

Election of Presiding Officer

Tuesday, September 08, 1998

SENATE

Tuesday, September 08, 1998

The Senate met at 10.00 a.m.

ELECTION OF PRESIDING OFFICER

Clerk of the Senate: Hon. Senators, the President of the Senate, Sen. Ganace Ramdial and the Vice-President of the Senate, Sen. Philip Hamel-Smith are both incapable of performing their duties. Therefore, in accordance with Standing Order 5, I now invite Members to nominate a Senator who is not a Minister or Parliamentary Secretary to preside over today's sitting.

The Minister of Finance (Sen. The Hon. Brian Kuei Tung): Madam Clerk, I wish to nominate Sen. Diana Mahabir-Wyatt.

Sen. Nafeesa Mohammed: Madam Clerk, it is with great pleasure that I second the nomination of Sen. Diana Mahabir-Wyatt.

Clerk of the Senate: Are there any other nominations? There being no other nominations I now declare Sen. Diana Mahabir-Wyatt the Presiding Officer for today's sitting. [*Desk thumping*]

PRAYERS

[MADAM PRESIDING OFFICER *in the Chair*]

Madam Presiding Officer: I would like to thank all my colleagues on both sides and independent colleagues for the confidence that you have shown in me and also for your insistence on maintaining the dignity and respect of the Senate. [*Desk thumping*]

LEAVE OF ABSENCE

Madam Presiding Officer: Hon. Senators, I have granted leave of absence to Sen. Philip Hamel-Smith from the sittings of this Senate for the period September 8 to 22, 1998.

PAPERS LAID

1. Report of the Task Force for the Removal of the Common Entrance Examination. [*The Minister of Finance (Sen. The Hon. Brian Kuei Tung)*]
2. Report of the Auditor General on the accounts of the Sangre Grande Regional Corporation for the year ended December 31, 1993. [*Hon. B. Kuei Tung*]

Papers laid

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3. Report of the Auditor General on the accounts of the Sangre Grande Regional Corporation for the year ended December 31, 1994. [*Hon. B. Kuei Tung*]
4. Report of the Auditor General on the accounts of the Sangre Grande Regional Corporation for the year ended December 31, 1995. [*Hon. B. Kuei Tung*]

PLANNING AND DEVELOPMENT OF LAND BILL

**Select Committee Report
(Presentation)**

The Parliamentary Secretary in the Ministry of Housing and Settlements (Sen. Carol Cuffy-Dowlat): Madam Presiding Officer, I would like to be the first on this side to congratulate you on presiding over today's session.

I have the honour to present the Report of a Special Select Committee appointed to consider and report on a Bill to provide for the orderly and progressive development of land in both urban and rural areas and to preserve and improve the amenities thereof, for the grant of permission to develop land and for other powers of control over the use of land and the design, construction and occupation of buildings; to confer additional powers for the protection of the environment, and the architectural and cultural heritage, and for the acquisition and development of land for planning; and to provide for purposes connected with the matters aforesaid.

ARRANGEMENT OF BUSINESS

The Minister of Finance (Sen. The Hon. Brian Kuei Tung): Madam Presiding Officer, I seek leave of the House to deal with Motion No. 2 on the Order Paper followed by Bills before going on to Bills second reading.

Agreed to.

PLANNING AND DEVELOPMENT OF LAND BILL

**Special Select Committee Report
(Adoption)**

The Parliamentary Secretary in the Ministry of Housing and Settlements (Sen. Carol Cuffy-Dowlat): Madam Presiding Officer, I beg to move the following Motion standing in my name,

BE IT RESOLVED that the Senate adopt the report of the Special Select Committee of the Senate appointed to consider and report on a Bill entitled,

“An Act to provide for the orderly and progressive development of land in both urban and rural areas and to preserve and improve the amenities thereof, for the grant of permission to develop land and for other powers of control over the use of land and the design, construction and occupation of buildings; to confer additional powers for the protection of the environment, and the architectural and cultural heritage, and for the acquisition and development of land for planning; and to provide for purposes connected with the matters aforesaid”.

Madam Presiding Officer, I beg to move.

Seconded by Sen. Prof. J. Spence.

Question proposed.

Sen. C. Cuffy-Dowlat: Madam Presiding Officer, there is a special report that is not for debate but to seek leave to get an extension of time. We would like to report on the proceedings that were held and then seek leave for an extension.

Question put and agreed to.

Sen. Carol Cuffy-Dowlat: Madam Presiding Officer, at the sitting of the Senate held on Thursday, August 20, 1998, the Senate agreed to the following resolution: that the following Members be appointed to serve on a Special Select Committee to consider and report in two weeks on a Bill entitled, “An Act to provide for the orderly and progressive development of land in both urban and rural areas and to preserve and improve the amenities thereof, for the grant of permission to develop land and for other powers of control over the use of land and the design, construction and occupation of buildings; to confer additional powers for the protection of the environment, and the architectural and cultural heritage, and for the acquisition and development of land for planning; and to provide for purposes connected with the matters aforesaid”.

The Members of the Committee are: Mrs. Carol Cuffy-Dowlat, Chairperson; Mrs. Vimala Tota-Maharaj, Member; Miss Agnes Williams, Member; Mr. Vincent Cabrera, Member; Mrs. Nafeesa Mohammed, Member; Prof. John Spence, Member; Prof. Julian Kenny, Member.

To date your committee has held four meetings as follows: Saturday, August 22, 1998; Wednesday, August 26, 1998; Friday, August 28, 1998; and Monday, September 7, 1998.

Development of Land Bill
[SEN. CUFFY-DOWLAT]

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10.15 a.m.

The committee has requested the assistance of the Interim National Physical Planning Commission and members of that body have attended all four meetings to date. During the course of deliberations, several highly complex and technical issues have surfaced which would require the consideration of your committee. Accordingly, your committee was regrettably unable to complete consideration of the Bill and to report to the Senate within the time-frame given to it.

Your committee in submitting this special report to the Senate, seeks an extension of time from the Senate in order to fully complete the consideration of the Bill before it. Your committee is satisfied that if granted an extension it would be able to complete its deliberations and report to the Senate by Tuesday, September 15, 1998.

REGULATED INDUSTRIES COMMISSION BILL

Order for second reading read.

The Minister of Public Utilities (Hon. Ganga Singh): Madam Presiding Officer, I beg to move,

That a Bill to provide for a Regulated Industries Commission to perform certain functions respecting certain service providers; for the licensing of service providers and to make consequential amendments to related Acts be now read a second time.

Madam Presiding Officer, I am extremely pleased to present to this honourable Senate, the Regulated Industries Commission Bill. May I take this opportunity to congratulate you on your ascension to high office. Perhaps, it is fortuitous that you are presiding over these deliberations having regard to the fact that this legislation has travelled several administrations.

The presentation of this Bill is a key step in the strengthening of the legal and regulatory framework for the utilities sector. The purpose of this Bill is to repeal and replace the Public Utilities Act, Chap. 54:01. The Regulated Industries Commission would have as its primary purpose, the regulation of service providers, those undertakings, whether publicly or privately owned, that provide under monopolistic conditions, services which are of a public utility nature and essential.

This initiative is intended to reform utility legislation in Trinidad and Tobago, promote efficiency, consumer responsiveness and private sector participation. It is integral to the Government's strategy of increasing private sector involvement in

utilites and a part of Trinidad and Tobago's drive to become amongst the most competitive economies in the world. As stated in a most recent *New York Times* article, "Trinidad and Tobago, an economic tiger in a sea of pussycats".

The development process of this Bill. Madam Presiding Officer, as I would demonstrate later in my presentation, this legislation was thought necessary since 1977, some 21 years ago. It has gone through numerous drafts. The final draft was put out for public comment in September 1997. Comments were received from several individuals, groups, ministries, the Trinidad and Tobago Manufacturers Association, the Public Services Association and several international organizations including the World Bank, the Inter-American Development Bank and the Institute of Public and Private Partnerships. The Bill was amended as a result of these comments. Clearly, the development of this new legislation involved wide and meaningful participation from the national and international community.

Madam Presiding Officer, I now wish to look at the rationale for this Bill and some of its key provisions. This I would do by briefly exploring the following areas: the importance of the utilities sector, global trends, local trends, the limitations of the present Public Utilities Commission (PUC) legislation, and key provisions of the new legislation.

Importance of this sector: Vital and essential to life in a modern society, utility services constitute the infrastructural foundations of the developmental process. The level and quality of the provision of these services are generally regarded as direct measures of the quality of life or the standard of living in a country. Providing infrastructure services to meet the demand of users, is, therefore, one of the major challenges of economic development. Utility services have strong linkages to the national economy. Inefficiency in the provision of these services are likely to be felt quickly and throughout the economy and thereby impacting adversely on the competitiveness of the national economy and the quality of life of our people. Good utility infrastructure on the other hand, raises productivity, lowers production cost and improves the quality of life of our people. The challenge to my Government, therefore, is to create the institutional and organizational framework which achieves a balance in the interest of the consumers, Government and the providers of the utility services.

What are the emerging and reality global trends? There are three fundamental changes taking place in the utility sector of which a serious government must take cognizance.

One, private sector involvement in the provision of utility infrastructure services is a reality internationally, regionally and locally. Secondly, private sector involvement requires an appropriate regulatory framework which assures potential investors that the utility would not be subject to arbitrary political interference whilst at the same time reassuring consumers that their interests are protected. Thirdly, new technology is making competition possible in areas previously unchallenged. For example, satellite and microwave systems are replacing long distance cable networks. Cellular service is the emerging alternative to local network. Competition in activities such as power generation or cellular service is now commonplace in most countries.

Given these realities and the consistent urgent need to reform, many countries are increasingly making use of mechanisms for introducing commercial principles and market forces into infrastructure services. This involves giving utility service providers explicit performance objectives, managerial and financial autonomy while holding them accountable for their performance and less governmental *ad hoc* interventions in the management. The numerous past failures of public provision combined with growing evidence of more efficient private provision in utility services, argue for a significant increase in private involvement in financing, operation and even ownership of the utility services.

Local trend and the need for new regulatory framework: Locally, we have seen changes in Trinidad and Tobago Electricity Commission, Telecommunications Services of Trinidad and Tobago, Water and Sewerage Authority and now the postal service. Whereas in the past these utilities were generally regarded as the exclusive preserve of the state, today the reality is different. The general consensus that has developed about the inefficiency of state ownership, the poor condition of many state-run utilities, the need for new capital, the pressure brought to bear by the need for higher environmental standards, the need for a more commercial approach to management and poor customer services are all reasons why countries are moving in the direction of commercialization and privatization of the utility sector.

Madam Presiding Officer, these rapid and dynamic changes require modification, in some cases wholesale changes in the way these industries are regulated and supervised. The traditional regulatory mechanisms designed to govern vertically integrated monopolies are giving way to those better suited to the use of competition and markets for the delivery of services. The injection of market forces into what were once public sector enterprises, necessarily requires the intervention of a regulator.

The principal challenge and fundamental duty is to ensure that all the country's consumers receive the best that markets have to offer while at the same time protecting them from the potential abuses that may accompany these changes. To accommodate the changes underway require the transformation of the regulatory and internal structure of the Public Utilities Commission so that it can respond with speed and flexibility and effectively fulfil its core responsibilities.

This Bill, therefore, addresses the following aspects:

- (i) Regulation and Regulatory Framework
- (ii) The Scope and Functions of the New Body
- (iii) The Internal Structure of the New Body.

The limitation of the existing Public Utilities Commission legislation: Madam Presiding Officer, apart from new changes and developments, the decision to replace the Public Utilities Commission by new regulatory mechanisms has been taken after recognition over several years that the Public Utilities Commission has not functioned in a manner appropriate to a progressive business-oriented society. In fact, numerous studies have criticized the rate-setting procedure and the scope of the Public Utilities Commission activities.

Among the reports which have studied the Public Utilities Commission over the years are the following:

- (i) Cabinet-appointed Committee to Review the Role and Functions of the PUC (1977)—by Errol Matthews, Errol Cupid, Kishore Ramcharitar and others.

I would return to that report shortly.

- (ii) The imperatives of structural adjustments (1983—1986, the Bobb Report).
- (iii) NAR Manifesto and Macro Planning Framework 1986—1991.
- (iv) Price Waterhouse “Trinidad and Tobago Enterprise Sector Study—Legal and Institutional Study” (1992).
- (v) The PNM Medium Term Policy Framework: 1993—1995.
- (vi) Report of the Cabinet-appointed Committee to Review the Utility Sector (1993)—by G. Brathwaithe, Harjinder S. Atwal and Angela Hamel-Smith.

- (vii) Report of the Cabinet-appointed Task Force to review the PUC (1993)—by David Punch, Errol Cupid, Roger Moore and others.
- (ix) PUC Staff Report on Regulation and Control of Public Utilities in Trinidad and Tobago (1993).
- (x) PUC branch of the PSA—Position Paper re: the Public Utilities Commission (1993).
- (xi) Study into the Utility Regulatory Framework of Trinidad and Tobago (Adam Smith Institute of London) (1994).
- (xii) Analysis and Commentary on the Proposed Bill Establishing a Regulated Industries Commission—Institute for Public-Private Partnership (Washington D.C.) (1997).
- (xiii) Report on the Regulated Industries Commission Bill—by the London Economics for the Inter-American Development Bank (1998).

Madam Presiding Officer, I would cast our minds back to 1977 when I am certain there are those among us who were still either in primary school or college. I read from the Report of the Committee to Review the Role and Function of the Public Utilities Commission (1977).

The Committee reported in 1979 and amongst its principal observations were:

- (i) The Commission had functioned only by way of claims from Public Utilities.

This is the Errol Cupid Task Force.

“There were no reviews either on its own motion or at the instance of the Minister, as provided for in the Act;

- (ii) The commission, being a Tribunal, functions like the High Court of Justice. This has led to protracted hearings by Commissioners, and has proven to be time-consuming and expensive both to utilities as well as to objectors;
- (iii) Definition of a ‘Public Utility’ as a statutory authority is narrow and restrictive;
- (iv) No doubt on account of the protracted nature of the proceedings of the Commission, up to 1979—thirteen years after its establishment—only six applications for rate increases had been made and dealt with by the Commission;

- (v) The Lack of continuity in office by Commissioners obviated against the development of expertise.”

The principal recommendations of the Cupid Task Force were as follows:

- “(i) New machinery for regulatory control should be devised and the necessary legal framework created to give effect thereto;
- (ii) In consequence of item (i), a new type of commission should be established, but this should not be a quasi-judicial body in that Tribunal-type hearings should be abolished;
- (iii) In addition to rate-making, the Commission should carry out monitoring of performance through performance audits;
- (iv) Investigatory mechanisms should be put in place to deal with complaints;
- (v) The Public Utilities Commission Regulations should be appropriately amended;
- (vi) The Commission should be properly staffed.”

Madam Presiding Officer, as a follow-up to the above recommendations, the 1980 Budget Speech of the then Minister of Finance noted, and I quote:

“...the performance of the Public Utilities Commission, with its almost exclusive emphasis on rate hearing and legal ramifications, has not lived up to expectations...”

It took decisions in six cases only, during its 13 years of existence. In consequence, the Government will introduce changes in legislation now being drafted aimed at the resurrection, restructuring and reorientation of the Public Utilities Commission to deal with all utilities—water, electricity, telephones, public transport, port, airport, housing, postal services.

In particular, the legislation was to effect the following:

- “(i) the appointment of an independent Chairman who will not necessarily be a lawyer;
- (ii) powers to investigate fully and expeditiously all complaints received from citizens, including such complaints as the complete absence of the essential service, chronic and unwarranted disruption;
- (iii) to recommend corrective action relating to specific complaints and establish time limits for such corrective actions;

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- (iv) to report directly to Parliament on matters within its jurisdiction;
- (v) to undertake performance audits of all utilities;
- (vi) to advise the Minister responsible on matters referred to it by the Minister, including annual reports of these utilities;
- (vii) to hire on contract consultants for specialist advice.”

Further, it stated in that budget speech:

“...the restructured Commission will be provided with adequate staff to undertake this expanded responsibility with new emphasis.”

It went on:

“On the basis of such performance audits and thorough scrutiny, the Public Utilities Commission will, when required, fix appropriate rates when the service to the public is sufficiently improved.”

Needless to say, the legislation never saw the light of day except for item one which was given effect by Act No. 29 of 1981.

I now move on to the Bobb Report—The Imperatives of Structural Adjustments, 1983—1986. Commenting on the role of the Public Utilities Commission at that time, the Bobb plan saw the Commission as being:

“...crucial to almost all the utilities charged with paying their way in that it is the body that has the authority to determine the rate chargeable by the utilities.”

It observed, however, that:

“...the nature of the pertinent deliberations under the existing law, such that the time during which changes in rates may be considered and determined is open-ended and could range from a few weeks to a year or more.”

In terms of chronology of this development process, I now turn to the post-1986 period and the National Alliance for Reconstruction Election Manifesto which recognized that:

“...the task faced by the NAR Government in improving our public utilities is a formidable one...”

It stipulated that:

“...the management performance auditing will be an on-going feature of all public utilities...the present system of open-ended subsidies will be replaced by a system of subventions for projects which have been clearly identified and approved, consistent with Government’s social and economic objectives.”

The NAR Macro Planning Framework stated—this document postulated that the need for regulation will persist and set out the objectives of the then government. These included:

- (i) development of a tariff structure for utilities services which generally reflect the economic cost of their provisions;
- (ii) the restructuring of the regulatory environment to ensure, *inter alia*, that regulation is not regulated to ineffective *post facto* analysis of major investment and decision-making and costs incurrences;
- (iii) the provision of utility services at their least cost and, consequently, accrual of maximum value of welfare to the society.

Other specific objectives were:

- (a) the promotion of an on-going interface among utilities including collaboration and co-ordination of activities where feasible;
- (b) the promotion of acceptable utility customer interface;
- (c) the monitoring and evaluation of performances;
- (d) the provision of “consultancy” with respect to problem-solving in operations;
- (e) the determination of rates that are fair, flexible and that reflect, among other things, the cost of efficient operations;
- (f) the establishment of, and adherence to proper standards of service and operations.”

The NAR manifesto stated that an NAR government will re-examine the role and functions of the Public Utilities Commission. This decision was given effect to in a Price Waterhouse Report entitled *Trinidad and Tobago Public Enterprise Sector Study* which was submitted in April 1992, that is, some four months after the NAR had demitted office. In its conclusions and recommendations, the Price Waterhouse Report stated:

“The PUC experience in Trinidad and Tobago is widely regarded as having so far failed to demonstrate effectiveness and there is suspicion that political rather than strictly technical consideration come into play (‘political’, in this context, includes any disposition on the part of the regulators to deliberately build cross-subsidies into the rate structures, not an implication that politicians are instructing regulators). Nevertheless, such an institutional arrangement has

the potential to achieve the objectives of commercialization better than the alternative of regulation through a Ministry...

