunity to be heard.

(3) Where the Commission is satisfied that the public utility has failed to implement the terms of the agreement within a reasonable time, the Commission may-

- (a) direct the public utility to pay the institution or body such sum as it considers reasonable;
- (b) recommend the cancellation or suspension of the public utility's licence; or
- (c) give such other directions as it considers necessary.

42. A public utility shall not restrict or refuse to provide its services unless-

Restriction on refusal to provide service.

- (a) it has a written permission of the Commission; or
- (b) its licence is, as the case may be revoked, suspended, cancelled or expired.

43. (1) The Commission shall prepare and provide public utilities with guidelines for levels of rates that may be charged by the public utilities for the services provided.

Fixing rates,

(2) In preparing the guidelines the Commission shall take into account-

- (a) the interest of consumers;
- (b) the interest of investors;
- (c) the cost of production;
- (d) assurance of the financial integrity of the public utility and
- (e) any other factor the Commission considers relevant.

44. (1) The Commission may investigate and determine whether any expenditure incurred by a public utility is justified or reasonable in order to assess the cost of production of any service provided by the public utility.

Cost of production.

(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 services concerned.

Approval of rates.

45. (1) No public utility shall demand or receive any rate for the service it provides unless the rate chargeable for the service has been approved by the Commission.

(2) Notwithstanding subsection (1), 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.

(3) The Commission shall, before approving any rate provide, as far as practicable, the public utility and the consumer affected by the rate a reasonable opportunity to be heard and shall take into account any representation made before it.

Publication of tariffs.

46. The Commission shall publish in the *Gazette* and the mass media any rate that it approves.

Uniform rates of tariffs.

47. (1) Where the Commission decides to fix a uniform rate for any service a public utility provides, it shall take into consideration-

- (a) the population distribution of the country;
- (b) the need to make the best use of any natural resources of the country; and
- (c) the economic development of the country.

(2) The Commission may approve different rates for different classes of consumers.

Filing of tariff.

48. (1) A public utility shall, within such time as may be determined by the Commission, file with the Commission tariffs showing the rate it charges for services it provides.

(2) Copies of the tariffs shall be published or otherwise made available to the public for inspection.

49. (1) Where a public utility starts a new service for which rates are chargeable or desires to revise any existing rates charged by it for any service, it shall file with the Commission notice of the proposed new rates or revised rate as the case may be at least 60 days before the commencement of the new service or the effective date of the revised rates. New Service and change in existing rates.

(2) The notice under subsection (1) (where it relates to rates for new service) shall state -

- (a) the new rates;
- (b) the effective date of the rates; and
- (c) any other particulars that may be required by the Commission.

(3) The notice under subsection (1) (where it relates to changing existing rates) shall state -

- (a) the existing rates and the proposed rates;
- (b) the effective date of the proposed rates;
- (c) the reasons for the change in rates; and
- (d) any other particulars that may be required by the Commission.

(4) The Commission shall, within 30 days after receipt of the notice required under subsection (1), take a decision on the rates.

50. (1) A public utility may permit the joint use of its equipment and facilities by another public utility for a reasonable compensation where such arrangement is convenient or necessary and the joint use will not result in damage to the owner or other users of the equipment. Joint use of facilities.

(2) Where a dispute arises with respect to any arrangement made under subsection (1) any of the disputed party shall submit a written complaint to the Commission.

(3) Where the Commission is satisfied after investigation that a joint use of equipment and facilities -

- (a) is necessary to provide safe, adequate and economic service to consumers;
- (b) will not result in irreparable damage to the owners or users of the equipment or facilities; and
- (c) is just and reasonable, having regard to the circumstances of the case;

the Commission may direct that two or more public utilities enter into an agreement for joint use or other arrangement upon such terms as the Commission may determine.

(4) The Commission may upon a complaint from a public utility or consumer affected by the directives under subsection (3) modify or revoke its earlier directives.

Returns and information.

51. (1) The Commission may, in writing require a public utility to furnish the Commission at such time as the Commission shall determine, the following:-

- (a) a detailed report of finances and operations of the public utility; and
- (b) contracts, reports of engineers, documents, books, accounts and any other record in possession or control of the public utility and in any way relating to its property or service.

Ascertainment value of property.

52. (1) The Commission may, in writing, direct the ascertainment by appraisal, of the value of the property of any public utility and in that connection, may enquire into every fact which it considers has any bearing on that value, including the amount of money expended by the public utility in order to provide adequate service to the public.

(2) Expenses incurred in connection with any appraisal order by the Commission shall be charged to the capital account of the public utility whose property is the subject of the appraisal.

53. A public utility shall give to every consumer (other than a consumer on payment meters) after every calendar month or at such time as may be determined by the Commission, a bill showing the sum payable by the consumer for the service provided by the public utility during the preceding month or such time as may be determined by the Commission .

Obligation to provide bill.

54. Where a consumer is entitled to receive any money from a public utility as a result of favourable change in rates, the money shall be adjusted towards any money future debt by the consumer to the public utility or paid in cash to the consumer.

Adjustment of credit to consumers.

55. (1) A public utility that requires its consumers to make cash deposit with it as a condition before receiving a service, shall pay interest on the deposit at such rate as the Commission shall determine except where the deposit is held by the public utility for less than six months.

Interest to be paid on deposits.

(2) Subject to subsection (1), a public utility shall disclose to the consumer the amount of interest which has accumulated on deposits during the calendar year and the proportion which stands to the credit of the consumer.

56. (1) A public utility shall establish procedures for dealing with the complaints of consumers or potential consumers.

Complaints from consumers.

(2) No procedure shall be established or modified unless-

- (a) the public utility consults and receives approval from persons or bodies that constitute a fair representation of consumers; and
- (b) the proposed procedure or modification is approved by the Commission.

