

# **Public Utilities Commission of Sri Lanka**

## **Regulatory Manual**

A guide to the work of the PUCSL

**May 2009**

**Version 02**

This is the Regulatory Manual prepared by the Public Utilities Commission of Sri Lanka in accordance with section 17(e) of the Public Utilities Commission of Sri Lanka Act No. 35 of 2002 and section 3(i) of the Sri Lanka Electricity Act No. 20 of 2009. It represents the code of practice that governs the functions of the Commission.

# Table of Contents

<b>Section</b>	<b>Page</b>
<b>OUR VISION .....</b>	<b>V</b>
<b>OUR MISSION .....</b>	<b>V</b>
<b>READER'S GUIDE.....</b>	<b>VI</b>
<b>PART I: COMMON PROCEDURES AND PROCESSES .....</b>	<b>1</b>
<b>SECTION 1: Introduction .....</b>	<b>2</b>
1.1 The purpose of the Manual .....	2
1.2 Keeping the Manual up-to-date .....	2
1.3 Obtaining further information.....	3
<b>SECTION 2: Overview of the PUCSL.....</b>	<b>4</b>
2.1 The PUCSL .....	4
2.2 The PUCSL as an independent regulator .....	8
2.3 Our objectives, functions, powers and duties.....	10
2.4 How policy is made.....	15
2.5 Regulatory principles .....	15
2.6 Protecting our independence.....	17
<b>SECTION 3: The PUCSL's Processes .....</b>	<b>19</b>
3.1 Regulatory reviews.....	19
3.2 Public hearings .....	25

# Table of Contents

<b>Section</b>	<b>Page</b>
3.3	Publication of PUCSL decisions ..... 28
3.4	Appealing against PUCSL decisions ..... 28
3.5	Minimising the costs of regulation ..... 30
3.6	Organisation and funding of the PUCSL’s work ..... 32
<b>SECTION 4: Consumers and the PUCSL.....37</b>	
4.1	Asserting your rights ..... 37
4.2	Resolving disputes ..... 39
4.3	The Consumer Consultative Committee..... 41
4.4	Working towards competitive markets ..... 45
4.5	Registering a complaint ..... 50
<b>SECTION 5: Operators, Investors and the PUCSL.....53</b>	
5.1	Licensing ..... 53
5.2	Regulating prices and quality ..... 56
5.3	Obtaining information..... 58
<b>SECTION 6: Other Agencies.....62</b>	
6.1	Agencies with whom the PUCSL coordinates ..... 62
6.2	Memoranda of understanding ..... 63
<b>PART II: INDUSTRY-SPECIFIC PROCEDURES AND PROCESSES ..... 64</b>	
<b>SECTION 7: The Electricity Industry.....65</b>	
7.1	The PUCSL and the electricity industry ..... 65

# Table of Contents

<b>Section</b>	<b>Page</b>
7.2 How the PUCSL’s approaches apply to the electricity industry.....	68
7.3 Electricity consumers and the PUCSL .....	70
<b>PART III: GLOSSARY, LEGISLATION AND OTHER DOCUMENTS .....</b>	<b>80</b>
<b>SECTION 8: Glossary .....</b>	<b>81</b>
<b>SECTION 9: Legislation .....</b>	<b>84</b>
9.1 Common legislation .....	84
9.2 The electricity industry .....	84
<b>SECTION 10: Other Documents.....</b>	<b>85</b>

## **Our Vision**

Create an environment for all inhabitants of Sri Lanka and the contributors to its development, to have access to essential infrastructure and utility services in the most economical manner within the boundaries of the sustainable development agenda of the country.

## **Our Mission**

Regulate all the utilities within the purview of the Public Utilities Commission of Sri Lanka, to ensure safe, reliable and reasonably priced infrastructure services for existing as well as prospective consumers in the most equitable and sustainable manner.

# Reader's Guide

A summary of the contents of each part of this Manual is provided below. Please use this to help you identify the parts of most interest to you.

## **PART I: COMMON PROCEDURES AND PROCESSES**

Provides an overview of the PUCSL and describes those procedures and processes that are common across all the regulated industries.

**SECTION 1: Introduction** Describes the purpose of this Manual and how it is updated

**SECTION 2: Overview of the Commission** Describes the structure of the PUCSL, including the relation between the Commissioners and OFCOMM, and its role

Details the objectives, functions, powers and duties of the PUCSL under the legislation that establishes it

Describes how the PUCSL receives Government advice ; how the PUCSL can provide policy guidance to Government

Lists the principles that the PUCSL follows in its work

Describes how the PUCSL retains its independence

**SECTION 3: The PUCSL's Processes** Describes the processes that the PUCSL follows in undertaking regulatory reviews and public hearings

Describes how the PUCSL minimises the costs of its work

Describes how the PUCSL consults on its work plan, how its budget is set and funded and how it reports on its activities and audits its accounts

**SECTION 4: Consumers and the PUCSL** Covers issues of particular interest to consumers in regulated industries

Describes how the PUCSL can help consumers assert their rights to obtain information on goods

and services

Describes what disputes the PUCSL can help resolve and how the PUCSL will use mediation to do so