The adoption of a simpler rate making formula can render the work of regulators to be more objective and less onerous; but even in the case of the price-cap mechanism there is a need for review, particularly of 'X', about every three years. Such reviews require a high degree of impartiality and technical expertise which institutionally is likely to be better provided by a Public Utilities Commission than a section of a Ministry...

In terms of the rate making mechanism, price-caps seemed to better achieve stability, objectivity, efficiency incentives and simplicity than other methods for the other reasons explained earlier."

Madam Presiding Officer, I now move on to the period 1993—1995, taking up from the Price Waterhouse study submitted in April 1992.

The People's National Movement Government's Medium Term Policy Framework 1993—1995 had, as its strategy, concerning the Public Utilities Commission, the need to quote remedy institutional weaknesses in the legal and regulatory framework in 1993. In this connection, the intention, as stated, was to effect a more rapid resolution by the Public Utilities Commission of rate applications by the regulated public utilities. Towards this end, it was stated work was proceeding on the design of the Legal and Regulatory Framework.

The Medium Term Framework saw the principal fault in the rate determination machinery as lying in its semi-judicial process, where legal ramifications tended to be accorded paramount say. In consequence, the process of rate-making was time-consuming and did not allow for timely rate adjustments.

Given the Government's stated policy that public utilities should greatly reduce their dependence on the Treasury and strive for greater self-sufficiency and efficiency, the Government, in February 1993, appointed a Task Force with the following terms of reference:

"...to prepare proposals for the transformation of the PUC in light of the Cabinet's decision to reduce the budgetary allocation, and in keeping with new policy directives emerging from the Medium Term Policy Framework 1993—1995."

The task force reported in April 1993.

Madam Presiding Officer, as you have seen, we have traversed the chronology of the development of this regulatory framework from 1977 onwards and it is a clear indication that the firm conclusion of all administrations and of all the studies and the reports, is that the Public Utilities Commission was not the appropriate institutional mechanism to regulate the utilities sector in Trinidad and Tobago.

When this Government of National Unity assumed office in November 1995, the Public Utilities Commission was moribund and in a state of animated suspension. Such was the regulatory framework, yet there was private sector involvement in TSTT, PowerGen and the Water and Sewerage Authority. It was clear to me that the previous regime had not addressed the issue, that is, the public interest issue of how to ensure that the benefits of efficient production, through a monopoly, accrue to the society as a whole and not exclusively to the holders of the monopoly.

You see, while a firm which is a monopoly is in public ownership and control, the public interest is protected through Government's control of its corporate policies. Accordingly, any inclination in the enterprise to abuse this monopoly can be checked by the Government.

However, when the enterprise has been privatized or has private sector involvement, it becomes necessary for the Government to adopt measures, such as the regulation of tariffs and the deployment of enforcement mechanisms for observations relating to the coverage and the quality of the service provided and the investment performance of the service provided.

The law needs to provide an appropriate framework within which such measures can be fashioned and implemented. The central issue, therefore, is how to check the abuses that may arise from the dominant market position of a monopoly provider.

When an analysis was provided of the Caribbean, no Caribbean country has a modern utility regulatory framework accompanied by regulatory institutions. This new Bill and the establishment of the Regulated Industries Commission would put this country at the forefront of the utility regulation in the Caribbean. Objectives for the utility are clear. The Government wants to see greater efficiency, appropriate technology and greater responsiveness to changes in the nature and the quantity of demand, and better service at a lower cost for our consumers.

We feel this philosophy can best be accommodated under the model of an independent body as proposed in this Bill, which will allow greater flexibility to the

Regulated Industries Commission and the ability to speed up the decision-making process. It will also protect investors from possible arbitrary action by Government. The broad functions of the Regulated Industries Commission are set out at clause 6(1) of the proposed Bill.

10.45 a.m.

Clause 6 states:

- “(1) The Commission may have and exercise such functions, powers and duties as are imposed on it by this Act in particular—
- (a) advise the Minister on matters relating to the operation of this Act including the granting of licences;
 - (b) administer such matters as are required consequent upon the granting of licences;
 - (c) ensure, as far as is reasonably practicable, that the service provided by a service provider operating under prudent and efficient management will be on terms that will allow the service provider to earn sufficient return to finance necessary investment;
 - (d) carry out studies of efficiency and economy of operation and of performance by service providers and publish the results thereof;
 - (e) prescribe and publish in the *Gazette* and in at least one daily newspaper circulating in Trinidad and Tobago, standards for services;
 - (f) monitor service providers and conduct checks to determine their compliance with the standards referred to in paragraph (e);
 - (g) impose such sanctions as it may prescribe for non-compliance with the standards referred to in paragraph (e) and any conditions attaching to a licence;
 - (h) where applicable, establish the principles and methodologies by which service providers determine rates for services;
 - (i) monitor rates charged by service providers to ensure compliance with the principles established under paragraph (h);

- (j) carry out periodic reviews of the rating regimes of service providers;
 - (k) facilitate competition between service providers where competition is possible and desirable;
 - (l) investigate complaints by consumers, of their failure to obtain redress from service providers in respect of rates, billings and unsatisfactory service and facilitate relief where necessary;
 - (m) impose and collect fees for licences; and
 - (n) do all such things as may be necessary or expedient for the proper performance of its functions.
- 9(2) In the performance of its functions under subsection (1)(e), (g), (h) and (j), the Commission shall consult with service providers and representatives of consumer interest groups and any other parties it considers as having an interest in the matters before it.
- (3) In the performance of its functions, the Commission shall have regard to the public interest and in particular—
- (a) to maximum efficiency in the use and allocation of resources to ensure as far as is reasonably practicable, that services are reliable and provided at the lowest possible cost;
 - (b) to equal access by consumers to service;
 - (c) to fair treatment of consumers and of service providers similarly placed; and
 - (d) in respect of consumers similarly placed, to non-discrimination in relation to access, pricing and quality of service.”

Madam Presiding Officer, at a seminar held recently under the aegis of my ministry in collaboration with the Commonwealth Secretariat and the Institute of Business during the period July 13 to 24, 1998, Dr. S. K. Date-Bah presented an article entitled “Regulatory Aspect of Privatization: The Regulation of Utilities”. In dealing with the issue of the regulatory governance, Dr. Date-Bah, in his article stated:

“The following 6 criteria were identified in a report recently prepared for the Asian Development Bank (by the National Economic Research Associates, Consultants: The report is entitled: ‘Governance and Regulatory Regimes for Private Sector Infrastructural Development’.)

‘clarity of roles and objectives particularly between Ministers and regulators, should help to make regulation more effective, by removing any possible confusion about which functions are carried out by regulators and which are carried out by Ministers and others. Regulators should have a clear statement of both their functions and their objectives in carrying out those functions;

autonomy from political intervention (which will be easier to achieve if there is a clear statement of regulators’ objectives) will help to ensure that regulators are free to carry out their functions in the way they consider best satisfy their stated objectives;

participation which is present when all relevant parties contribute effectively to the regulatory process. Improves the quality of regulatory decisions and increases the likelihood of the regulator receiving, both support and corporation from firms, consumers and others;

accountability requires that regulators’ decisions which are thought to be unfair or incompetent can be challenged in an effective way, but decisions cannot be challenged to a degree which renders regulation ineffective.

transparency is important in its own right, since a requirement on regulators to explain their decisions and processes should reduce the likelihood of unfairness or incompetence.

predictability which means that the firms can be reasonably confident that the ‘rules of the games’ will not suddenly change, either through a change in the overall legal and regulatory framework, or through a change in the way that regulators behave within this framework.”

Madam Presiding Officer, clarity of roles and objectives, autonomy, participation, accountability, transparency and predictability are the principles and qualities found in the body of this legislation.

With respect to the independence of the Regulated Industries Commission one must keep in mind what the various studies and reports indicated as far as political interference in the processes of the PUC—though it was defined by Price Waterhouse as not direct political interference by politicians, but a kind of political approach taken by the regulators themselves. The RIC will be afforded a considerable degree of autonomy. This will be achieved through a number of measures and instruments.

Madam Presiding Officer, it is widely accepted that the regulator should maintain an arms-length relationship with the regulated utilities, consumers and other private interests. This idea remains a matter for debate, but one will see that the manner in which we dealt with this provides for that kind of autonomy and arms-length relationship with the political directorate in this country.

However, we feel that entrusting regulatory authority to ministers may present serious drawbacks as the possibilities of short-term political considerations may weigh heavily on regulatory decision-making. The situation may become serious where the state remains the owner of the utilities. We have tried to provide an independent regulator with real autonomy from political interference in this Bill and some of the concrete measures we have adopted are as follows:

The composition: The RIC will be made up of three to five members appointed by the president on the advise of Cabinet. Although the overall accountability is to the Minister of Public Utilities, the minister gives no general or specific policy directions to the commission.

10.55 a.m.

The commission's mandate is clearly defined in the Bill, and the commission is not subject to any direction by any political authority. Clause 6 is quite clear, and its mandate is quite defined.

The composition of the commission. It will be multiple disciplinary and members will be drawn from a wide cross-section of disciplines including: economics, finance, law and public administration.

The commission will also be permitted to set up committees—working groups to advisory councils—to assist in carrying out its functions. These devices will allow for wider involvement and the mobilization of the national community.

Madam Presiding Officer, clause 8(1) provides for the term of appointment of the commission, this being no more than five years at any one time. This allows for knowledge continuity in the commission and for institutional resiliency and continuity.

Security of tenure. Clause 8(2)—The removal of the commissioners is only in restrictively defined cases, and these are properly laid out in the Bill. Once again, we believe that protection from arbitrary removal is essential for resistance to improper political pressures.

Another new feature of this Bill is at clause 29 which deals with the access of the commission to independent sources of funds. This feature once again is to give real autonomy from political authorities and ensures that the commission is less

prone to capture from both the government as well as service providers. Therefore, the main sources of funds of the commission in the future will be the cess imposed on service providers and the licence fees.

In order to prevent the cess from growing too burdensome, the cess has to be approved by the Minister by Order.

Clause 30—The Bill imposes further responsibility in the Minister in that he may have the cess assessed by the Auditor General to satisfy that it is fair and reasonable, having regard to the needs of the commission. This is another example of the ‘dance of balance,’ weighing the various interests in order to ensure the proper regulatory governance.

As we seek to provide independence, we must be able to reconcile that independence with accountability. We must be able to ensure that the regulator is accountable for his actions. Checks and balances are required to ensure that the regulator does not stray from its mandate, engage in corrupt practices or become grossly inefficient. A number of measures have been proposed in the Bill to achieve proper balance between independence and accountability.

Mandate and the review process: Irrespective of whether the decision-maker is the Minister or the RIC, it is subject to an appeal process, that is, appeal to the Fair Trading Tribunal—clause 45(1)

Removal for misbehaviour: While security of tenure of the commission is an essential safeguard of independence, that protection should extend to cases in which there is evidence of incompetence or misbehaviour, therefore, this Bill clearly provides in clause 8(2) for the termination of commissioners on that basis.

Transparency in decision-making: To achieve this objective the Bill provides mechanisms for interested parties to make submissions on matters under consideration, and for the commission to publish decisions and the reasons for those decisions. It is important!

Clause 56(2) requires the commission to publish the results of any studies of deficiency and economy of operation, and of performance by service providers which the commission may carry out. In order that there may be a transparency in the award, suspension or cancellation of licences, clause 46 of the Bill provides that such licences shall be available for public scrutiny at the office of the commission and may be reproduced by the commission at the request of any person. The Bill also requires the commission to prescribe and publish standards of service as enunciated earlier in clause 6(1)

Review of budgets and reports: The commission's accounts and annual reports shall be subject to scrutiny by Parliament.

Bad debts of the RIC can only be written off with the prior approval of the Minister of Finance. Finally, the system of accounting introduced by the RIC must be approved by the Minister with responsibility for finance.

Limitations on subsequent employment: Clause 14 also limits the ability of the commissioners to move directly into the service of regulated industries until the expiry of two years from the termination of their appointment.

The need to consult—clause 6(2): The Bill requires the commission to consult with service providers and representatives of consumer interest groups and any other party having an interest in the matter. It is a continuous and an evolutionary process as to how you provide the regulator with independence and how you reconcile that independence with accountability. We felt that we have struck a balance which will meet the approval of this Senate.

Protection for investors: Parts 4 and 5 of the Bill contain provisions which are intended to give a certain degree of comfort to investors, such as ensuring fair and reasonable rate of return, and the avoidance of expropriation without timely compensation.

If one were to look at clause 40, it says:

“(1) A license issued in accordance with this Part—

- (a) shall contain provisions setting out—
 - (i) the term of the licence;
 - (ii) the service governed by the licence;
 - (iii) licence fees and cess;
 - (iv) the procedure for enforcement of the terms and conditions of the licence;
 - (v) the procedures, principles, and mechanisms relating to compensation of the service provider;
 - (vi) entities to be employed for resolution of disputes between the service provider and the Commission or the Minister.

- (b) may contain provisions setting out—
- (i) the principles by which the maximum rates for the service, are determined.
 - (ii) the minimum quality and service standards applicable to the service;
 - (iii) arrangements for continuity of the service in the event of default or bankruptcy of the licensee.
 - (iv) procedure for variation of the licence;
 - (v) rules concerning interconnection with other entities;
 - (vi) rules promoting or limiting competition in the provision of the service.
 - (vii) any other matter relevant to the supply of the service...”

Sen. Daly: I thank the hon. Minister for giving way. This might be an appropriate time to ask these two questions. It appears to me that subclause (a) is mandatory and subclause (b) is permissive. I am wondering why a distinction has been made between subclauses (a) and (b) in making some provisions mandatory and some provisions permissive, for example, service standards. If, in fact, there is that distinction, (b)(ii) service standards, should certainly come under the mandatory provisions.

11.05 a.m.

Hon. G. Singh: I would take a note of the Senator’s concern and deal with it in my winding up, but it is an important point.

Madam Presiding Officer, what is clear is that the licence terms as enunciated in clause 40 would reflect Government’s policy objectives with respect to the utility sector. The use of freely negotiated licences is a strong incentive for investors to come to long-term agreements and the new legislation gives investors a level of comfort as their investments would be less vulnerable to arbitrary governmental action.

Thirdly, the investors could expect a rate of return which is fair and reasonable. In this regard, improvements in profitability would result should there be increases in efficiency over and above that which has been pre-determined in the licence or other agreement.

The Bill also seeks to protect consumers' interests. The interest of the consumer would be institutionalized through clause 24 through the mandatory appointment of consumer service committees. Persons to be appointed to these committees would be drawn from throughout Trinidad and Tobago with one member being nominated by the Chief Secretary of the Tobago House of Assembly.

The consumer service committees would focus on empowering the customer by providing dedicated staff to handle customers' complaints and queries in a timely and efficient manner thereby bringing quality utility service closer to the customer. The consumer service committees and the mechanisms for complaints and review established under the Regulated Industries Commission (RIC) provide an avenue for redress to the public when they are dissatisfied with the quality of service. It gives citizens of the country some leverage in dealing with service providers.

The Bill also provides comfort to the customer since service cannot be disconnected once the bill is in dispute. It provides for appeals from the Regulated Industries Commission to be heard and adjudicated by the Fair Trading Tribunal.

In the performance of its functions under clause 6(2), the commission is mandated to consult with the service provider and representatives of consumer interest groups and any other parties it considers having an interest in the matters before it.

Furthermore, the commission is once again mandated to ensure maximum efficiency in the use and allocation of resources so that services are provided at the lowest possible cost, equal access by consumers through service, and non-discriminatory treatment of consumers on our service providers similarly placed.

Madam Presiding Officer, another noteworthy provision is the power of the commission to investigate complaints by consumers of the failure to obtain redress from a service provider in respect of rates, billings, and unsatisfactory service. With the passage of this Bill, the consumer could expect to receive value for money through improvement in standards, and terms and conditions of supply.

Over the years, there have been ongoing complaints with respect to retroactive rates charged by monopoly utilities. This Bill brings some relief in this area of concern to consumers. Clause 50(2) mandates the commission to determine the rate application within six months and clause 51(2) does not permit a service provider to impose rates and charges retroactively for any period other than that

commencing six months before the date of the rate of application. The combination of these two section, is that in future, rates may not be charged retroactively for a period exceeding one year. Today, this has been accomplished by ministerial direction.

Over the past decade or so, many countries have started experimenting with different approaches to price regulations in an effort to overcome the weaknesses of the rate of return method. Instead of limiting the service providers revenue under the new methodology, the regulator fixes the price that can be charged for long periods of time according to a formula that takes into account the future inflation and future efficiency gains expected from the utility.

Price caps, or insensitive regulation as it is commonly called, are becoming increasingly popular in many countries including the United Kingdom, Argentina, Malaysia, Mexico, New Zealand, Peru, Puerto Rico, Singapore and the United States of America. Some of the key advantages include stronger incentives for efficiency. The utility has incentives to improve efficiency since it retains the benefits of lower than expected costs for the period during which prices are fixed. It provides a smoother, more efficient means of tariff determination. This new method would focus on regulating the tariffs within the entire utility sector rather than utility companies. Rates would adjust to suit the prevailing economic reality. As such, the phenomena of rate shocks where rate charges change by a large quantum in one fell swoop would be eliminated. It would ensure that the utilities must achieve some yearly level of efficiency improvements which would ultimately impact on the final price to customers. It produces financial stability and viability by introducing rating flexibility. It reduces transaction costs of regulation especially costs related to hearings.

Madam Presiding Officer, to accommodate the changes underway in the utility sector, as I indicated earlier, requires the regulatory body to transform its internal structure so it can respond with the speed and flexibility that the utility sector demands. The structure proposed for this new body is not a large monolithic institution, but a highly professional and technical regulatory agency to facilitate and better manage the regulatory framework for the utilities, therefore, we see a small, highly professional, highly skilled body to carry out this work.

The Regulated Industries Commission would ensure enhanced quality of service, consumer protection, and ever increasing efficiency whilst ensuring that the utilities are financially viable. The key objectives of this new Bill are to protect

consumers from possible monopoly abuse, possible arbitrary action by the Government, and to promote economic efficiency.

The Bill is truly customer friendly and in keeping with Government's thinking that quality customer service must be a primary objective of the utility sector. The new proposed mechanisms included in this Bill were therefore drafted in the interest of the nation's utility sector and the population of Trinidad and Tobago in keeping with Government's policy in building a total quality nation.

It is perhaps for the first time that this legislation enables us to have a very focussed approach with a clear responsibility for the proper foundation for the creation of a rational, proactive, flexible, professionally staffed and well-equipped body to undertake this important function of utility regulation.

We believe that we have made a good beginning and this Government is committed to the regulation of the utility sector in the interest of the consumers. Our Government's vision for utility regulation involves not only the widest participation of interested groups, but also the establishment of a proactive and flexible regulatory system for the country. I believe that this Bill is a catalyst for the undertaking of this responsibility.

I commend this Bill to this honourable Senate, and I beg to move.

Question proposed.

Sen. Nafeesa Mohammed: Madam Presiding Officer, I take this opportunity on behalf of all my colleagues on the Opposition Bench in the Senate, and our entire party to congratulate you on your nomination and elevation to the position of Presiding Officer in the Senate.