(3) A public utility shall publish the approved procedure in such a manner as the Commission may require and send copies of the procedures (free of charge) to consumers who make request therefor.

(4) The Commission may direct the public utility to review its procedures or the manner in which it modifies the procedures.

PART VIII—UNFAIR COMPETITION

Unfair competition.

57. (1) A public utility shall not engage in any activity whether by act or omission which has, or is intended to have the effect of unfairly preventing, restricting or distorting competition in relation to any business activity relating to any utility service provided by that public utility.

(2) A public utility shall not deny access or service to a customer except for failing to pay dues or for any other just cause.

(3) A public utility shall provide equal opportunity for access to the same type and quality of service to all customers of the same type in a given area at substantially the same tariff rate, limiting variations to available or appropriate technologies required to serve specific customers.

(4) For the purpose of subsection (1) an act or omission shall include-

- (a) any abuse by the public utility, either alone or with others which unfairly excludes or limits competition between that public utility and any other party;
- (b) entering into any agreement or engaging in any concerted practice with another which unfairly prevents, restricts or distorts competition; or
- (c) the implementation of anti-competitive changes in the market structure and in particular, anti-competitive mergers and acquisitions in the relevant sector.

(5) A person affected by a contravention of this section by a public utility may submit a complaint to the Commission.

(6) Where it appears that a person has contravened this section, the Commission shall forward a written notice to that person stating -

- (a) that the Commission is investigating a possible breach of fair competition;
- (b) the reasons for the suspicion, including any matter of fact or law which is relevant to the investigation;
- (c) where appropriate the steps to be taken to remedy the contravention.

(7) The public utility which is the subject of the investigation may, within thirty days from the date of the notice referred to in subsection (6) make a representation in response to the notice and forward to the Commission all information required under the notice.

(8) The person affected by the contravention may also make a representation to the Commission

58. (1) Where the Commission concludes after investigation that a public utility is competing unfairly it shall-

Penalties for unfair competition.

- (a) order the public utility to stop the unfair competition;
- (b) require the public utility to pay a fine not exceeding the equivalent of ten percent of the annual turnover of the public utility;
- (c) declare any anti competitive agreements or contracts null and void ; or
- (d) modify, suspend, cancel or revoke the licence if any of the public utility where the anti competitive behavior is serious or persistent enough to warrant such action.

(2) The provisions of subsection (1) shall not affect in any way the right of a person to take any other action against the public utility under any other law.

(3) Any person aggrieved by the decision of the Commission under this section may appeal to the Minister.

(4) The provisions of this section shall not limit or in any way affect the obligations of a public utility under any term or condition of a licence.

PART IX—OFFENCES AND OTHER RELATED PROVISIONS

Offences.

59. (1) A person who assists, encourages, conspires or induces in anyway another person to engage in any activity prohibited under this Act commits an offence.

(2) Any person who suffers loss or damage as a result of a contravention of this Act may recover compensation for such loss or damage from the person who contravened the Act, whether or not that person has been convicted of the offence.

(3) Where an offence under this Act is committed by a body corporate, that offence shall be deemed to have been committed by every director, corporate secretary or manager of the body corporate, unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions and the circumstances of the case.

(4) Where an offence under this Act is committed by a partnership or firm, every person who at the time of the commission of the offence was a partner in the firm or was purporting to act in that office shall be deemed to have committed the offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions and the circumstances of the case.

False return.

60. A public utility which makes any return or furnishes any information to the Commission which is false in any material particular commits an offence.

61. A person who obstructs or interferes with a member of the Commission, officer or person employed by the Commission in the exercise of the powers conferred by this Act on that person, commits an offence. Obstruction.

62. Where the Commission, before or after any investigation makes any decision or gives any direction requiring any person to do or desist from doing any act and the person fails to comply with the decision or direction, the Commission may apply to the High Court for the enforcement of the decision or direction. Enforcement of decision.

63. (1) The Commission may make a compliance order against a person where - Compliance order.

- (a) it is satisfied that the person has committed an offence under this Act; or
- (b) it has evidence that the person is likely to commit an offence under this Act.

(2) A compliance order may require a person to-

- (a) refrain from conduct which contravenes this Act; or
- (b) take the necessary action to comply with this Act.

(3) A copy of the compliance order shall be served on the person against whom it is made

(4) A compliance order shall be-

- (a) made in writing specifying the grounds of its making;
- (b) enforceable as an injunction in the High Court; and
- (c) placed on the public register.

PART X—MISCELLANEOUS

Confidentiality. **64.** (1) Except otherwise provided by this Act or for the purposes of any court order or proceeding thereunder, no person shall disclose information or material obtained under this Act.

(2) For the purposes of this Act, any person who gives or discloses any information or material referred to in subsection (1) to the Commission, whether under compulsion of law or otherwise, may claim confidentiality in respect of the whole or part of the information or material.

General penalty. **65.** (1) A person who fails to comply with any requirement under this Act for which no offence is specifically created commits an offence and shall be liable on conviction to a fine not exceeding fifty million Leones or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

(2) A person who commits an offence for which no penalty is provided shall be liable on conviction to a fine not exceeding fifty million leones or to imprisonment for a term not exceeding five years or to both such fine and imprisonment and in the case of a continuing offence to a further fine of five million Leones for each day the offence continues.

Rules and Regulation. **66.** The Commission may, by statutory instrument make rules or regulations for carrying out the purposes of this Act.

Passed in Parliament this *13th* day of *October* in the year of our Lord two thousand and eleven.

IBRAHIM S. SESAY,
Clerk of Parliament.

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed Parliament and found by me to be a true and correct printed copy of the said Bill.

IBRAHIM S. SESAY,
Clerk of Parliament.