Describes the work of the Consumer Consultative Committee, which has a particular responsibility for representing the interests of smaller consumers, and how the Committee is appointed, organised and funded

Describes the role of the PUCSL in protecting against reduced competition in the industries that it regulates

Describes how the PUCSL investigates and enforces controls on anti-competitive practices and dominant firms

Describes what complaints can be received from consumers by the PUCSL and how it will address these

**SECTION 5: Operators, Investors and the PUCSL**

Covers issues of particular interest to operators and investors in regulated industries

Provides a general overview of the licensing framework applied in the industries regulated by the PUCSL and how they are issued, modified and revoked

Provides a general overview of the role and powers of the PUCSL in respect of the regulation of prices and service quality

Describes the powers of the PUCSL to obtain information and its information disclosure policy

**SECTION 6: Other Agencies**

Lists other agencies with whom the PUCSL might need to co-ordinate on the sharing of information and harmonising regulatory approaches and procedures

Lists those agencies with whom the PUCSL must enter into formal Memoranda of Understanding

**PART II: INDUSTRY-SPECIFIC PROCEDURES AND PROCESSES**

Describes how the role of the PUCSL and its procedures and processes differ with respect to specific regulated industries

<b>SECTION 7:</b>	<b>The Electricity Industry</b>	Provides an overview of the electricity industry.  Describes how the PUCSL’s objectives, functions, duties and powers differ with respect to the electricity industry from the general ones described in Part I  Describes how the procedures of the PUCSL with respect to licensing, dispute resolution and the regulation of service quality through performance standards differ from the general ones described in Part I  Describes the role of electrical inspectors under the PUCSL
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**PART III: GLOSSARY, LEGISLATION AND OTHER DOCUMENTS**

Provides general reference material for readers of the Manual.

<b>SECTION 8:</b>	<b>Glossary</b>	Contains definitions of various terms used in the Manual and which are not in common usage or have a particular meaning in the context of the Manual
<b>SECTION 9:</b>	<b>Legislation</b>	Lists legislation and regulations relevant to the work of the PUCSL
<b>SECTION 10:</b>	<b>Other Documents</b>	Lists selected rules, guidelines, decisions and other documents issued by the PUCSL and which are of particular importance in understanding the regulatory framework for those industries which it regulates

# **PART I: COMMON PROCEDURES AND PROCESSES**

## SECTION 1: Introduction

### 1.1 The purpose of the Manual

**This Manual is a guide for stakeholders to our processes and procedures. It explains how we will generally operate in fulfilling our role as the independent technical and economic regulator for public utilities industries in Sri Lanka.**

This Manual does not replace the laws and regulations applicable to us, and which govern our work. A list of these is provided in Part III of this Manual (click [here](#)). In the event of any inconsistency between these laws and regulations and this Manual, then the former will prevail. This Manual is published for the purposes of guidance only and does not represent a legally binding commitment by us to follow its contents at all times, although we will endeavour to do so where possible.

Throughout this Manual we refer to the Public Utilities Commission of Sri Lanka Act No. 35 of 2002 as "the PUCSL Act".

### 1.2 Keeping the Manual up-to-date

**It is important that this Manual is regularly reviewed and updated to take account of changes in our role and work over time.**

The guidance in this Manual, is based on the current position and will need to change over time to reflect:

- changes to our role and functions (which may be prescribed by law);
- changes in regulation and economic theory which we adopt in our work; and
- changes in the public utilities industries we regulate.

Other matters that might give rise to changes in the Manual include changes arising out of the conclusion of any regulatory reviews which we undertake.

#### ***1.2.1 Timing of updates***

We intend that this Manual will be updated each year. After it is updated, it will be given a new version number to differentiate it from previous editions. The latest edition will always supersede all previous editions, so you should check that you are reading the latest edition.

If there are times where we think it is necessary to update the Manual within the course of a year (for example, where there is an important change in legislation), we may revise the Manual on an interim basis, to reflect these changes.

### **1.2.2 Responsibility for updates**

Section 17(e) of the PUCSL Act requires us to prepare this Manual, and also to revise it as and when required. Therefore the responsibility for updates falls on us.

We always welcome stakeholders' views and suggestions on how this Manual could be updated.

### **1.2.3 Finding out about updates**

Our website contains details of updates to this Manual (click [here](#)). It will also list the major changes that have occurred with each new update. You can also obtain copies of updates by contacting our Information Centre using the contact details given in the section below.

## **1.3 Obtaining further information**

Remember, where possible, we will always try to assist you with matters that fall within our remit. Therefore if you need further information on anything contained in this Manual, you should contact our Information Centre in any of the ways set out below.

*Public Utilities Commission of Sri Lanka*

*Level 06, BOC Merchant Tower, No. 28,*

*St. Michael's Road,*

*Colombo 03.*

Telephone: (+94 11) 2392607

Fax: (+94 11) 2392641

e-mail: [info@puosl.gov.lk](mailto:info@puosl.gov.lk)

website: [www.puosl.gov.lk](http://www.puosl.gov.lk) ]

You can write, telephone, fax or email in any of Sinhala, Tamil and English. You can also submit a completed form through our website.