Today was indeed a historic day in our Parliament and the fact that you had at least shown a willingness to accept nomination for this particular position, is a reflection of your deep sense of patriotism. As a woman of substance in our country, one who has been making a contribution in so many spheres of activities in our society and as a parliamentarian who has served in our Parliament for a number of years spanning successive administrations, we are heartened at your elevation and congratulate you. We are confident that our parliamentary traditions and practices would be upheld and the dignity which is associated with our parliamentary practice would prevail.

We congratulate you, Madam Presiding Officer. [*Desk thumping*]

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The hon. Minister of Public Utilities went to great lengths to give us some background to the Regulated Industries Commission Bill which is before us today and he indicated that the movement for change with respect to the Public Utilities Commission is a movement which commenced many years ago, way back in 1977. He referred to several reports and studies which had been done, and a number of documents and today we see after all these years there is, in fact, a piece of legislation seeking to effect some reform with respect to the Public Utilities Commission. We on this side recognize there is need for reform and as the Minister himself pointed out, during the period 1991—1995 in particular, a number of things were happening and efforts were being made with respect to effecting the kind of reform that was required and which he outlined.

In terms of the intent and purpose of this piece of legislation which is before us, we on this side are in support of the spirit and intent of the legislation. However, with respect to the actual provisions in this Bill, there are several areas of concern which we have, as a consequence of which we are calling for it to be put before a joint select committee of the Parliament. It is a Bill which would have tremendous consequences for the people of Trinidad and Tobago because it deals with a very important aspect in terms of the mechanisms for setting rates for our public utilities and moreso, we are dealing with some basic, essential services for our society, particularly with respect to water and electricity.

11.20 a.m.

I heard the hon. Minister remark about us wanting to delay. You see, Madam Presiding Officer, we have been seeing, over the last few months and, moreso, over the last two years and more, a tendency on the part of this Government to railroad its way through, in nearly every area of activity.

The mere fact that we have called for this Bill to be put before a joint select committee, and the fact that the Government's reaction is to talk about delaying the process, is just a reflection of the high-handedness with which they want to operate the affairs of Government. This particular piece of legislation is important and it is the kind of legislation that requires more detailed scrutiny, particularly by us, as parliamentarians.

I say this because when the hon. Minister presented this Bill he referred to a number of studies that had been done. Madam Presiding Officer, that is the kind of information, as they talk about transparency, that they should make available to parliamentarians, so that if we sit as a joint select committee of the Parliament we

would be in a better position to look at these various reports and studies and be able to give this legislation the kind of careful analysis and scrutiny that is required, so that at the end of the day we would have a piece of legislation that would be satisfactory to all parties concerned and would redound to the benefit of all citizens of Trinidad and Tobago.

We know that over the last few weeks the Government has been trying to rush through a number of pieces of legislation. We are dealing with important pieces of legislation. Parliament has to be prorogued, we know that, but this attitude of wanting to rush through these things without giving the kind of careful study, is a matter of great concern.

Mr. G. Singh: Would the hon. Senator please give way?

Madam Presiding Officer, this Bill was published for public comment since September, 1997. The Opposition Members had the opportunity to comment on this Bill. The Bill was laid in the Senate some time ago. If there are amendments that the Opposition Members want to table that is fine—they want to continue the delaying process.

Sen. N. Mohammed: Madam Presiding Officer, that is the kind of arrogance and high-handedness about which I speak. The mere fact that the Bill was put out for public comment does not necessarily mean that it will get the kind of attention that it deserves. We have seen a number of other pieces of legislation being put out. Just last week there was the Integrity Commission Report being laid in the Parliament. There is a very critical piece of legislation that is presently before the Special Select Committee of the Parliament, that is the Planning and Development of Land Bill. These kinds of legislation require careful scrutiny. Not because the Government goes on a public relations exercise and spends taxpayers' money to publicize and to put advertisements on the newspapers, it means it would necessarily get all the opinions that are required in order to reflect the true body of opinion with respect to the particular legislation and that is sufficient.

We are here as parliamentarians to perform an important role. The Government has brought a piece of legislation and it is our business to look at it and to provide critical analysis to the Bill. The hon. Minister referred to several reports and studies that have been done. We, as parliamentarians, have not had access to these documents and, perhaps, if a bill like this is before a joint select committee, one would have a better opportunity to access this information and to study the legislation in a more effective manner.

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It is the United National Congress that has been campaigning all along for a change in parliamentary functions—I am talking about more committees and what have you—and now when we call for committees they are backing down on it. It is just a lot of “ole” talk, public relations and propaganda. *[Interruption]*

They talk about being lazy, but from my research on this particular piece of legislation, the fact of the matter is that in the period, particularly between 1991 and 1995, much had been happening. We know that the Public Utilities Commission came into being in 1966. At that time the purpose of setting up a Public Utilities Commission was to deal exactly with what the Minister was talking about, that is, with the likelihood of political interference when it came to these types of monopolistic institutions, entities or utilities. The purpose of the Public Utilities Commission was to protect the public from possible exploitative situations involving these monopolistic positions enjoyed by the public utilities.

The hon. Minister went on, in referring to his studies and report, to point out that one of the realities is that in terms of the functioning of the public utilities there have been many handicaps. We are aware of that. We are mindful of the limitations. We know that under the Public Utilities Commission the *modus operandi* is a type of *quasi*-judicial operation; a body that involves hearings that could go on for many months. It is time-consuming and we know that much time is normally spent under the Public Utilities Commission in terms of legal arguments and the normal procedures that are involved when an actual case is going on before the courts—as we know it to operate under our court procedures—because it is a *quasi*-judicial body, and as a consequence there are many handicaps associated with it. Therefore, in terms of the need for change, we have no difficulty in moving towards change with respect to the operations of the Public Utilities Commission.

In the period 1991—1995, this is the kind of movement that was, in fact, taking place. I have in my possession a newspaper clipping from the *Trinidad Guardian* dated January 5, 1995—that was a very historic year in our country. This article on page 1 deals with the public utilities:

“Utilities must curtail rate hikes”

On another page the headline is:

“New PUC to be a watchdog body”

Madam Presiding Officer, I will quote some paragraphs from this particular newspaper clipping. It says:

“THE RESTRUCTURED Public Utilities Commission (PUC), soon to undergo a name change, will insist that all utilities curtail rate hikes to a certain level, and they will not be allowed to pass their costs on to the consumer. ‘The PUC will insist that utilities’ rate increases are kept below the rate of inflation,...

So this will be an incentive for the utilities to be cost-effective. If we allow them to charge rate hikes which are above inflation in rate, they will be fuelling inflation.”

11.30 a.m.

The article refers here to the price-cap formula which the new PUC will use to set rate hikes as being an integral part of the restructured entity. Its transformation, which began last year, is still incomplete, he stated, saying that since the PUC Act must be laid in Parliament, a change of name has been suggested for the restructured entity from the PUC to the Regulated Industries Commission.

Madam Presiding Officer, the background to this legislation, as the hon. Minister pointed out, has been in the making for quite some time, and here we see that in 1995, this RIC was about to be laid in the Parliament. In terms of what the draft of 1995 was, and in relation to the present draft, this is yet another reason we would like to have that opportunity to closely examine this particular piece of legislation, because it was part of our policy while in government, in terms of effecting the kind of change that we are talking about. With the present draft that is before us, it is necessary for us to go through this with a fine tooth comb to see and be able to make the kinds of comparisons that are required.

While we may have no difficulties with the spirit and intent, in terms of the actual provisions here, there are some areas of concerns, and I will go on to point out briefly some of these concerns. The hon. Minister spoke at length about political interference and the likelihood of political or avoided political interference, and hence, in this particular piece of legislation attempts are made to have an independent commission set up to replace the Public Utilities Commission. I have to wonder about the independence of this commission as it is provided for in this piece of legislation, because when I go through the various clauses in this Bill, I see that the role of the Minister in this process, to me, can, in fact, lead to tremendous political interference.

Coming back to this issue of the independence of the commission, perhaps if they were really serious about setting up a truly independent commission, then perhaps what we should have been looking at is the setting up of a body to replace the PUC that might well be a constitutional body; a commission that we can actually help with safeguards and provisions to set up as a constitutional body if we are talking about true independence.

Let us look at Part II of the draft Bill before us. Clause 5 deals with the constitution of the commission, and Madam Presiding Officer, it says here that the commission shall consist of not less than three nor more than five members. The hon. Minister talked about having persons from different fields and disciplines, but I have to wonder about the composition of the commission, because when we look at the PUC Act, the old Act, the composition of the Public Utilities Commission talks about three members from among persons having experience in relation to trade, law, finance, engineering or accounting, and it goes further to include two members representative of the general public.

Under the terms of legislation, in terms of the composition of the commission, there is no representation from the public. Granted the hon. Minister spoke about setting up a consumer committee, but I have to wonder about the role and function of this consumer committee. I have to ask whether it is not just a public relations exercise to simply appear to be allaying the fears of the consumer interest groups. When we look at the clause that deals with the appointment of this committee—clause 24—it says here that:

“The Minister may, after consultation with the Commission, appoint committees to be known as consumer service committees to assist and support the commission in its functions and represent the views and interests of the consumers of services”.

It goes on in terms of the committees, but, clause 25, to me, goes contrary to what the role and function of these committees would be. When one looks at clause 25(4), it says that:

“The Commission is not bound by any report submitted to it by any committee appointed under this section and the commission may reject or adopt a report wholly or partly or with such modifications, additions or adaptations as the Commission thinks fit.”

Madam Presiding Officer, we know that Mrs. Hazel Brown has been a champion with respect to the interest of consumers in our society and the cause of our consumer interest groups for a number of years. I wonder if it is Mrs. Brown were

to be a member of this committee appointed by the commission, and based on some proposed rate hike and increase in water rates or electricity rates which are to come, and if it is that Mrs. Brown represented the interest of consumers in the country and was to agitate, express her concerns and provide a report to the commission, what is clause 25 going to do to her? Her report can just be discarded at will!

We have to wonder about these kinds of measures. Whether it is not just a public relations exercise on the part of Government to appear on the one hand to be appeasing the concerns of the consumer interest groups, whilst on the other hand ensuring that power and control continues to reside with the Minister. The Minister is saying commission, but I started off by talking about the role of the Minister and in many respects, the role of the Minister in this piece of legislation is yet another major area of concern for us.

In terms of appointments to the office of Commissioner, this Bill speaks about the President making the appointments, and we would like the hon. Minister, when he is winding up, to give us some clarification in terms of the President; whether this is a case where the President definitely means the Cabinet, in which case, obviously, the Minister in charge of public utilities will be the Minister advising the Cabinet. We are not questioning that aspect of it.

When we look at clause 15 of the Bill, we are dealing now with offices of the commission and it says:

“The Commission shall appoint for a term not exceeding five years on such terms and conditions as the Minister may determine, an Executive Director who shall be the Chief Executive Officer of the Commission.”

So, the Minister will have the power to set terms and conditions for the Executive Directors, but more than that, what concerns us is the very unusual situation where in clause 18 which deals with staff and related matters:

“The Commission may appoint on such terms and conditions as it thinks fit and subject to such maximum limit of remuneration as the Minister may determine, employees as it considers necessary...”

The Minister will be determining the salaries; not just for Executive Directors, but for staff members. That gives tremendous power to the Minister.

That is an area where one can have real nepotism. As we know, this Government has now established a track record in its short two and a half years in

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office to be well known for its rampant acts of corruption, nepotism, waste and mismanagement. More than that, clause 22 goes on to read that:

“The Commission may employ on such terms and conditions as it thinks fit and subject to such maximum limits of remuneration as the Minister may determine, persons to perform specific tasks that the Commission considers necessary for the due performance of its functions under this Act.”

Is it that this new commission is going to be like a sort of employment agency where the friends, associates and financiers and others of the Minister or the Government will be appointed in positions like that?

One of the tendencies we have is always to say that we did this and we did that and what have you, but the reality is that two wrongs do not make a right. This is the kind of legislation that gives room for a lot of political interference and arbitrariness. This is one area where we would like to see some safeguards. When it comes to matters involving staffing normally, Madam Presiding Officer, within the civil service, there are checks and balances and systems involved. We know that the PUC has operated as a part of the Ministry of Public Utilities, and clearly this RIC is also going to be operating as part of a Ministry, particularly, the Ministry of Public Utilities, so why is there this unusual situation where it is the Minister who will be determining all these things?

This is an area of serious concern for us. More than that, the hon. Minister talked about the realities of monopolistic situations and the change in times and dealing with these types of situations. Madam Presiding Officer, one matter that really concerns us in this Bill is that reference has been made to a proposed Fair Trading Commission. Where is that Commission? When is it coming? If we are talking about this kind of legislation, perhaps it is a case of putting the cart before the horse. Perhaps we needed to set this commission up first so that we would really be confident that we would get the kind of justice that is required in circumstances.

This is another area that concerns me. This RIC was on the verge of being set up in 1995. It has taken this Government nearly three years to reach this far. They want to delay the process further, but perhaps what they should have been doing was putting these other mechanisms in place, for example, the Fair Trading Tribunal. They should have already done that. They should have set up that body already.

11.45 a.m.

So that in terms of this Bill that is before us, we would know that it would not just be a case of passing legislation for passing legislation's sake, and that they would actually be putting mechanisms in place to ensure that legislation would work.

Only last week, I remember hearing an enquiry being made about the situation with respect to the Intellectual Property Office. All this talk! Imagine the Minister of Legal affairs travelling through the length and breadth of the world to talk and boast about intellectual property legislation, and we have the best intellectual property legislation in the world. If one goes, I am sure the office to this date, the actual mechanisms that are required, the infrastructure, has not been put in place. It is the same kind of situation we are seeing here. At the end of the day when we pass legislation, we want to be satisfied that it is legislation that will actually work.

Madam Presiding Officer, just by way of a joke. The other day I was listening to the radio and I heard someone making a comment that the Attorney General's name is now "Billy Maharaj", because is so many bills, bills, bills. You are passing bills for the sake of passing bills and, in truth and in fact, in terms of ensuring that they actually work, we are concerned and worried.

With this particular piece of legislation I have to wonder at the haste with which this Regulated Industries Commission is being rushed through. Only last week—it has not yet been laid in the House of Representatives, but notice has been given that on Friday it will be debated in the Lower House. What is the big rush! They talk about transparency. We want to know what is the big rush.

Because the hon. Minister of Public Utilities has been talking—and I want to commend him. He has a dream and goal for providing water for all by the year 2000. We are fully in support of that. We would like to see him achieve that objective. But in the process, only in the last few months, we have been hearing talk about the setting up of a desalination plant involving over \$600 million. That is the kind of Government policy that we need to know more about. We need to have more discussions about it.

In this kind of legislation, where one is seeking to replace the Public Utilities Commission with a Regulated Industries Commission, this involves the setting of rates. It involves a matter that affects every single citizen of Trinidad and Tobago. We know that over the years there have been many problems. When electricity rates or water rates have to go up, all these things are going to affect all of us. We have to be very vigilant, we have to be concerned.

This brings me to another very grey area in this particular piece of legislation. This deals with, again, the role of the Minister, because, in Part III of the Bill, clause 30, it says:

"30(1) Subject to subsections (2) and (3), the Commission may impose subject to the approval of the Minister, a cess on rates and charges payable to service providers."

So the Minister may impose a cess. But more than that, we would want clarification. These are the issues we want to have the opportunity to examine in greater detail.

When we look at Part IV, clause 37, which deals with licences, it states:

"37(2) The Minister may by Order amend the Second Schedule except that he shall not add a service to the Schedule unless he has consulted with the Commission and he is satisfied that it would be in the public interest to so add and that -"

But clause 38 deals with the power of the Minister to grant licences. This is a very, very grey area. The Minister stands here and talks about political interference, and this Bill talks about a licence, and here it is that the Minister will be granting the licence and, from what I gather, the most the commission will be doing will be setting out certain basic principles and guidelines. Where are these principles and guidelines? Reference is made to a licence. What are these licences going to look like? I am sure that in terms of the actual preparation of a licence, this is an area that will require a very specialized kind of attention and people who are really skilled and have the experience in the field to deal with so forth. Again, it is the Minister who will be granting these licences.

In the granting of these licences, this is where we have to worry because it leaves a lot of room, very quick profits can be made. We really have to be vigilant, we want to be sure that in terms of these licences, that there are proper guidelines. There is nothing in this legislation to inform us or to give us a better idea as to what these licences are going to look like.

If it is that we are moving away from one system in terms of setting rates into a new system, here it is they are saying that the commission will set the guidelines; it is a whole new formula—I have heard talk about a price-cap formula—a whole new method of setting these rates. But we have very little information to go on and we have to wonder and ask questions about these licences. We are very concerned

about the extensive powers in this legislation that have been given to the Minister in terms of the granting of those licences.

This is where clause 40, for example, is very relevant. It says that a licence shall contain certain things, but in clause 40(1)(b) it says it may contain, and speaks about the principles by which the maximum rates are determined, the minimum quality. These things are all well and good, but at the end of the day it is the Minister who grants these licences.

More than that, when one looks at clause 42, it is the same Minister who may vary the duration of a licence or any condition in the licence. So this is an area that really, we are very concerned about. We need more information, especially for this reason, if there is some precedent of a licence, let us see what it looks like. What mechanism exists in this legislation that at the end of the day if an actual licence is negotiated, who will be negotiating these licences? What checks and balances are there in terms of ensuring that these licences will redound to the benefit of the country?

They talk about committees, but as I pointed out, we are not sure that these committees will have any real teeth. Yes, the committees would listen to complaints and they will express views and so forth, but we saw where whatever the committees submit, it can be overridden. There is where the real nitty gritty of it lies in terms of the licences, the preparation of these licences and what goes into them, we are seeing that ultimately it is the Minister who has the last say in this matter. We are very concerned about that.

So, Madam Presiding Officer, these are some very serious concerns that we have with this particular piece of legislation. I merely wish to reiterate or repeat our call that this Bill be referred to a joint select committee of the Parliament. Not because Parliament is going to be prorogued in a couple weeks' time they can expect to railroad this thing through, because it has implications for all of us. We know over the years the problems associated with increases in electricity rates.

You know, with all due respect, the present Minister of Public Utilities has a tendency to go around the country giving the impression and, I am sure to a large extent he is genuinely concerned about giving orders to prevent sudden rate hikes. I remember, very early in the term of this Government when, in 1995, there was a Motion in this Senate dealing with the Severn Trent agreement, a lot of public relations went into it, some statements were made by the hon. Minister that with the Severn Trent agreement they were able to renegotiate new terms and

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conditions and that they were able to get certain things. For example, they got a hardship relief concession, in terms of relieving pensioners and poor people who were unable to pay their bills. Whilst the Minister was saying that, I had in my possession actual water bills from pensioners, increasing their water rates from \$100 to more than \$1,000, sometimes \$2,000. This hardship relief programme obviously was just a public relations exercise on the part of the Minister and his Government. So, even when he was speaking about it, I remember enquiring about the procedures. If they get these kinds of bills with sudden increases, what can they do, and the mechanisms were not in place to assist those poor people and pensioners. So that, this is absolutely no guarantee that this piece of legislation would really assist.

The hon. Minister tried to give the impression that it is so consumer friendly and it will protect consumers, but at the end of the day, we do not know if there are some long term plans or other things that may be in the making with respect to the Government and moreso, with respect to the setting of rates and so forth.

We, as citizens of Trinidad and Tobago, have to be concerned and we want to see a regulated industries commission that would really be an effective watchdog commission. We are not satisfied with the Minister getting up and saying that it will be so, when in truth and in fact, if we look at the provisions in the legislation, it is far from being so. It is a commission where, at the end of the day, the consumer committees would have very little teeth. We are seeing where in terms of the composition of the commission that the interest of the public will not be represented on the commission. We feel that the base of the commission needs to be broadened. We really want to see certain checks and balances, especially in this situation where we have the Minister actually determining salaries, determining licences, being able to vary the terms and conditions of licences.

This kind of legislation affects not just WASA and T&TEC, it deals with telecommunications as well. In this information age, we know that tremendous changes are taking place and we have big money involved in this process. We have to be very careful.

All we are asking is that this Bill be referred to a committee and let us go through it clause by clause and be able to put those safeguards in that would protect all parties concerned.

Madam Presiding Officer, I thank you once again for this opportunity.

12.00 p.m.

Sen. Martin Daly: Thank you, Madam Presiding Officer, I too join in congratulations on your election to preside over today's sitting. I think I can say very confidently, that immediately upon your assent to the platform today, a calm descended, not only over this Chamber but the entire country. [*Desk thumping*] I hope that the Government would keep in mind that your eight remaining colleagues would guard your seat and the vote that goes with it, very jealously.

At the same time, at the start of each of the sittings in the near future in which we will have to engage in the exercise of an election, I hope the same wisdom and impeccable good taste that attended your election today would prevail.

We have to be very careful with this Bill because of the way in which the Minister has presented it. He acknowledged that it had been on the drawing board for some time but, regrettably, as full-time politicians must do, we had many labels about freeing us from arbitrary political interference and all the good things that this commission would do and how wonderful it was that we were now moving away from rate regulation and a *quasi*-judicial process. In the course of all these political perks we have to be very careful about what we are doing.

Fundamentally, what we are seeking to do is replace one system of rate regulation with another. First of all, it is important to identify the features common to the out going Public Utilities Commission Act and the Bill we are debating.

What they have in common is simply that the rate making process, that is to say, the process by which the rates which public utilities can charge, would be first and foremost in the hands of a commission. To that extent we are not doing anything different. What we are doing differently is providing for the first time that these rates can be fixed, not in the open gaze of a judicial process, but in the closed rooms of the commission. That is not necessarily a bad thing but we first of all have to see what it is we are jettisoning along with the *quasi*-judicial process.

It is not necessary that a *quasi*-judicial process should be a long, drawn-out procedure, whether it is so is entirely in the hands of the commissioners who can shorten the process by giving directions for written briefs and so forth. But the *quasi*-judicial process is going, therefore I do not want to defend it. What I would point out and emphasize—and indeed, I have submitted amendments which would shortly become available—is that, if you remove the rate fixing process from the openness of the *quasi*-judicial body which has subpoena powers to the closed

rooms of the commission, unless you specifically so provide in this legislation, the public is going to lose one considerable advantage.

I have appeared in some of the lengthy proceedings before the commission, and such is the ability of the President from time to time to cast his net so wide, that we actually have someone on these Benches who sat as a commissioner, so you will get the benefit of our experience. The one advantage of the *quasi*-judicial process and having a body with subpoena powers is that the public utilities cannot hide their books and records. Invariably in my experience one gets extensive—it may not always be relevant, and we will come to that—cross-examination by counsel on behalf of the objectors to the rate increase on the books and records of the public utility.

Thus, that it is not simply their sanitized, audited financial statements that come under the gaze of the public through the participators in the *quasi*-judicial process, but all their books, records and supporting information is also available to the public. Nowhere have I found in this Bill any expressed powers given to the regulators to ensure that access to those books and records is preserved. *[Interruption]* Is it there? We will see. Equally important is that I have not found any provision providing for the giving of information to the commission or its consumer committee when it is investigating complaints. The amendment I am proposing and which would be circulated is to make it a term of the grant of the licence under section 40 and 40(a).

Mr. G. Singh: If the hon. Senator would look at clause 58 there is a condition of every licence.

Sen. M. Daly: I am grateful to the Minister for pointing out 58(a) which states:

"It is a condition of every licence that -

- (1) a service provider shall allow a Commissioner or any officer or other person authorized by the Commission to inspect the accounts, books, papers, records and documents and records of the service provider at any reasonable time;"

[Interruption] After looking at clause 57(a), I am much obliged because that is a very important feature. I am grateful to the Minister for pointing it out, so I would look at my amendments again.

The purpose of my amendments is to make sure of the condition of the licence. If you remove this process from the *quasi*-judicial process you lose the ability to have these books and records available for inspection. This does not satisfy me completely because I believe it is important that these records be available to—well, we will no longer have objectors—but the purpose of my amendments is to make sure these books and records are also available to persons who may have an objection about any rate that is fixed by the commission.

In other words, I am proposing, by way of my amendments, not only to give access to the commission, its officers and its committees, but there must be access to its books and records to any person wishing to lodge an objection or make a complaint to the commission, whether it is about rates or other aspects of the utility.

The one advantage of the present system is that the objectors play the role of a third party. They provide another look at what is going on in the utility and between the utility and the commission. These clauses do not go as far as my amendments intended. I will review my amendments with the objective of making sure these powers are added so that the public or someone wishing to make a complaint to the commission can have access to those books and records. Otherwise they would be making the complaint with a hand tied behind their back, missing essential information. Therefore, I will review my amendments but that is my major objective, that the public must have a role in this, apart from the Minister and the commission.

Madam Presiding Officer, I have already raised this sore point with the Minister. Why is it that some of the conditions of the licence are mandatory and some are permissive? I would have thought that was a decision taken already and therefore, he would have been able to assist me with this. I do not understand why in clause 40 there are mandatory conditions in 1(a) and permissive conditions in 1(b). I think it is very important because as I indicated, at least, 40(b)(2) requires that quality standards are mandatory in the licence.

I would make my other points clause by clause. In relation to clause 1 it may be necessary to expand the base of qualifications referred to here. The Leader of Government Business has pointed out to me that no provision is made for experience in business. We have many persons who are experienced in business but may have no formal training, therefore, I will also be proposing an amendment to clause 5.

I am a bit confused as to the combination of clauses 38(2) and 39(1) because it appears that under clause 39(1), unless I misread it, all licence applications have to go before the Minister and before he grants the licence the commission would have given its comments. I am not quite clear why there is a 38(2) which suggests that the Minister has to forward a licence application to the commission where he is contemplating a licence for the exclusive provision of service.

I do not quite understand the interrelation between clauses 38(2) and 39(1), and I suggest that there should be a remodelled clause 39(1) that includes a requirement on the Minister not only to forward the application to the commission but to consult the commission and to be satisfied with the grant of any licence. Whether it makes for exclusive provision or not, he should be satisfied that it is not in the public interest. It seems to me that the standards prescribed for an exclusive licence in clause 38(2) are better and more readily understood than the rather vague standards in clause 39(1) which is forwarding the application and advising the Minister. I would be proposing an amendment that combines clauses 39(1) and 38(2).

I have already said what explanation I require for clause 40 under this Bill. I am pleased to see that in clause 67 there has not been removed from the purview of Parliament some of the principles and matters that must go into the regulations. What I ask the Minister to consider under this clause is, following the example of the Financial Institutions Act, whether the first set of the regulations and only the first set, ought not to be brought to the scrutiny of the Parliament under the provisions for an affirmative resolution.

I emphasize "only" in relation to the first set because if, in fact, there is going to be any substantial variation of the principles going into rate fixes and other matters under this Bill, I think it would be sensible and prudent for Parliament to look at those regulations for the first time so that if there is a serious policy shift it may be debated. At the risk of repetition I would say that the Financial Institutions Act would provide a good example of how we can accept that the first set of regulations must be subject to an affirmative resolution.

There are some very important technical details to look at, but basically I am pleased to see that although this is a capitulation to the requirements of foreign capital that there not be some judicial process to which they cannot negotiate, because that is what this is about. Although we are submitting to the requirements of foreign capital and removing the judicial process—it is well known that is what

we are doing—some of the safeguards of the old Public Utilities Commission Act are there.

I would end as I began, I am not seeing provisions in here that provide for the availability of the books and records of the utility to the public, the persons who have to pay these rates, and my amendment would go to that. I am satisfied that there is provision for the officers of the commission. I think it is important to refer to the committees expressly and my amendment would do that. Subject to those modifications I would support this Bill.

12.15 p.m.

Sen. Rev. Daniel Teelucksingh: Thank you, Madam Presiding Officer, I too congratulate you on your election to be our Presiding Officer today. I am particularly pleased that your election received the support and the confidence of, particularly, the Government and the Opposition Benches.

I say this because our country has been traumatized and subjected unnecessarily to prolonged and bitter standoffs between these two Benches and, therefore, such brief experiences, as demonstrated today, of co-operation and understanding between both, I think this is most refreshing for Trinidad and Tobago. I wish we had more of this type of co-operation between these two Benches.

Madam Presiding Officer, my comments about this Bill—you will forgive me if possibly in the course of the debate or by the end of all the contributions I step out of line because this is a very serious piece of legislation. I looked at it by myself with a background of the functioning of the public utilities in Trinidad and Tobago over many years. In my humble estimation, Madam Presiding Officer, I feel that the Bill is top heavy with numerous clauses and sections.

So many clauses and sections—I thought last evening while reading this Bill which creates this Regulated Industries Commission, of it being excessively preoccupied with matters and conditions of service of members of the commission. Out of 69 clauses in this Bill I counted 30 of them dealing with the forming of a commission and this disturbed me. I feel that half the Bill is missing. Somebody has to correct me. Conditions of service of members of a commission. Staffing? You spend so much time on staffing? You are inventing or creating a cadre of directors and assistant executive directors of subcommittees. You spend so much time talking about remuneration, pensions, the kinds of meetings of commissions, about management and finance. That is their Bill; all these cumbersome details; forming a new body—which I feel might be another glorified commission set for the Twin

Towers and far removed from the real needs of the public whom the utilities are supposed to serve.

You must have seen the news on Trinidad and Tobago television last evening relating to some Belmont residents with plastic containers and buckets and so forth. The Minister is saying today in his presentation about the new Regulated Industries Commission, just as we have right now the Public Utilities Commission, and I quoted him saying, at least more than once, about better service at lower cost to the consumer. If this is the objective of the Bill this is the half that I do not see catered for in the Bill. This is my disappointment with this piece of legislation.

It is about the Belmont people complaining last evening about no water in their community; it is for years and years people all over Trinidad have been complaining. If we find something wrong with the last Public Utilities Commission and they are creating a new one after so many years of service, where are the comfort clauses here? Where are the clauses that give us the assurance that we are going to deal with the real problems of the public? I do not see it here. This is why I make an apology and I hope that others who see it in this Bill later on in the course of this debate will enlighten me and show me where it is.

I had the chance to look at the commission that is operating at present—shall I call it the old one, the Public Utilities Commission Act—and I asked myself after reading both of them: “Well, what is new?” What is new as far as the needs of the public go and the work of these commissions is concerned? How does the Bill assure us that the proposed commission will get the job done?

I see some new names and so forth but the needs of people remain the same. How are you going to get, in this new piece of legislation, the service providers to be responsible to the public they serve? I personally feel out of the 69 clauses, whoever drafted this piece of legislation missed something. Maybe they were more concerned about setting up this special group of select people. I do not see much difference between what they have done here and the other Public Utilities Commission; that Commission that has failed in so many ways.

Listen to this, Madam Presiding Officer, from clause 6 which I considered to be about the most important clause in the Bill. I will just read one or two sections:

- “(g) impose such sanctions as it may prescribe for non-compliance with the standards referred to in paragraph (e) and any conditions attaching to a licence;

- (i) to monitor rates...
- (l) investigate complaints by consumers, of their failure..."

That would be the service providers—

“...to obtain redress from service providers in respect of rates, billings, and unsatisfactory service...”

That is a problem.

“...and facilitate relief where necessary;”

I would have loved to see how the new commission will address things like unsatisfactory service as far as public need is concerned and how it would facilitate relief where necessary. That is the real concern in a piece of legislation like this as far as the public is concerned. The question is: How does the Bill empower the proposed commission to efficiently fulfill these functions?

My next concern is about the operations of public utilities in Trinidad and Tobago that are under foreign-based management. I would like the hon. Minister, in his reply, to enlighten me on this Bill. Tell me something about the conditionalities and the contracts where you have foreign-based management of our utilities and how are the terms of their contracts in harmony with the provisions of this Bill; and how will this commission operate *vis-à-vis* the contractual arrangements and agreements for these people who come from overseas to run our utilities. If it is in the Bill, personally, I feel it is too vague.

Clauses 42 and 43 deal with the power to vary, to suspend or to cancel the licence. Somewhere along the line I get the feeling that after a contract is signed, let us say with these service providers, that we are bound and we are tied. The best and most recent example would be Severn Trent. I have to talk about them. Are you telling me that once the contract is signed and we know that we are bound all around—are you giving us the assurance that the Minister or the commission has the authority to modify, vary, suspend or cancel? The message we have been getting for months, maybe for years, is that we cannot do it. Are they telling us now that they have the power, after they have signed these agreements with their foreign-based management teams, by this new piece of legislation that they have new powers to vary, suspend and cancel? They have to show us that. Somehow or the other I doubt this very much.

The question of New Zealand International Post, that is the latest issue and a very important matter in Trinidad and Tobago. I am concerned about the signing of contracts and the handing over of our public utilities to foreign-based management with five persons in a commission and the Minister sitting down and making arrangements like those. I have always said that in terms of these very serious utilities—I am not talking about granting a licence to a television cable company. Anybody could do that. Go ahead and grant your licence as to where the television cable must run. I am talking about serious utilities such as those listed in the first schedule; WASA, PowerGen and one or two others. Now we are adding the postal management, far different from the small licence like cable television.

I personally believe that the time has come when we need parliamentary involvement and “parliamentary” does not mean Cabinet because the present Government has been extremely critical of the decision taken by the last administration *vis-à-vis* Seven Trent and the water utilities. That was a Cabinet decision and they have been very critical of the Cabinet decision. My submission is that in the case of all these very important public utilities you need wider consultation before decisions are made.

I think the legislation is a good attempt at something but somewhere along the line, Madam Presiding Officer, I am not happy with it. I am not pleased in that all those who are responsible for drafting the legislation were more concerned with setting up a commission rather than telling us how this commission is going to meet the real needs of the people; the needs that have not been met by the present Public Utilities Commission.

I thank you very much and I eagerly look forward to answers.

Madam Presiding Officer: I think this is a good time to take the break. The sitting of this Senate is suspended until 1.30 p.m.

12.30 p.m.: *Sitting suspended.*

1.30 p.m.: *Sitting resumed.*

Sen. Joan Yuille-Williams: Madam Presiding Officer, first of all before I make my contribution, let me too join with those who have congratulated you today on assuming this office. I also wish to thank you for accepting the nomination, which I am sure will ensure that the dignity which this Senate is accustomed to is sustained. I am sure the entire country breathed a sigh of relief when they heard of your acceptance. No doubt this is a red letter day for us in the

Parliament and the country. I knew before I came here that something good would happen.

Madam Presiding Officer, I would like to make a few comments on the Bill before us this afternoon. I listened to the hon. Minister as he went through the history, I should say, of this particular Bill. I think he alluded to since 1970 and the fact that several governments at different stages had done certain things to this piece of legislation or with the intent of this legislation. I know for the last administration, that a draft was left there and I think this one is somewhat different to the last draft. However, this has reached Parliament.

Before I go any further, let me just say—and sometimes I need to repeat this—I remember my colleague spoke this morning about putting this to a joint parliamentary committee. Immediately upon her saying so, I noticed that certain persons took objection to it in one form or the other. Regardless of how people felt, I think it was well meant and her design in saying so is that we felt certain parts of this needed further explanation and further work. My point is whether we agree or disagree, after having tried to work on a piece of legislation and having tried to get some facts about it, when we come to Parliament sometimes it seems that suggestions might not be accepted; or they are rejected in a manner which I think does not augur well for the Parliament. However, in spite of that, I think we need to continue because we are here to do the nation's business.

I am going to raise a few points this afternoon. Quite clearly, I am no technical person, but I spent a little time talking and looking at the piece of legislation. For what it is worth, I would like to give my suggestions. This legislation, clearly, is not easy, simply because it is going to bring together a number of service providers—T&TEC, WASA, InnCogen, PowerGen and others. It is difficult to do that in one bit of legislation. We are not like Britain where I understand there are regulated commissions for each of the entities; one for electricity, one for water, *et cetera*. This is a small country and probably we could not do that for each one and, therefore, within that lies our difficulty. How could we put things into law that would service all these entities? That makes this much more difficult legislation to put together than if we were in Britain. That is why I thought my colleague said we need to study this to see how it would impact on each of the entities.

Also, when I look at this Bill I am wondering if—I do not want to call it piecemeal—there should be other things with this legislation. I looked at the Fair Trading Act and the Fair Trading Commission and I am wondering if those are not

necessary to be in place when this comes to the Parliament. To me one depends on the other and I thought that it would be absolutely necessary that they would be prepared to come with this Bill. Probably that is why in some cases, that draft which was left did not come to Parliament because I would tend to think that packet was absolutely necessary. Also necessary with this are the regulations which will inform a lot of what we do. The regulations are not here either and, therefore, we are trying to go through this thinking that it will fit the Fair Trading Commission as it is being said; thinking that the regulations that are necessary will be effective.

One of the things I would suggest as far as regulations are concerned, even though we have this major Bill and we are trying to make this for all the service providers, for all those entities, we may have to look at separate regulations for each of the areas—a separate set of regulations that would deal with WASA, T&TEC et cetera. I do not know if that is too much but I am trying to see how we could do something in Trinidad and Tobago which is different from what is happening abroad to suit our particular needs. Hence, the Regulated Industries Commission Bill governs each of the industries and then probably we may need separate regulations for each.

Madam Presiding Officer, I want to just look very quickly at some aspects of this legislation. As I said before, I am not a technical person but certain things come to my mind. When I look at page 2 of the Bill we have here the definition of rate base. I tried to find out in my humble way whether this is relevant to all service providers—T&TEC, WASA et cetera. Could we use the same formula for each industry? This might be relevant to one industry and not to another. Should we write this, therefore, into law? For example, if this is accepted that we can also add to the Schedule, I am wondering if other industries come into this Schedule whether this rate base definition would fit the others.

For example, I heard people talking about the mail services today. Suppose the post office came under this, will this definition fit? I am wondering if there is not a danger in writing this definition into law because if we put this here, it means that this rate base on any of the industries—water, electricity—will have to be done according to the definition which we have put here. I think we need to look at it and we probably may need to have a different formula for different service providers instead of having a pre-determined formula. So I think we need to look at that.

Probably the hon. Minister would tell us how this will work for each of the industries but I have a difficulty when I look at what is there to see how it will work for each one. At some time I wondered whether or not the commission should not be given that competence to go in to determine and examine the basis for each of the separate entities. So I think we need to look at this whole idea of the rate base, its relevance to each of those we are trying to work with and also look at the future, whether we should put this into law because we have a Schedule which could be amended to include other industries.

When I also look at the composition of the commission—five members designated commissioners—and I listened to Sen. Mohammed when she spoke this morning—last night what I wrote next to this was, “experience in economics, finance, law, public administration.” It came to me that there should be some experience in the technical areas—engineering or something like that. I was surprised that for the type of work that has to be done, that experience is not put in here. I heard Sen. Mohammed reading this morning—I think from the PUC—that that was one of the experiences that should be in there—some kind of experience. There is need for it because as we go through this legislation I am seeing where they would need it.

This commission is looking at setting down standards, for example, whether water is potable or not; service standards—which is technical; performance standards—how we are going to be measuring these things. In that commission there is no technical expertise. I think we need to look at the experiences that we are asking for because to me, quite clearly, there is need for that expertise within it. When one looks at WASA and what they deal with—pumps, pipelines—and T&TEC—the physical plants and whatnot, I cannot see only economics, finance, law or public administration—with due respect to the people in those disciplines—would give the commission the competency that it deserves. Remember we are saying, this commission is overlooking a number of industries. So I would like to hear the hon. Minister reply to that. In fact, if you go to the University of the West Indies there may be people there who can span some of the experiences, including the engineering, to strengthen this commission.

When we look at the powers and functions of the commission, in clause 6(c) which says:

“ensure, as far as is reasonably practicable, that the service provided by a service provider operating under prudent and efficient management will be on terms that will allow the service provider to earn sufficient return to finance necessary investment;”

Regulated Industries Commission Bill
[SEN. YUILLE-WILLIAMS]

Tuesday, September 08, 1998

That is a passing comment in the PUC. I think the aim was to protect the public and here it seems that the aim is to protect the service provider. I see no more in that.

One would also notice that with this regulated industries, I think it is the first time we are having such a Bill to protect not only the private industries but also state-owned enterprises. I put a question mark here as to whether we are signalling that some time in the future that all those state-owned enterprises will be privatized. It is the first time we have seen a Government trying to regulate in this form with the private industries, the state-owned industries. One would want to think that this indicates that the Government intends to privatize all those industries within the Schedule.

Notice again, if you look at clause (d), it says:

“carry out studies of efficiency and economy of operation...”

Again, the need for the technical competence of the commission is required here. If one looks at the functions, the need for the technical competence of the commission is required and, therefore, we plead for some persons on that commission with the necessary skills.

In clause (e) on page 4, it says:

“prescribe and publish in the *Gazette* and in at least one daily newspaper circulating in Trinidad and Tobago, standards for service.”

That is pretty vague. I do not know where we will get these standards articulated. What standards for service? Again, even without the regulations we are just going to imagine. Again I am saying, if this is part of the commission's duty, how could the commission provide standards for service if it does not have within it the necessary expertise? What standards, what specifications for performances? These are all technical requirements.

1.45 p.m.

Somewhere, I think the commission has a responsibility to the public, therefore one of its functions should be to create that public awareness. Everything that is being done here should be done and those people who use the services are not very much aware of what is asked of them; what are the functions; how will this operate? I want to see how that link would be made between the commission and the public. I think it should be written into one of the functions of the commission so the whole business of public awareness would be documented.

I think Prof. Kenny and Prof. Spence may have wanted to speak about this, but in terms of the environment, how does it fit into this Bill? When I look at the powers and functions of the commission, I am wondering how it relates to the environment. I do not know if it will come up in the regulations, but I think somewhere within the functions, there should be something related to the environment.

Let me make some comments on the consumer service committees. I am not happy with this. In fact, I do not know what they are going to do. What are the functions of these committees? As someone said today, they are given the appearance of consumer protection agents, but we have to go much further than that. There are two sets of committees—one is appointed by the Minister and the other by the commission. Let us look at the first set. I do not know why there are two sets anyway.

The only qualification, Madam Presiding Officer, that one needs to have to be on a committee is that one must be a national of Trinidad and Tobago. I see nothing else. I do not see any specifications for qualifications or anything else. Probably they are not needed, because there does not seem to be a specific function for the committees.

The committees, to me, seem to be permanent—serving for periods of three years sometimes—committees and I am wondering how they will be set up. Is there a separate committee for WASA? Is there a committee for T&TEC? Is there one for TSTT? What will these committees do? Are they broad-based? What is their real purpose?

There is no specific number of persons on any of these committees so it seems as if any number of persons could be put if that is what is wanted. This is what people talked about. You probably would not like to hear it, but when some people talked about the politics of the thing, these open-ended things lead one to think that this could be a mechanism where, people can be just called upon, rewarded, put in position, because it is so open and in a Bill like that where things should be kept focussed, things are not just left to the imagination.

It is said that these people would be there; I do not know how they would operate; I do not know what they would be doing and I do not see them protecting any consumer. There is nothing here telling me that, except that the Minister can appoint persons to committees if they are nationals of Trinidad and Tobago and some other things—which I would not mention—they can find a place on this committee, and there can be any number of persons.

Matters should be free of political interference and transparent, so when committees are set up like this to support a commission, room is left for people to think a number of things.

Then there is the appointment for three years, so for three years their own procedure can be regulated. What the committees feel they should do, is done with minutes submitted, as the case may be. Again, I say that people talk about these committees being watchdogs. What are they watching? I am still wondering whether people can approach these committees to make complaints. I still need to know more about these committees. How will these people be paid. There must be a budget to cover these people. They must be given some honoraria; they will be there for three years; I do not know how they will work or be appointed.

I think in fairness to us, the hon. Minister must say something about the appointment of these committees. I do not see them as consumer protection committees; I see no room for people approaching them; I do not see their function; I do not know if they are permanent; I do not know if there are going to be 10, 20 or 40 committees. There is nothing that says these things. I do not know the size of the committees; how many there could be. I do not know what we will want to call this. Somebody is taking cover and hiding behind this and we need to look at it. If it is said that we should not be political, this is an opportunity where all the politics can play and I wonder why, on such an important piece of legislation, this should be like this.

Then the commission is appointing committees. Why two sets of committees? They are all called other committees. Functions for the first set could not be found. I do not know where functions will be found now for the other committees. At clause 25(1), it says:

“The Commission may appoint committees other than those referred to in section 24 to examine and report to it on any matter whatsoever arising out of or connected with any of its functions under this Act.”

What is the Minister’s committee doing if this other committee is supposed to be doing what is said there?

“...on any matter whatsoever arising out of or connected with...”

Also, at clause 25(2), it says:

“A committee appointed under this section shall consist of at least one Commissioner and such persons whose assistance or advice the Commission may require.”

That could be anybody. That, again, is very loose—no specific qualifications or no specialties. One asks oneself: Why?

But, I think clause 25(3) bothers me a bit when it says:

“In relation to the service in respect of which it is appointed,...”

So, it might be appointed for services, I do not know.

“...a committee appointed under this section shall have and exercise such of the powers of the Commission under this Act as are specified in the terms of reference of the committee.”

It seems to me here that the commission can now decide to give any or all of its powers and functions to a committee.

“...and exercise such of the powers of the Commission under this Act...”

So, the commission could now get a committee and appoint and decide to give all of its powers to any of the committees. I think we have to look at that because, later on clause 25(4) says:

“The Commission is not bound by any report submitted to it by any committee appointed under this section and the Commission may reject or adopt a report wholly or partly or with such modifications, additions or adaptations as the Commission thinks fit.”

This is why I find these committees worthless. These committees are being paid; they are sitting; given honoraria; various things are being done for them. I am a bit confused. Why are these committees there? Because they can be sitting for any length of time and when they report, it may not be accepted at all. What is the purpose? Is it that some people would be given an honorarium? Is it that some people need to be kept quiet? Or, are some people being given something to do?

What I am concerned about is suppose this committee decides to grant a licence to some new service provider, as the case may be, and then the commission decides not to accept that decision. What is going to be the position of that service provider?

Mr. G. Singh: Would the hon. Senator give way? I am trying to get clearly what she is saying. That the committee grants a licence?

Sen. J. Yuille-Williams: Recommends, sorry.

Suppose the committee recommends the grant of a licence and the service provider does not know. So, the committee sat; it looked at all the information, or whatever, and it is now recommending that this service provider be granted a licence. Then, the commission decides against it. One asks oneself what is the purpose of having the committee go through all that? If I am going to sit there day after day, or night after night, work on it and make a decision which the commission can easily turn down, one asks oneself what is the purpose of the committee? Because, the decision which is given to the commission is not going to be accepted. That could cause some confusion, so we need to look at that.

I consider these committees to be really useless in terms of the fact that they have no specific function and, secondly, their advice is not going to be taken. We are paying these people; staff is set up for them; there is honoraria for them; there could be any number of them and I am really worried about this particular area.

This is an area where a whole lot of political appointees can be put but, it is serving no useful purpose. In fact, they are not bound to work too hard at all, because, as we said before, the commission could reject all that they have done. It could create much confusion if I am a service provider, and I heard that the decision of a committee which recommended me was rejected by the commission. On what grounds would the commission say no to all that had been done, when the power had been given to the committee to go and do all the investigation, *et cetera*? There must be some way out of clauses 24 and 25.

As I said before, you would notice below, the remuneration, the honoraria and the expenses to be paid to the committee would be determined by the Minister, which makes it worse. I do not want to say it, but sometimes one has to. Any or all of these persons could be friends of the Minister and he could determine how much they would be paid. We cannot say it will not happen, because I always say we are not making legislation only for ourselves. Even if you do not do it, this is for all time. That is why we are here.

When it goes into the law books, it goes for all successive governments that have to adhere to the laws. Much room is being left for unscrupulous people, because hundreds of people could be involved in this exercise doing absolutely nothing and being paid by taxpayers' money in the long run. We will see how that works out. I am worried about it and I do not know how this could have reached here, when probably people did not listen to the comments made. I want to know why is the Minister going to determine how much moneys are to be paid to these people?

We need to look at these things very seriously, because I really do not like this whole matter of committees. I do not know how in a short time this afternoon you are going to tell us how you are going to regulate this whole matter of committees and their functions. What are they doing? How are they going to function in their relationship with the commission? All that is needed before this Bill is passed.

I think, Madam Presiding Officer, we need to hear a number of things from the hon. Minister. I do not know how he can convince us, but it needs to be documented and it will take some time. I do not think anybody at all here could be happy with this as it stands, if we look at what is stated on this page, regardless of who or what one is supporting: that does not matter here.

What is important to us is, here we have before us a piece of legislation which is confusing and which cannot achieve what, I believe, are the goals of the Minister. In fact, his goal must be to employ a number of people, keep them very happy, and make them believe they are doing something for the commission.

2.00 p.m.

Madam Presiding Officer, Part III, Management and Finance, worries me because all these committees—and goodness knows how many members there are—will be financed from a cess. The Parliament will give money until the commission attains self-sufficiency from the cess. I know there is a cess in the energy sector, but that comes from the producing companies. They make a lot of US dollars and that is different. This cess comes from service providers such as WASA, T&TEC and others that, in some cases, are unable to break even. Each service provider has to pay cess.

Mr. G. Singh: PowerGen and TSTT. What was the PNM's plan before, was it industry specific?

Sen. J. Yuille-Williams: That is what I am saying. That is the danger to which I am referring, Madam Presiding Officer. When you put one bit of legislation to cover all, some will suffer. That is what I am saying. [*Desk thumping*] I am agreeing with what the Minister is saying. I know this is a problem. I am not saying it here because I want to be critical. I am just saying that the cess will come from the service providers. In the Ministry of Energy and Energy Industries a cess comes from the providers of those fields and that is in US dollars. I am saying this is in TT dollars, and whether you like it or not, some of our providers are WASA and T&TEC: state-owned firms making next to nothing and sometimes not breaking even and they would have to find the cess.

If one goes through this carefully, the commission has to provide a budget at the beginning of the year, or whenever it is, because it has to be self-sufficient and the cess has to be apportioned according to each industry. So when WASA gets its cess to pay, it has to pay one part of it and T&TEC another part. I do not know if WASA would have the money to pay it; it may have to borrow some of it. The Minister can correct me if I am wrong, but this cess is on the revenue—that is the money I pay for my water, electricity and so forth—which I take up. Therefore, out of that—I am talking about the state-owned companies, in particular, to show how one cannot serve all—you have to pay cess. In fact, 28 days after the commission tells you that you are liable, you have to pay this cess. You had better find that money within 28 days, even if you have to borrow it. So, you get the money and you pay. Who is going to pay that the following year? It is going to be those who use the service—electricity, water and so forth. They are going to have to pay and in some of those cases, especially if they are state-owned, for all you know they are going to have to borrow the money to pay the cess. So we have a problem there and I think we need to look at it.

This is what I glean from reading what is said here. Therefore, those industries are going to pass on that cess to the consumers. That is why I worry about all those committees and all the expenses involved because we have to maintain all those committees at salaries, or honorariums that the minister may decide. That money is going to come from the cess which the commission is going to use to become self-sufficient. The cess will come from the service providers which are state-owned; and for years we have been hearing that they cannot make ends meet and in some cases even have difficulties in functioning. I am saying now that we have to look at it carefully.

We can talk about those who can afford to pay. Those in the energy sector can pay because they are paying in US dollars, but these are getting TT dollars. That cess is going to be passed on to us. I am saying that when they pay, it comes out in some other form, maybe through levy or something like that. We have to look at it very closely because they can probably recover some of the cess that they pay. The Water and Sewerage Authority cannot recover any cess in any way and they are going to pass that cess charge on to the consumer. The Bill states at clause 30(1) that:

“...the Commission may impose subject to the approval of the Minister, a cess on rates and charges payable to service providers.”

We need to look at that very carefully.

Madam Presiding Officer, again, that carries us to clause 30(3) and (4) which tells how the value of the cess is going to be decided. Clause 30(2) also tells how the funds of the commission would be used. I did not see in the Bill where it states that the funds of the commission will be used for paying the members of the committees. I did not see that. Probably it is somewhere there, but it is important and has to be in there because hundreds of people who would be employed on committees have to be paid. Therefore, I am seeing the salaries for commissioners, operating expenses, rent, capital expenses and other expenses authorized by the commissioners. I do not know if it is in there, but maybe the Bill needs to deal with the payment to members of these committees. They probably do not want to put it in here, but we know they are going to be paid out of cess and I think we need to put that in, probably as (f).

Madam Presiding Officer, let me move very quickly to licence. I always notice in these bills—really I do not know why it is that we try to cover this business of the “all powerful” ministers coming through. Always there is this phrase of “notwithstanding this Part the Minister may grant an exemption”. We are getting accustomed to that way of doing things. We saw it in a number of bills that came through here and I am seeing it again in clause 38(3):

“Notwithstanding this Part, the Minister may grant an exemption from the requirements of this Act where—

(a) he is of the opinion that such an exemption will promote competition;”

He is not even to consult the commission to, at least, cause them to feel good that they have something to do. If you go through this Bill, the commission is there and many times not being consulted. I do not know who will be members of this commission because they are to be there and so many times the minister is to operate and will not take time to consult with them. They could put it in there to, at least, cause them to feel that they have some purpose.

“(b) he is satisfied that exemption will not conflict with a licence issued under subsection (2).”

I feel that where there is a minister he should not be left out there on his own like a runaway horse. Put something in there that, at least, he is to talk to somebody. I have seen it in more than one piece of legislation. All that is being done, it is the minister, in the final analysis, who can do what he wants. We saw it

in one of those bills where the minister can go and pull an application and make a decision and here it is coming back in this Bill. I am seeing throughout this entire piece of legislation that the minister can do many things. Clause 38(1)(a) states:

“...the Minister may—

- (a) on the payment of such fee as may be prescribed; and
- (b) on receipt of an application in the prescribed form,

grant to the applicant, a licence...”

The minister is doing a whole lot and I am saying the commission has to do something.

2.10 p.m.

Regardless of what the commission does, there is a clause which says notwithstanding this, the Minister may grant an exemption from the requirements of this Act where he is of the opinion, or he is satisfied—no consultation with anybody, he just feels this is how it should be; and if he is an arrogant Minister, well, I could tell you but I will say nothing more. There are Ministers whom one feels comfortable with—this is for all times and we should look at this. We need to qualify some of these things. I feel ‘minister’ alone should not be in the legislation.

In clause 39 it says:

- (1) “An application referred to in section 38(1)(b) shall be forwarded by the Minister to the Commission which shall, subject to subsection (2), advise the Minister on the application within sixty days of the Commission’s receipt of all information that it may require for such advice.”

When I saw the words, “all information” I asked myself, how much information is “all information?” When do you decide that you have “all information?” How long does it take? Could it take three years before you get “all information” or three years down the line one can decide one does not have enough information? One has to look at all these vague terms that are put into legislation because they will come back to haunt us. In clause 39(4) it says:

“The Minister is not bound to accept the advice or any part thereof rendered by the Commission in accordance with this section.”

Why do you have the commission? These are professional people. This is making nonsense of the commission. As far as I am concerned, this could go only with the Minister piloting the whole thing through, because there are so many provisions in here where the Minister could do what he or she wants without the commission. One is not bound to accept that commissioners are professional people and the Minister is not bound to accept the commissioner's view? If he could do what he wants, and grant licences and so forth, why have the commission at all? There is no part in this Bill where I see that the commission can do anything without being overruled by the Minister. The Minister can do what he wants. If the commission does something and he does not like it, he can do what he wants. I am very worried about that whole process.

Clause 41:

“Where an application for a licence is refused by the Minister he—

- (a) shall notify the applicant and afford the applicant a period of four weeks after the date of refusal, to make representation to the Minister;”

He is going to tell you it has been refused.

- “(b) may, having regard to the representation, grant the application subject to such terms and conditions as he thinks necessary.”

No consultation with the commission. You brought an application to him, he refused it—four weeks later the provider makes representation; the Minister, based on the representation grants the licence. Where is the commission in all this? Why have a commission at all? No consultation with the commission. The Minister is an all-powerful minister. He has all the expertise about everything. I see nothing about consultation here. He can just grant the licence. There is no need for a commission as far as I am concerned. In all these matters I do not see how you would need it. Therefore, I think one needs to look at this very closely because as I said before, commissioners are professional people.

Madam Presiding Officer: The speaking time of the hon. Senator has expired.

Motion made, That the hon. Senator's speaking time be extended by 15 minutes.[*Sen. N. Mohammed*]

Question put and agreed to.

Sen. J. Yuille-Williams: I thank hon. Senators. Somewhere I read that the commissioners were the messengers of the Government. I find in this RIC the commissioners are the messengers of the Minister. I will tell you why I say so. If one looks at clause 43 it says:

- “(1) Subject to this section, the Minister after consultation with the Commission may suspend or cancel a licence for sufficient reason.”

This Minister is not bound to listen to anything the commission says—So it is the Minister who is suspending.

- (2) The Minister shall, before exercising the power of suspension or cancellation conferred on him by this section—
- (a) cause the Commission to serve on the relevant service provider, a written notice to the effect that—”

If I were a commissioner there is no way one would get me to go and serve anything on any provider if you cancel it—that is offensive to say the least. You made your decision and you want to serve notice. What is one going to say to them? Will the commissioner say the Minister is considering exercising the power and say on which ground it may be exercised?

- “(ii) the service provider may within thirty days of the date on which the notice was served, make representation to the Commission;

Which commissioner are you going to get to do this? What kind of persons do you think will be on this commission? You made your decision. Why send me to tell them about it? No, this is not right. The Minister shall go and tell them all those things himself. These are honourable people and, therefore, you would be bringing dishonour on persons in the RIC or the commissioners when you tell them that they should go to the service provider—to whom you refused to grant the licence—to tell them that you are considering doing this and in 30 days you would take it back for him to take into consideration any representation made to him under this paragraph. Who would make the representation under this paragraph? The commissioner? Therefore, we see that the Minister is always by-passing the commission.

We are here to set up a commission which will become ineffective because the Minister is not using the commission. I am really concerned about all these areas because at the end of it, say what you want, this is a Regulated Industries Commission Bill over which, if implemented, the Minister has control. One can see this is being done.

One is not going to get people of credibility to come and do this for you—you go out there and tell whoever it is that your licence is not accepted, that I am considering doing certain things and you have 30 days to make representation—the commission must do that. Then they will really be called messengers of the Minister.

I can also say you are not going to get people of credibility to serve on this commission at all. People are not going to sit down and look at the kinds of things you are doing here.

This worries me very much as I look through this whole Bill. That was why when my colleague spoke this morning she said let us look at it a bit more—I know time is the problem—I know there must be certain reasons why you want to get it through, but why is all this super-power placed in the hands of the Minister? Why have an RIC at all? Why did you not let the Minister do the whole thing? Why are you covering the Minister with the commission? You are making the decisions and sending the commission out. Come forward and say you made the decision—go out and find what you want. This is what is going to happen if you have a commission of people who consider themselves credible, and I think people in this country as one knows, would not consider themselves credible if they try to accept this.

2.20 p.m.

Therefore, Madam Presiding Officer, we need to look at this legislation again. It was said that it was there for a long time, but it came to the Parliament for debate today. Even if they were in our package for two or three weeks it does not make a difference. It was said since 1970 we were trying to get here and what we are doing here Britain cannot do. They can afford to have a regulation commission for each enterprise, but we cannot. We have one Bill like this and we have to find ways and means where it can become effective for each of the others. As it stands now, there is too much we have to ask.

We also noted this matter about the Fair Trading Act and we have not come to that. There is need to look at the area of rates and tariffs. There is just one other area which I would like to look at very quickly and it is clause 49(1) which says:

“Notwithstanding section 48, where it is the opinion of a service provider that there has been such a fundamental change in circumstances as to warrant a review of the principle for determining rates for the service which it provides, it

may give written notice to the Commission requesting a review of the principle except that it may not request a review more than once in any year.”

And notice given under subsection (1) shall state a number of things and it says in clause 49(2)(b): “be published in the *Gazette*...” I understand that there is something called business sensitivity and I am wondering whether it is ethical to publish all those reasons under 49(2). That needs to be looked at very closely.

I think somebody made note of the regulations practice in clause 67(2) which states:

“The Commission may, after consultation with the relevant service providers and with the approval of the Minister, make Regulations for the purpose of carrying this Act into effect and in particular may make Regulations—

(d) prescribing forms of accounts and records to be kept by service providers.”

I know there is a Companies Act, but I do not know if the commission could now give them special forms for keeping account and records of the service provider. I thought there would be some accepted way to do this and I am wondering whether it is consistent with the Companies Act. I am not an accountant, and I do not know whether or not the commission can prescribe forms of accounts and records to be kept. I do not know if that is consistent with what the companies already have to do. If it is two sets of records, this one may be entirely different from the way they were keeping it, which was up to international standards and in accordance with the Companies Act. When I saw it, I knew within myself if I am in a little group and there are certain ways of doing things if we had to do something parallel, it would cause some confusion.

Madam Presiding Officer, I recognize my time is up, but those are some of the comments I have on this Bill. I feel that we need to go a little deeper into it. There is a lot in here and if this is passed, this legislation would be put aside and we would do our business the other way because we cannot follow what is here to guide the industries.

I accept there is need for an RIC and that there is a difficulty in bringing it—this parent legislation for all the industries. Probably you may need to have different legislation for different industries, but there is much that needs to be done.

My colleague had asked for it to go to a joint select committee, I knew the Minister did not like the idea because I saw from his reaction. He probably thinks it would take too long, but what is too long in terms of having a Bill that will serve Trinidad and Tobago for all time?.

Thank you.

Sen. Prof. John Spence: Madam Presiding Officer, may I join my colleagues in congratulating you on your election as Presiding Officer in this Senate, and may I say I am particularly pleased that it was an unanimous election with both the Opposition and the Government joining.

I am also aware that it is of some personal discomfort to you seeing your injury at the moment, and also I believe some professional discomfort in the sense that I am sure there would have been points in this Bill that you would have liked to make and I hope your other eight colleagues on the Independent Bench would make the points for you one way or another.

If I may crave your indulgence and that of my senatorial colleagues just to make another comment on that particular point. I think it is important because there is a view that an Independent Senator should not preside because it means that one voice is no longer on the Independent Bench, and also because there is a shift in the voting ballots.

Two things in that regard, one is Independent Senators, in my opinion, do not exert their influence by the power of their vote. It has been my experience for 12 years in the Senate, it is really the strength of their arguments and the rationality of the points which they make that exert the influence. I have found that the three governments with which I have been in the Senate have, by and large, listened very carefully to the views of Independent Senators and I say particularly this Government. In the last couple years we have had a very good reception from that point of view, so the voting is much less important than the points we would put.

I must also say that one must recognize that this election is for one sitting and if they ask for another sitting I do not think there would be any danger in that regard.

Before going to the Bill, I also want to congratulate my colleagues, the Government Back Benchers for the fortitude they have shown in accepting the position whereby this change of tradition has meant that they have been, in a sense, overlooked for this particular function. I am not so sure I would have taken that position myself were I in their seats, so I congratulate them on their fortitude.

With respect to the Bill, I would like to make a number of detailed points and then some general comments. With respect to clause 2 as far as I am aware, a fair trading commission has not yet been set up: perhaps the hon. Minister would comment on this point. Can this legislation go forward if the commission has not been set up? Could we have some idea, if it has not been set up when it would be done?

With respect to clause 5(1), there may be a typographical error here. I presume there should have been a comma between the words “finance” and “law”. May I raise the point about a number of commissioners even with the expertise spelt out here and the difference of business which has been suggested by my colleague, Sen. Daly, it would seem that one has now gotten beyond the number of three. Perhaps, it would be appropriate not to have three to five, but just five or, perhaps, even seven given the number of disciplines that may be required to be included amongst the commission. I think when we go into committee, that point might be addressed.

With respect to clause 6(2) I think one needs to have some reassurance as to who selects the consumer interest groups with whom the commission must consult and I wonder whether we do not need to have further clarification on that point.

Sen. Yuille-Williams made the point about the environment and I think it is of some importance. It is not mentioned at all in the Bill and I wonder whether in 6(1)(e) we should add at the end of the sentence the words “after services” and before the semicolon, “including considerations of a clean environment” to at least indicate that it is our feeling that the commission should be looking at environmental matters when it is looking at the frequency of the functioning of these various services.

With respect again to clause 6(3)(a), one would perhaps ask whether there needs to be some clarification of the lowest possible cost. Is that an effective wording to convey the concept that is being put forward, and perhaps one might add “consistent with the reliable service” or some other further qualification on the lowest possible cost?

If one goes to 24(2)(c) which says:

“six members drawn from throughout Trinidad and Tobago to represent consumer interests.”

It would seem useful if we could, at the end of that sentence add: “they should not be employees of any service providers listed in the First Schedule or public officers.” The consumers who are represented here should not be employees of any of the service providers or of the public service or public officers who might be involved in the regulatory process.

In clause 37(2)(a), I wonder if the Minister in his winding up would amplify a bit on this, because it is not clear to me why you would only include services which are not competitive in the market.

Does the fact that there is competition necessarily ensure that the most efficient service would emerge or the most reasonable rates would apply? I really would like some opinion on the point as to why the service has to be non-competitive before it can be included.

With respect to 38(3), is it really intended that the Minister would exempt the whole Bill, or might it not be worded so that he can exempt any part of the Bill, or is it an either/or situation?

With respect to clause 42, should not the opinion of the commission be sought, as is the case in clause 43, where the Minister is required to consult with the commission?

With respect to clause 48, I can understand the reasons for the commission reviewing, at least every five years, but I find the next two sentences a little confusing to me which say:

“where the licence issued to the service provider prescribes otherwise, at such shorter interval as it may determine.”

Does that mean if the licence issued does not suggest a shorter period that the commission cannot in fact, review within a shorter period? Or is the intention that it must be reviewed after five years, but may be reviewed at a shorter time, or has to be reviewed at a shorter time? That point ought to be clarified.

With respect to 49(4), I think I would raise the point whether it should not be mandatory that consumers be consulted instead of any party that it sees fit? Should it not be mandatory to consult with consumers?

2.35 p.m.

With respect to clause 51, does this mean, in fact, there is no possibility of a third part? Is this, indeed, what is intended? What would the recourse be if the commission's decision has been made? Is there the possibility of recourse to the courts? Should there be some other mechanism for review?

With respect to clause 51(1), do we really want to give the service providers the possibility of retroactive charging at all? It would seem to me that it is a show of inefficiency if they have to change their charges retroactively. Should we be countenancing this sort of inefficiency? Therefore, I raise the question as to whether we should allow any retroactive charges.

A couple other points of a more general nature that I would like to ask are: Why have cellular services been excluded from this legislation? I appreciate that cellular technology may come under telecommunications, under the relevant authority. On the other hand, it is not clear to me that authority would be able to fix rates. Why, therefore, are we not giving this commission the authority to fix cellular rates? After all, cellular phones are now becoming more common and could no longer, in my opinion, be an exclusive service, but rather a service that may be generally required in the population. Also, if one is separating the two, as being one that is transmitted over wires and the other through—

Madam Presiding Officer: Hon. Senators, we have just received some news of a slightly disturbing nature. We are going to have to suspend the sitting this afternoon for a period of about half an hour. We have been told that a bomb has been placed in the Parliament building. I would, therefore, ask all members of the public and all Members of the Senate to please vacate the building to give the police time to search the premises. Senators would be informed as to when the sitting would resume.

2.38 p.m.: *Sitting suspended.*

3.40 p.m.: *Sitting resumed.*

Madam Presiding Officer: Sen. Prof. Spence, do you care to continue from where you were interrupted?

Sen. Prof. J. Spence: Thank you, Madam Presiding Officer. I was just winding up, really. There were just one or two general points I was about to make. One was to ask whether this commission would have any input into the pricing of the PowerGen charges for converting natural gas to electricity. If I remember correctly, the process of charging for generating electricity by PowerGen is that they secure gas at a certain price and then they pay to convert it to electricity. I wondered whether this commission would have an input in that process, because, clearly, that affects the price of the electricity, eventually.

Then I had asked whether there was some good reason for excluding cellular telephones. Even though I recognize that the technology is different for a cellular as opposed to a telephone that goes by wire, there is an overlap. Because, I think that Trinidad and Tobago was about to introduce a system presently in use in other countries in rural areas, where the telephone lines go to the central point and then telephones of the individual subscribers are no longer by wire, but by telephone. In

a sense, it seems to me that recognizes the fact that telephones can be not only by wire and, therefore, it seems to me that cellulars can come under this law.

The other thing was whether it should be enshrined in the Constitution. I have no strong views on this, but it had been raised by certain persons, so I just raised it as a question; whether it should be enshrined in the Constitution. It seems to be a view from people who are associated with the Public Utilities Commission.

Finally, Madam Presiding Officer, this is a point that I have raised on more than one occasion recently, because I am concerned—I think, other people have expressed their concern—about the cost of these new bodies that we are setting up. We never seem to provide the financial resources at the time that we are passing the legislation. Once again, I make the comment that, perhaps, we would be better off if we adopted the American system of passing a budget for a particular activity out of a law, when we pass the law.

I would like to have some assurance from the hon. Minister that he has discussed it with the Minister of Finance and that the committee, or whatever committee that deals with these matters, has provided adequate funding for this commission, otherwise it just would not come into operation.

Thank you very much, Madam Presiding Officer.

Sen. Danny Montano: Madam Presiding Officer, as I begin my contribution, allow me to join my fellow Senators in congratulating you on your elevation to the Chair. Certainly, we on this side, look forward to your experience, independence and integrity in the governance of this Chamber. We welcome you. [*Desk thumping*]

When I heard the Minister's presentation to introduce this piece of legislation, I was reminded of an earlier piece of legislation which was brought here a while ago. Remembering some of the things the Minister said in the other place, I was reminded of another piece of legislation where in the opening paragraphs they were talking about land for the landless, and I thought that the Minister was going to talk about water for the waterless and lights for the lightless. [*Laughter*] Well, he did not say anything about that but, nevertheless, I am going to provide a clue for the clueless.

3.45 p.m.

Madam Presiding Officer, my first real comment on the legislation in front of us concerns the actual appointment of the commissioners. In clause 5(2) and (3)

where it reads that the President may appoint the commissioners, I understand that it is the convention that when the term “President” is used in that context, it actually means the Cabinet. If that is the case, what we are dealing with here is that notwithstanding everything that the Minister has said, the commission is going to be a political creature. If that is so, then there is no change from the previous situation.

He made much in his argument about how independent the new commission would be from the political interference of the Government or the administration of the day, but as I understand it, the commissioners are going to be literally directly appointed by the government of the day—the Cabinet of the day—and therefore, they are likely to be political creatures. A political party is free to invite any vagabond or rascal to sit with it whether it likes it or not, but when it comes to the appointment to a senior position in a state organization, that is a different story.

How this Bill fails from the beginning is that there is nothing in here and nothing has been said whereby the selection of the commissioners would be screened by anybody. There are other jurisdictions in which appointments such as this are screened by sections of the Government or the Senate, and the population can get some assurance that the commissioners in an organization like this have been seriously vetted and investigated. What we are facing here is quite the contrary, and notwithstanding what the Minister says, the Minister himself ends up with too much authority in his hands.

We know how things work, and even though the Cabinet has collective responsibility, one knows that in a situation like this, the appointees are going to come from the Minister himself. His team of advisors is going to select, identify and put them up to the Cabinet and, therefore, they become the creatures of the Minister himself. Now, everything that the Minister said in his presentation was suggesting that this is exactly what he is trying to avoid and that seems to be exactly what he is doing.

He is setting this entire organization up to be a creature of his own making, and for that reason, it seems to me that the Bill fails. One of the problems it fails in is, in clause 14, dealing with or trying to ensure that the commissioners themselves are independent of the agencies that they are looking into and trying to control. That clause says that the commissioners cannot accept employment with any of these agencies for a period of two years after their period of appointment terminates here. The practice, as I understand it in the industry—and certainly in

any profession—is five years, because that period of five years is sufficiently long as to break any real alliance that the individuals may have formed with those organizations. I submit that two years is simply not long enough. A period of five years is sufficient.

Furthermore, within clause 14, why is it only that the commissioners themselves are confined to that restriction? In fact, it should extend to all senior members of the commission and not simply the four or five commissioners such as they are. When it comes time to submitting amendments, I propose to submit an amendment along those lines.

One of the problems I had in looking at this piece of legislation is that I understand there are presently 21 employees at the Public Utilities Commission, and I inquired what was going to happen with these individuals when this legislation was enacted. Would they be brought over? Would they be terminated? What is the situation? At this point my investigations have revealed that, at least, they have been dealt the discourtesy of not being told anything. I cannot chastise the Minister and say they are not being brought over because I do not know and they do not seem to know either.

I think that is a gross injustice to the workers at the PUC. I think it is grossly unfair. If, in fact, this new commission is simply a device to get rid of the workers of the existing PUC to replace them with party hacks, then I think that the country as a whole would take a very different view of that type of practice. That is not fair employment, and it would be a gross injustice to the people of the country and, of course, the 21 workers of the PUC. I ask the Minister to give us some specific statement as to what is intended for all those workers.

Madam Presiding Officer, I turned also to clause 13, the declaration of interest. I think that is a good and necessary thing, and I believe that it is something all of us have got to think very seriously about. Not only in terms of the commissioners but, in fact, anybody who is employed at the commission or on a contract. We need to understand what the terms of relationships are. I turned also to clause 25(4) and I had difficulty with this. The clause reads that the commission is not bound by any reports submitted to it by one of the committees. What we have heard from the other speakers here this afternoon is that the Minister is not bound by anything at all.

In the first instance, in terms of what actually happens, the commission itself is not bound by any one of the committees, and the Minister is not bound by the

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commission. So, if the Minister is not bound by the commission, what on earth is the point of having a commission? How can he stand there and say that the commission is independent and full of integrity when the Minister has the authority to literally do whatever he wants? Remember, the Minister himself is not bound by the restrictions of clause 14, so immediately after he quits office, he can accept a job with any one of those organizations. He is not bound, but yet all the authority rests in his hands. A most peculiar state of affairs, at least!

As I read on, Madam Presiding Officer, clauses 28 and 29 deal with the management and finance of the new commission. Whereas I really do not have a problem with them, I would simply point out that the drafting of this would appear to restrict the activities of the commission in the sense that it does not deal with what the commission can and cannot do with any surpluses that may accrue. Even if they have surpluses, the way that clause 29 is worded, it appears to be an all-inclusive paragraph as to what the commission can actually do, so if they have surplus funds on hand, it would appear that they are restricted and they cannot even put those surpluses on temporary deposit. According to that, that would not be an expenditure; that would be an application of cash and it would seem that they have no authority to apply cash in that way. I think that this, therefore, is an inadequacy.

I went also to clauses 34 and 36. Clause 34 reads that the commission shall keep proper accounts and so forth, and subclause (3) reads that the commission shall, not later than June 30 in every year, submit to the Minister their financial statements. In clause 36, we see that the financial year is defined as by section 3 of the Constitution. We just dealt with that a couple days ago, and that is now September 30, so what we are saying is that the commission has nine months in which to prepare its accounts. That does not mean that they have to take the whole nine months, but they are being given nine months. I submit that this is far longer than necessary. This is a most important organization, and I cannot see that the accounts should be any later than three months after the end of the financial year. That is the standard in the industry. I see absolutely no reason why it should be nine months.

Paragraph 37(1) reads:

“In relation to any service listed in the Second Schedule, no entity shall render a service to or for the use of any other person or service provider except with the authority of a licence.”

Paragraph 38(2) reads:

“Notwithstanding sub-section (1), the Minister shall not grant to a service provider, a licence for the exclusive provision of a service...”

In other words, it is not going to allow the setting up of a monopoly, but by the mere working of clause 37(1), from the moment one has licensed one person, one has created a monopoly, and we are facing a situation where entry into the market to try to compete with that is going to be subject to the granting of a license. So, even if the Minister has not actually provided an exclusive licence, there is going to operate a *de facto* monopoly, and we are hearing of situations like this.

I will just recall a situation that came to my attention some time ago where a particular company had difficulties with Trinidad and Tobago Electricity Commission (T&TEC) and set up its own generating plant. As I understand it, T&TEC, in effect said, “No. You cannot do that. We are the only authorized providers of electricity. You cannot provide it for yourself.”

4.00 p.m.

Now what is happening, as I understand it, because coming from the private sector, I have had a number of individuals come to me with a variety of proposals for the establishment of what I would describe as miniature generating plants and miniature water producing plants, where factories on their own can literally drill a water well and produce industrial quality water for their own use, not having to rely on the vagaries of WASA. That is going to be the subject of a licence. What they are doing is completely limiting those industries from being able to win their own water at a competitive rate.

Mr. G. Singh: Would the hon. Senator indicate that in the absence of the licence as a regulatory instrument, what mechanism or method would you use to regulate the market? Would you want anarchy to prevail in the market?

Sen. Mohammed: That is what we have under your Government.

Sen. D. Montano: I think that the Minister needs to do his homework a bit and he needs to go back and rethink this legislation and to realize that he has got to come back here with legislation that will promote competition. It is one thing to stand and say that the commission is going to regulate the rate, it is an entirely different thing to come and say regulate the provision of the service. That is the issue; the provision of the service, not the rate. If any company in a free

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environment, in a free society decides that it could compete successfully with WASA, T&TEC, BWIA or the airport or whoever it is, should this not be encouraged?

You see, when one looks at the overall framework of this legislation, and the authority and influence that the Minister has in his hands, it becomes very suspect and undesirable that the Minister should have that kind of authority to grant or refuse licences in that kind of situation. When the Minister is, in fact, removed from it altogether and cannot interfere with it, and his name should not be appearing in here, then you have an entirely different situation. A completely different situation! That is the point. In order to engender free competition, because it is available, it is out there, and they will make the right decisions and they will make this country efficient. *[Interruption]* Madam Presiding Officer, if the Minister does not know what he is doing, the comments are irrelevant.

The other thing that concerned me greatly was clause 42(3). This deals with a variation of a licence or the condition of a licence, and it says:

"A variation made pursuant to subsection (2)(b) is of no effect until the Government fully compensates the licensee for any actual or probable changes in the licensee's financial position as a direct result of the variation."

If I am charitable, I would like to think that I understand what the Minister is trying to achieve there. But it seems to me that the Minister is creating an undefined, potentially enormous liability on the public purse in the event that, for some political reason, he decides to change the rates that have been formerly approved in a licence. Madam Presiding Officer, what he can do is reduce the rates, just by decree literally, he can simply overrule the advice of the commission, particularly close to the next election or any election, and then literally just have the state pay for it. I have great difficulty with that. Again, the Minister must not have that kind of power and authority, it has got to be taken away from him, it has got to be left in the hands of the commission, let them do what they are there to do. If it is done properly the first time around, then there should be no need for any variation of anything at all. I see absolutely no need for it.

The other thing that I wanted to raise before I close is clause 48 where, according to my notes, it says that the licence can be granted for up to five years. Now in terms of the comments that I made a little while ago about the miniature generating plants, water treatment centres and water producing centres, that five-

year licence, particularly if granted under exclusive use, is going to completely prohibit competition. So that nobody can even really get themselves ready if they have to sit and wait for five years. Why should the licence be granted exclusively for up to five years? The Minister has really made no case. He did not even deal with that. I would like to recommend to this honourable Senate that it really should not be granted for longer than two years. This is obviously going to be a high-powered organization with some experienced individuals who are going to be well paid and they will obviously all have to be full time. I see absolutely no reason why it cannot be done on a biennial basis. That way we can ensure that there is fair and free competition for all in the country.

Madam Presiding Officer, with those few words, I thank you.

Sen. Kenneth Ayong-Chee: Madam Presiding Officer, I join with my colleagues in extending congratulations to you on elevation to your position and for keeping your temper for all these hours.

I just want to make a comment on clause 51 of the Bill, but before doing so I think I should state that I have not fully read the Bill—and I wish to assure the Minister—not because I was lazy, but because I only saw the Bill on arrival here this morning.

With respect to clause 51 on the question of retroactivity, I have a little problem with the length of that retroactivity. My suggestion is that retroactivity should be restricted to commence three months before the date of the notice requesting a rate review by the service provider. I think in this age of computerized accounting and the generation of monthly financial data, there is no reason why a competent service provider could not determine the need for a rate increase on a more timely basis. That is my point.

I thank you.

Sen. Prof. Kenneth Ramchand: Madam Presiding Officer, I too want to congratulate you on your unanimous appointment to chair today's proceedings. I am confident that you will bring the same wisdom and calm to the Chair as you have brought to your performance as an Independent Senator.

I just want to notice the change of title from public utilities to regulated industries. I shall pass over some of the sinister connotations of the word "regulated" and just notice with some chagrin the removal of "public" from this commission. I join Sen. Teelucksingh in feeling that the Regulated Industries

Commission does not sufficiently indicate what it can do to make these utilities work better for the benefit of the ordinary citizen.

There are certain things that the citizens of a country should feel are an automatic part of the social and political contract. We obey the laws. A man with a cap and a uniform tells us move and we move. We obey the laws. We elect rulers, we do what they say, we abide by their decisions. We subscribe in all of this to the notion that there is right and there is wrong but above all, we support the notion of order. Now order in a democratic society is a very serious problem. Why would thousands of people obey? Why do they not riot? Why do they not loot? Why do they pay tickets and, of course, their taxes?. So, in return for the kind of obedience that the citizenry gives, they expect certain things to be theirs, either cheap or free automatically. These things include water, electricity for their homes, roads, bridges, public transport, hospitals, doctors, dentists, schools, libraries, universities, training institutions; these are just the core, there are certain things that the citizenry has a right to expect in return for obedience and the maintenance of order and for their taxes and their participation in making the society a coherent and orderly place.

Therefore, I come up with my usual point, I lament the way in which a business ethic is establishing itself in this country and everything we do, even the degrees we offer at the university, is measured in terms of financial profit. What financial profit are we getting out of it? I think, if one is providing roads for the country, roads cannot make a profit, we just have to say we have to allow communication to take place. Now, a Government which is raising revenue may well feel, okay we have to increase the taxes; or we might say, in every home you will get 1,000 gallons of water a week, but if you use more than 1,000 you pay; or you get so much electricity, but if you use more you pay or the rate will change. The citizenry cannot expect these things to be free, but by the same token, a Government cannot expect the citizenry to pay to allow the thing to make a profit. Certain utilities cannot make a profit, they are part of what a responsible government provides for the people who have elected it. I know this is an old fashioned view, but I would never get tired of repeating it.

The Minister said in his introduction that utilities are connected to the national economy. I say, that there is a more necessary connection between utilities and national well-being, between utilities and the sense people have of belonging to a place. If I may repeat myself in a different phrase, I notice that there is a growing disconnection between our economy and the people as the Government and the

country pursue export markets, foreign investment and a rising GDP, which only advertise to the world that this is a better place to come and exploit than anywhere else.

4.15 p.m.

A GDP does not say that you have happy or well-housed people. In fact, it says: we are exploiting the masses of our people, they are cheap labour: come use them, you would make a hefty profit here. That is what a rising GDP means. I lament this growing disconnection between the growing economy, poverty, unhappiness, desperation and violence of our people.

Madam Presiding Officer, I wish the new revised PUC under the name RIC could have been attentive to notions like this. Public utilities are as much public utilities as industries and businesses to be regulated, and a balance has to be found between these two functions.

I support Sen. Teelucksingh in talking about the efficiency of some of these utilities and the lack of provision for people to get redress when these utilities do not serve them. I think it is necessary, in coming up with a new plan, to show the people and Parliament that there is a concern about the cost of delivery of essential services. We should show this by a removal of some of the unconscionable perks in these utilities—the high and undeserved salaries; the square pegs in round holes; jobs for the boys; people driving company vehicles on private business; doing favours for friends so that I lose my place in the queue; plain inefficiencies and blatant corruption. These are things that have to be dealt with by a public utilities commission, but I do not see many signs of concrete plans in the RIC to deal with things like that.

This is a little thing but it adds up; every time I make a phone call to the United States and I ring six times but do not get through, I still get a bill for it. If I send a fax and it does not go through, I still get a bill for it. If I ring the international operator and say, "Look, I just sent a fax and did not get through, do not charge me for it." They say, "Well, we cannot deal with that so wait until you get your bill." When I get the bill they say, "We cannot see that on the bill, Sir, so you have to pay it." "I am not paying it!" "But if you do not pay it you will still get cut off, Sir" I really think that the citizen needs a little more assurance that a revised public utilities commission is doing something for him.

On another unfashionable word of warning, the Minister spoke with pleasure about the need to get private sector involvement in the utilities. Sometimes I sit on my bed and wonder why. Do they have more managerial skills than people in the public service? Are we accepting that slander about people working in the public service being inefficient or corrupt? If they are inefficient, can we not train them? Do we have to turn the thing over to local and foreign consultants? Why do we keep accepting the notion, and making that reason true, that because you are a local working in a public utility you are either inefficient or crooked? Why does the private sector have a premium or monopoly on efficiency? Why?

The private sector is not the Salvation Army. It is not going to make things cheaper for the public. It is there to make a profit and if you let the private sector run the public utilities it is going to make a profit and it is you and I who would have to pay for it. The figures may look good. This utility has made a profit, but I am paying more for it because the private sector has to make a profit for the Government and itself.

If you have a series of private sector people running a series of public utilities, a set of little businesses operating, it is a set of profit being made on the citizen. There is nobody above there saying, "Well listen, if yuh lash them with water yuh cyar lash them with electricity." Water, electricity and telephone would just say, "We lashing dem, we want a profit!" Everybody would want a profit. Nobody will say, "Yuh ent get a profit yuh get a martyr!" You are martyring the population!

These are my general remarks about the RIC but I would raise some questions about the Schedule and hope that the Minister in his winding up would tell us about them. I see in the First Schedule among "Service Providers" a company called InnCogen Limited. I do not know if they are income generators, hotel builders or whether they are "incogent" or whatever. I would like to know who or what is InnCogen, how did they come here, what contract do they have and what part are they playing in the country as service providers?

Secondly, I do not see the postal services or public transport under "Services". I wonder if the Minister could explain InnCogen and the omission of public transport and postal services from "Services"?

Thank you.

Sen. Dr. Eric St. Cyr: Thank you, Madam Presiding Officer. I, too, say congratulations to you on chairing today's proceedings.

I would make some general comments on this piece of legislation. It is likely to be far reaching even more so than we might think at this time. I know that the hon. Minister in introducing the Bill alluded to the fact that public utilities' costs underlie a number of the other services provided and the cost of goods we produce. From that comment I gleaned that the emphasis in the change was to effect greater cost efficiency, and I support this; it is generally good.

Taking a general view of the proposed legislation, I see as a major change from the old Public Utilities Commission, that whereas the old PUC gave emphasis to protecting the welfare of consumers and society as a whole, in the change being proposed here the interests of commercial suppliers of services take precedence over our concerns. I believe that this shift is part and parcel of the current liberalization paradigm that we now live under, especially now that everything is required to pay its way, and individually, cost and benefits must be recognized, industry by industry.

The two comments of substance I would make are firstly related to the problem of the public utilities and secondly to the cost of regulating them, namely the issue of the cess. Generally, public utilities lend themselves naturally to monopolies. They function usually on what is referred to as a negative sloping supply curve, so that the larger the operation the lower the unit cost of supplying it. Therefore, it does not make sense to have many suppliers, but to have one overall supplier for a particular service. The society benefits from the economies of scale and lower unit costs. One concedes this and then the problem is to regulate them so that they do not misuse that monopoly power in terms of their charges to users and also to keep them on their toes to enhance their technology and become more cost efficient.

In my view, the problem of regulating these utilities using the old PUC method has had serious drawbacks. I think it is generally conceded that some revision of the old PUC Act is necessary. My concern is, when I deal with the devil I know and substitute a devil I do not know, am I better off or am I worse off? That is the judgment which, *a priori*, we have to make.

I am not one of those who think that every utility by itself should show a profit, and I share Sen. Ramchand's concern there: the reason is that there are benefits, both positive and negative, referred to as externalities. In other words, given the distribution of income in the society, if there are substantial groups not able to pay for and so have access to an adequate water supply, if this causes an epidemic

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which affects the entire community, then it is our business to find a way to have everyone have this commodity.

I know we could say that we can deal with that by providing specific subsidies to the lower income groups. We could take a second example which might be slightly more difficult to dismiss in that way, namely the provision of electricity and the matter of lighting up areas throughout the country, which I think is generally regarded to be a deterrent to crime. So that the availability of proper lighting and electricity throughout, has its external benefits to the community at large.

4.30 p.m.

So, when I see a Bill focussing, or pointing in the direction, where increasingly the providers of these basic, necessary, essential services would be privatized, I see in that the possibility that we may be looking more at the welfare and the benefits of the private suppliers, and less so at the benefits of the consumers, especially, at the lower end of the distribution, of the community at large. So that this, to my mind, is a negative comment I want to make of the direction in which this seems to be going.

My second major comment refers to how rates would be set, and if I combined what I read on page 2 namely the definition of the “principle” as a formula, the definition of the “rate”, as a rate or fare and the “base” as comprising elements largely of the capital cost, I believe it is fair to say, those three things taken with clause 6(1)(h)—“that where applicable the Commission shall establish the principles and methodologies by which the service providers determine rates for services”—when we combine those things what I see is, that we have effectively a cost plus method of setting rates; the rates effectively being set by the service suppliers based on the principle, or the formula set by the commission, the rate which will be subject to the approval of the Minister, and we can find that appropriate clause elsewhere; most importantly, the determination of the cost of the capital being left in the hands of the supplier.

I think it was Sen. Daly, who wondered whether this new Bill would have in equal measure with the old Public Utilities Commission Act, the information base from which to make a judgment as to whether the price which the final user is being charged is fair, equitable, just, affordable or what you will. So that, I am concerned.

If I may add to that, this Bill seems to presume that the full cost of regulating, that is the cost of the commission, will be borne by a cess and other charges collected by the commission on its own behalf.

I would like to think, Madam Presiding Officer, that there are three participants in this exercise —there are the suppliers, there are the consumers, and there is the Government somewhere in between representing the public interest; and to the extent that we determine that it is necessary to regulate these industries, it seems perhaps not quite right that the entire cost of the regulation should fall to the consumer, because this was the point that Sen. Yuille Williams was making, that in a monopoly situation where there is a cess, it will ultimately be borne by the consumer.

From what I have read here, it is likely that the cess will simply be added proportionately to the rate. So that, I could see an element of regressivity in all this, the weaker members of society having to bear a higher element of the cess.

If that is so, my anticipation is, that by and large, the cost of these utility services would rise across the board; and I want to be careful how I say this, because I do not want in any way to come over as an alarmist. But, the evidence in most situations suggests that costs do go up; moreso in countries like ours, where we do not initiate the technology, where the size of the market is comparatively small, and where consumers are comparatively docile and very simply pay what is being charged without question.

So, I would wish to record some concern about the public welfare, which in my view is likely to be positively served by the improved service that in all probability we would have, but which will be paid for by the users in a way that would put some additional burden on users, and with what consequences, I am not sure.

There are a number of other matters that would need tidying up—for instance, in three places we are told about the Fair Trading Commission and that would have to be put in place.

I also would like to refer to clause 42(3), which concerned me a bit that a variation made pursuant to subsection 2(b), is of no effect until the Government fully compensates the licensee for any actual or probable changes and so forth, as another indication of the protection which is being built in to look after the interest of the supplier.

If I may take one final concern clause 6(c), that the rate should be such as will allow the service provider to earn sufficient return to finance necessary investment which is something that always bothered me. I know that the capital employed has to be serviced; but it seems to me, that there is usually a great deal of pressure that

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capital employed is not only paid its opportunity cost, but that the service generates sufficient revenue to allow no further need for more capital injection, but the additional capital to be generated there to expand and improve. In other words, the supplier who gets hold of that industry from then on, could make it bigger and better out of proceeds from a rate which is probably more generous than it need be.

Madam Presiding Officer, I wish to congratulate the hon. Minister and his very hard working and technically competent staff, working over the years in drafting this Bill—many of whom I may say I know personally, and I know of their abilities, and I do not want the remarks I have made to come over as though I do not support. I want them to come over as saying, that these are concerns that we must be mindful of.

I thank you, Madam Presiding Officer.

4.40 p.m.

Sen. Muhummad Shabazz: Madam Presiding Officer, I join the Members who have spoken, on both sides, in really congratulating you on your elevation to the Chair.

You know, I like to see this House as the “selected House” and the other place as the “selected Members”. I often wondered why one was called the “Upper House” and the other, the “Lower House”. Today, I understand why men have held dear to their hearts—almost sacrosanct—the fact that this House is called the “Upper House”. What we have seen, and the manner in which you were sent to the Chair, enable me to understand why men have held that point dear to their hearts.

I congratulate you—one lady was there before you in the Senate, Mrs. Moore-Miggins—and ask that we continue in that tradition and that you can carry out your duties in the manner that you have always carried them out whilst sitting at that desk.

God be with you!

In looking at this Bill, again, one of the first things that came forward was the question of the Fair Trading Commission. One wonders why the Fair Trading Commission was not something put into place with this Bill so we could have both things happening at the same time. This commission seems to be one of the only places which gives people a way to appeal or to do things on the basis of what will happen with this Bill. So I felt that should have been in there.

Not seeing it there, and hearing a number of other things that came up, I too make the appeal that we should sit in a joint select committee—forget the hustling—and put this Bill in place in a proper way because indeed it is important.

I do not want to belabour the points that a number of people have made here today, because I think that the House indeed has dealt very effectively with this Bill.

One of the things we ought to look at is the question of “the Minister.” So many people have spoken about “the Minister” and I do not want to dwell on it too much. This is something that we keep seeing happening in recent times: “the Minister” seems to be coming up all the time and he seems to be given all kinds of powers.

There are some people, on that side, who really seem to like this “Minister” thing: like to see the term “Minister” and feel “Minister” should have power. So this is something which will continue: “Minister” will keep turning up all the time; we will always have to be talking about it. So I do not want to press on about this “Minister” issue. If the Minister wants power, give him it. This is their time, let them have as much power: let the Minister take as much power as he wishes. It will come back to our time where we—when we become Ministers—will either have that power, or we will remove it. But we feel it would have been better if you employed a commission—and other people like this—giving them the right to do the work, and not put so many things in the hands of the Minister.

I would just like to point out a few things here.

The Minister spoke about political interference, and indeed he sounded very good: “no direct political interference,” “we want to keep a kind of arm’s-length relationship,” and the “dance of balance”—whatever that means.

When you hear the Minister speak, you say “Okay, no political interference”. But, look at page 8 of this Bill, what do you see—a Minister who does not want political interference? It says, “such number of Assistant Executive Directors...as the Minister may determine.” Page 20. After speaking about not wanting political interference, the Minister spoke about the subject of subsections and the question of being made retroactive—the one year retroactive. He then went on to say, “It has been accomplished by the Minister’s direction.”

So when one set of people deal with the departments, they are “interfering”; when they, on the other side, deal with the departments, they are “directing and guiding”.

Mr. G. Singh: Just by way of clarification—under the T&TEC Act and the Water and Sewerage Authority Act, the Minister can give general and specific directions to the board. Under the purview of that law, WASA and T&TEC were doing the same thing: retroactively charging people for over four and five years. I therefore gave general and specific directions that the retroactivity be confined to one year.

Sen. M. Shabazz: Thank you. Yes, Madam Presiding Officer. Again, when the Minister on that side is involved, he is “directing and guiding”. When it is on this side, or when it is any other government, “the Minister is interfering”, “the Minister is trying to sway the people in a certain direction.” It is either “interference” or “direction” and if it is “direction” for them, it is “direction” for us when we are in power and when we get back into power. I want him to understand this, when he sits on this Bench during the next term.

You see, I do not want to go on to “the Minister” and “the Minister”, because I understand what their feelings are—how they feel about being Ministers. They will continue that way. So I want to come off that point and I want to do so very quickly.

One of the things I looked at was the rates. How are they really going to arrive at the rates? From investigation we have seen that in England they have the “retail price index” to come up with what rates are going to be. Maybe here—because we import so many things—we may have to introduce something like the “import price index”. How are they going to do it? I would like the Minister to explain: how they are going to come up with the rates. Where will the starting rates be? Will they begin where the present rates are, and make the adjustment? Could the Minister explain better?

The Minister is going to be winding up or winding down very soon. However he is going to be doing it, he should explain how the rates are going to be arrived at and give us a better position on the rates situation. I think a number of people here are not too clear on the rates situation. I hope that he is clear enough to be able to explain it to some extent.

One of the things that we saw in the Bill was the question of establishing a commission. Previously, a number of things were taken from the PUC Act and brought directly into this Bill. Under the PUC, you must have had an engineer as

one of the Members of the commission. Now, that is no longer so. I do not know what is the rationale for taking out the engineer. He seems to be an important person, in dealing with utilities—the engineer seems to be an important person for the types of utilities that he would have to be dealing with, or for what they now call “service provider”. If you are going to be as technical as this, we still feel that the engineer is a very important person in that setting.

Again, another point that I would like the Minister to speak about is, why the question of the appeals? What room—and somebody brought this up—have you given the public for appealing? Now, I understand that when somebody from the public appealed, it would take two/three years and because of the length of time it took, by the time you came to the new rate adjustment, you would have to go into another adjustment. Could it not be worked out in such a way that the period could be shortened, to ensure that the adjustment could take place quicker? At least, the public—the people—should have some say in how these rates come about because, again, it will be affecting them in a serious way.

What I find now is that a number of people—you see, before under the Public Utilities Commission, you would have heard a number of voices crying out at a number of changes. Now, all these voices are almost silenced. Why are they so silent? I would like to know. I do not know if it is because they are in the fold of the Government, like a number of the trade union people. Why are they silent? This is what I am questioning. Is it that they have been given jobs by the Government? What is the reason for their silence, for not representing the public in the manner in which they should?

If this was a People’s National Movement government, we would have heard the voices rising up—

Sen. Cabrera: On a point of order, Madam Presiding Officer, I draw your attention to Standing Order 35(1)—Irrelevance.

Madam Presiding Officer: Thank you. Sen. Shabazz, I will allow you to continue; but, please, do try to keep it close to what the Bill is about.

4.50 p.m.

Sen. M. Shabazz: Thank you, Madam Presiding Officer.

I am saying that we need to have a strong voice coming from the public, and it should be encouraged in this Bill. Even if it is not in the same way as under the PUC, because this Bill will affect the public and I am asking and I will ask again, why are they so silent?

In winding up I would like to also make a point that I have made here before because I do not want to be too long on this. Sen. Montano brought up a point about the workers of the PUC at this point in time. What is going to happen with those workers? We know for sure that a number of workers at the PUC are under a certain pressure as to whether their contracts will be renewed. They have worked right through and new people are coming in. What are the decisions going to be with regard to these people? If they cannot make decisions easily to get infrastructure going, how are we going to have the confidence that this Government will be able to ensure that the infrastructure is put in place for all these other departments and all these things that they are going to be doing. In this Bill there seems to be a number of things that must be done. How are they going to do it if they cannot even make a decision about what is happening right now at the work place of the PUC?

On that note I would also like to add that most of these utilities which we are now calling service providers, are normally bodies which cannot bring people in if workers go on strike. They would have to bring soldiers in to work if they go on strike. I would like to ask at this point—and this is relevant—that the Minister pay the army the moneys that they are owed and have been promised since May, including the buy-out so that if the army has to come into one of the essential services at this point in time —

Madam Presiding Officer: Senator Shabazz, I appeal to you to keep to the point of the debate.

Sen. M. Shabazz: Yes, Madam Presiding Officer.

On that note, I would hope that the army would not have to be called in and I would like to say that even though we are going to support this Bill we would like to see it go to a select committee. Let us not rush it through the House but see that everything is put in place. Let the Minister answer the questions that are asked. We will be looking at it hoping to give him the support it needs if he does the things that are, indeed, correct and proper.

I thank you, Madam Presiding Officer.

Sen. Prof. Julian Kenny: Madam Presiding Officer, I will speak very briefly on the Bill and clearly I will support it. I think we have listened to many constructive suggestions. But before doing this I wonder whether you would permit me to congratulate you on your election to the Presiding Officership of today's sitting, especially in the circumstances.

I think also you ought to permit me, please, to congratulate the acting Leader of Government Business. [*Desk thumping*]

Madam Presiding Officer, we sitting over here frequently take flak. My brother Senator here was the subject of an editorial opinion that he ought to be fired and there were charges that we are not independent. It offends. I think that in all fairness to us, we recognize that when we act and we say things or, perhaps, people make comments, the Government is, in fact, quite responsive, certainly in my experience, to perfectly normal contributions. Although I may be critical from time to time, I am absolutely delighted that at this stage of the proceedings we have gotten a firm undertaking that we are going to have an environmental commission. I make this point because I just want to make an observation related to this.

Madam Presiding Officer, will you permit me again to refer to the rather peculiar circumstances, especially as involves the media action—I am not going to refer to the particular one but to the general media hysteria and madness. We saw today a fantastic performance and it ought to be a matter of concern to us in our proceedings.

One of the things that struck me over the past few days—and I am under very heavy manners from the Chairman of one select committee. I must apologize for leaving the Chamber when I ought not to have done so but it was business. When we looked at how the media addressed what was happening in the country, it struck me, as a scientist, that cosmic forces were brought in here. [*Laughter*]

I am a scientist and our understanding of the cosmology is that it starts with a singularity, which many people cannot comprehend, leading to chaos but out of this chaos comes order. In particular I refer not only to the calm that Sen. Daly referred to but to the order. [*Desk thumping*] Today, Madam Presiding Officer, I marvel at the order in this Senate Chamber. [*Desk thumping*]

Referring to this Bill, I focus particularly on something which Sen. Teelucksingh, Sen. Ramchand and Sen. Dr. St. Cyr said. One of the concerns that I have about this, while I support it I do not think it is really necessary to go to select committee. I think it can be done within the time which was set for us. My concern relates to a national problem. Legislating a new method of regulating monopolies is in order, this is fine, but there is a parallel problem and that is, changing the culture of these public utilities.

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We all know the horrors that people have to go through with water and telephones. Something that I absolutely marvel at is that if you write, as a citizen, to a public utility like the telephone company—I wrote to them on a matter of entering my property and removing my produce from my property and they just simply do not reply. That is very, very common. We have to, in parallel with regulating these monopolies, we have to think in terms of how do we increase the efficiency of the particular monopoly. I would not wish to take on a task of this kind because it goes very deeply into our culture.

Here we are setting up a commission just as we set up—the Parliament passed a law in 1995 establishing the Environmental Management Authority. Integral to this piece of legislation was a commission and one administration went through a period of time, the first two years of the life of the authority, and did nothing about something which is integral to the legislation. It is taking the present administration a fair amount of time to make the commitment to the environmental commission.

I mention this because the legislative process, in my view, must take into account—I think this is a point that Sen. Teelucksingh and Sen. Ramchand were making; and I think that Sen. Nafeesa Mohammed frequently makes this point—the infrastructure that goes with it, otherwise we keep passing the laws and we do not provide the wherewithal. Sen. Prof. Spence says that when we do things like this we ought to tie a provision to it. I know the times are difficult but it seems that we are not taking cognizance of the reality of what happens outside especially in these monopolies.

These are my comments. I support the Bill. I congratulate the Minister and his technical team on producing something which I understood in a certain way until some of my colleagues spoke and then I had to reflect on some of it. But I do not have a problem with it and I think that we ought to proceed.

Thank you, Madam Presiding Officer.

The Minister of Public Utilities (Hon. Ganga Singh): Madam Presiding Officer, I want to thank hon. Senators for their contributions on this Bill, in particular Members of the Independent Bench for the very positive suggestions they made with respect to the various clauses in the Bill. We intend to take on board those suggestions in order to provide for good regulatory governance.

I want to also thank Sen. Joan Yuille-Williams for making a positive contribution on the Opposition side. But it would be remiss of me if I do not deal with the contributions, individually, by Members of the Opposition first. It is clear to

me that there is a measure of insularity attending the Opposition Bench. I tried to find out, as I sat here and listened to them, what is the cause of that insularity, parochialism and xenophobic behaviour. The only conclusion that I could come to is that it is due to their lack of knowledge, lack of a world view and their lack of knowledge of what is happening in the world today.

I know Sen. Nafeesa Mohammed recently spent a considerable time in Boston and that is a hallowed hall of learning and cosmopolitanism. One would hope that she would bring to bear that kind of learning that there is in the areas of Harvard, MIT, Boston University and others.

I indicated in my opening remarks on this Bill that we are seeking to achieve balance between the contended interest of the consumer, the private sector investor and the Government.

5.05 p.m.

It is that sort of balance that we have to create in this Bill, so as to prevent the providers of utility services from abusing the monopoly and, therefore, the public interest is secured in that fashion.

What is the emerging trend worldwide as to what is happening in this area? The Opposition made much of a song and dance about ministerial power. Residual power must repose in the Westminster system and model, having regard to collective responsibility, with the Minister, who is answerable to Cabinet, who is answerable to Parliament and to the wider electorate. It must. That is one of the tenets. In this particular area, what is the emerging trend in this sector? I will perhaps add to their learning.

Sen. Shabazz: Perhaps.

Hon. G. Singh: Your head is so hard.

Sen. Mohammed: Madam Presiding Officer, on a point of order. The hon. Minister has just made a statement which, according to the Standing Orders, is offensive to a Member of the Senate.

Madam Presiding Officer: I would ask the Minister to take these words into account.

Hon. G. Singh: It was not meant in any way. I did not say that the hon. Senator had a soft head, but I withdraw the remark unconditionally. *[Laughter]*

Sen. Shabazz: It is your head which is soft.

Hon. G. Singh: Madam Presiding Officer, it is the learning that most independent regulators are responsible for administering rules, settling disputes and monitoring the firm providers. The question arises: What is the role of the Minister? When a worldwide trend analysis is done, it is seen in different countries that there are different approaches. It is generally agreed that the Minister should maintain responsibility for broad sector policy including public investment, privatization, sector restructuring, taxation, subsidies and the maintenance of the legislative framework.

There is a big song and dance from the Opposition as to the granting of licences and concessions. What is the worldwide experience? In the United States, state regulators grant licences or concessions. In the United Kingdom, the power to grant licences is formally vested with the relevant Minister who can delegate this task to regulators. In Argentina and Peru, concessions are granted by Ministers. In Jamaica, the regulator makes recommendations on the award of licences, but the Minister makes the final decision.

In the proposed Bill before us, the Minister grants the licences after consultation with the Regulated Industries Commission, so that it is clear that there is no hard and fast rule as to where the power is to reside and should be located. You find that in the smaller countries, because of the way the parliamentary democracy is structured, that the power resides in the hands of the Ministers.

Part of the rationale for that, Madam Presiding Officer, since licences are granted for an extended period of time, is that it will impact considerably on the national well-being and this explains the reason for the Minister being responsible for the granting of licences. The role of the regulatory agency and its responsibility for promoting investment in a sector will often conflict with its role as an impartial arbitrator of the investor and consumer interest.

Therefore, it is clear that the international approach can be regarded as being dual and, in our situation, we felt like Jamaica, it is more prudent to take the approach, like the United Kingdom, of reposing it in the hands of the Minister, who is answerable to Cabinet, to Parliament and to the wider electorate.

Secondly, Opposition Sen. Nafeesa Mohammed and Sen. Joan Yuille-Williams, made a number of remarks with respect to the role of the consumer service committees. First, the question of appointment. Now, when the legislation and its sequencing are looked at, it is seen that the consumer service committees are

appointed by the Minister; they are standing committees; they may be, by virtue of the regulations that will come into being, sector specific in the sense that they may be standing committees for each particular sector; but, they report to the Regulated Industries Commission.

Sen. Yuille-Williams made a big hue and cry about the commission being free to accept or reject a report. But, the nature of the way it is administratively structured, if that is not so, then it is almost as if any report emanating from the consumer service committees to the commission, as a matter of fact, must be accepted. That cannot be; it cannot be that way. It would not make for good regulatory governance if the tail were to wag the dog.

Sen. Yuille-Williams: Madam Presiding Officer, what the hon. Minister just said was a concern of mine. The point about the consumer service committees may be this or that. That is what I was speaking about, whether it was thought out. That is our problem. We did not know what it was and you have just confirmed it. The hon. Minister said it may be this or it may be that, which means he is still to think what these committees are about. That is our concern.

Hon. G. Singh: The point is, they are standing committees. That is decided. It will be in consultation with the commission to determine whether or not it wants to appoint committees specific to the water industry, to the telephone sector, or to the electricity areas, or further down the road to the postal areas. So, initially, they may have different approaches, but these are standing committees of the Regulated Industries Commission, reporting to the commission but appointed by the Minister.

Sen. Mohammed: Why can the commission not appoint them?

Hon. G. Singh: It is part of the checks and balances. If there is a consumer service committee appointed by the Minister, reporting to the commission then, by virtue of its appointment, they have more leverage in their report and recommendation to the commission. In addition to that, it is incestuous to have the commission appointing the consumer service committees and those committees reporting to them.

Sen. Mohammed: It amounts to political interference.

Hon. G. Singh: In that sense, what you want to get, is a broad spectrum of people serving on those committees. The fear of ministerial power is the hon. Senator's problem. She has to get over that paranoia. It provides for a broad spectrum of people who will be allowed to be appointed on these committees and

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it provides for one person to be nominated by the Chief Secretary of the Tobago House of Assembly.

Sen. Mohammed: Too much political interference. Let the commission appoint them.

Hon. G. Singh: I want to deal with the issue raised by Sen. Yuille-Williams as to so many people being appointed to these committees. Also, that there were no checks and balances and that one could willy-nilly waste the public purse. The reality is that all the expenses of the Regulated Industries Commission—first, the budget will be laid in Parliament so there is parliamentary scrutiny; secondly, the Auditor General will audit these expenditures and make the necessary report in the Auditor General's Report, therefore, for good governance of the utilities sector, one would expect a certain approach which would be reflected in the size of the committees and, also, in the functioning of the committees.

One final point, before we take the adjournment, Madam Presiding Officer, because I want to take time to consider the suggestions of the hon. Senators of the Independent Bench, and treat them with the necessary seriousness which they deserve.

The sheer hypocrisy of Sen. Danny Montano's contribution with respect to the number of staff in the current Public Utilities Commission. Under the last regime, in which Sen. Yuille-Williams was a Cabinet Minister, the Public Utilities Commission, as I said in my opening remarks, was left in animated suspension. There was one person left there when we went into office—who is Mr. Cupid—left by the previous regime. They virtually killed the Public Utilities Commission. We resurrected it in order to deal with long outstanding rate hearings.

Under the last regime, the General Manager of T&TEC went 13 times to the then Minister of Public Utilities with his cost of service study for him to take to Cabinet to get the okay to go before the Public Utilities Commission for a rate hearing. They never provided the Public Utilities Commission with the necessary staff and complement of technical support in order to have a rate hearing. Now, we wonder why? Whose interests were they protecting? Because, clearly, the rate increase they were seeking, as is sought now under our regime, impacted upon large industries. So, it is sheer hypocrisy to come here to talk about whether or not the 21 people in the Public Utilities Commission will be moving across to the Regulated Industries Commission.

We have made the necessary administrative arrangements. They are on contract and they have been recruited with the Regulated Industries Commission in mind. We had international, regional and local advertisements in order to recruit the best talent. Most of the people in the current Public Utilities Commission are highly qualified and they are on contract anticipating the coming into being of this legislation.

ADJOURNMENT

The Minister of Finance (Sen. The Hon. Brian Kuei Tung): Madam Presiding Officer, before I move the adjournment, let me say that I think it is only left for me to thank you very much for presiding over today's business of the Senate. I think I echo the sentiments of all here when they say you eased into the Chair, or moved into the Chair with a certain charm, ease and grace that we have grown to know and expect of you. [*Desk thumping*]

In thanking you, let me also congratulate you for the way you handled today's proceedings. It started somewhat slower than what the press expected, but by some unknown hand, was able to arrange a more eventful day for us than anticipated. In spite of all that, we have had a very good day today, and it is one in which the Senate, as an institution, should be congratulated. [*Desk thumping*]

On the next day we meet, I would like to complete the Regulated Industries Commission Bill and proceed to the Squatter Regularisation Bill. I would also indicate to hon. Senators that the International War Crimes Tribunal Bill came back from the other place with a number of amendments which I would like to fit in over the next few days.

With these few words, Madam Presiding Officer, I beg to move that the Senate do now adjourn to Thursday, September 10, 1998 at 1.30 p.m.

Madam Presiding Officer: Before I put the question on the Motion of the Adjournment, it is unlikely, but these things do happen and in future—I have been asked to say—if, for any reason, we have to vacate the Chamber during the course of a sitting as we did today, could members of the public as well as Members of Parliament please remember to take with them any bags, briefcases, or anything which belong to them, otherwise when you return you might not find them there because they would have been thoroughly searched for bombs.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 5.23 p.m.