Our preferred means of communications for non-urgent queries is by e-mail or post. For urgent queries, you should telephone us.

You can also obtain copies of many of the documents that we issue at our information centre.

Before contacting us, please look at our website, which has a lot of useful information. You can also visit our Information Centre located at our office in Colombo.

## SECTION 2: Overview of the PUCSL

### 2.1 The PUCSL

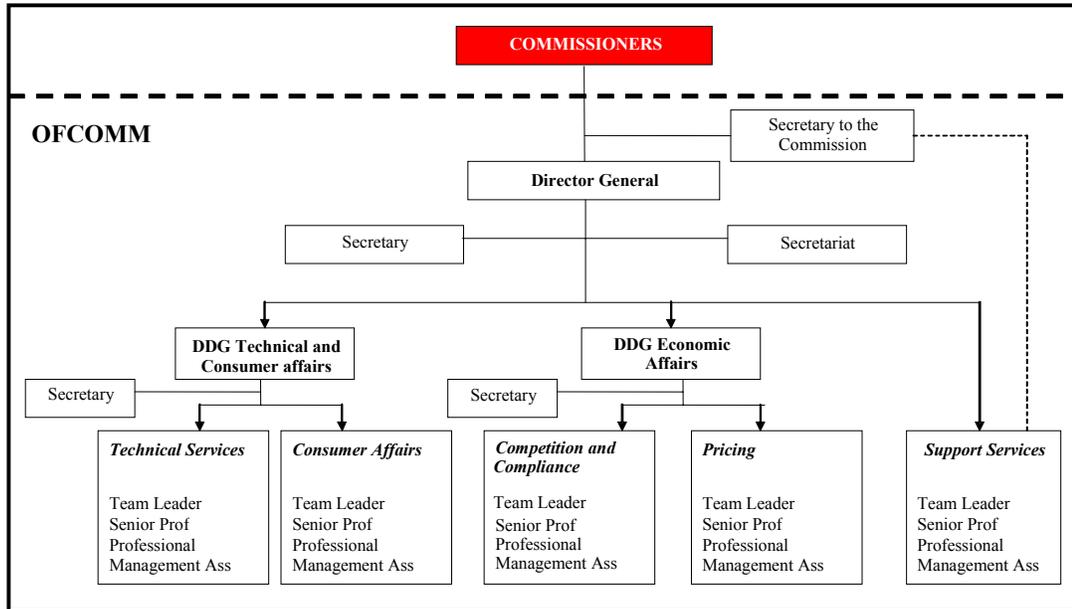
The PUCSL comprises the Commissioners and their supporting office, OFCOMM. This section describes the relationship between them and how they are appointed and dismissed.

#### ***2.1.1 The Commissioners and their office***

The PUCSL is established under the PUCSL Act (click [here](#)). The PUCSL Act provides for the appointment of:

1. the five Commissioners who make up the Commission; and
2. OFCOMM (the Office of the Commission); the staff of the Commission headed by a Director-General, who reports to the Commission. OFCOMM is organised into three main divisions covering Technical and Consumer Affairs, Economic Affairs and Support Services.

The figure below provides an overview of our structure. A more detailed organisational plan, including staff contact details, is available on our website (click [here](#)).



**1 - Structure of the PUCSL**

Throughout this Manual, references to “we” and “us” refer to the PUCSL as a whole, comprising the Commissioners and OFCOMM. Where we refer to either the Commissioners or OFCOMM as distinct from the PUCSL, we use the appropriate name.

**The Commissioners**

There are five Commissioners. They are appointed on a part-time basis. Their pay is determined by Parliament.

Commissioners serve five-year terms, except that the first Commissioners hold office for periods of four, three, two years and one year respectively. These are

staggered so that one Commissioner retires each year—thus maintaining continuity and avoiding sudden changes in approach as Commissioners are replaced. Commissioners may be reappointed for a second five-year term, but not a third.

The Commissioners provide overall direction to our work, both in its content and in its approach, and take all major decisions. The Commissioners are also responsible for approving and issuing our budget, work plan and annual reports.

The Chair of the Commission calls meetings. Any Member of the Commission may, in writing, request the Chair to call a meeting and this request must not be refused without good reason.

For a meeting to be quorate, a minimum of three Commissioners must be present including at least the Chair or Deputy Chair. Decisions are taken by majority vote with the Chair having a casting vote.

### **The Director-General**

The Director-General acts as the Chief Executive Officer of the PUCSL. The Director-General is appointed and removed by the Commissioners.

The Director-General is responsible for the day-to-day activities of the PUCSL, subject to the direction and control of the Commissioners. The Commissioners can only delegate, to the Director-General, decision-making powers with regards to the administration including the control of the PUCSL's staff.

### **OFCOMM**

OFCOMM, through the Director-General, supports the Commissioners in their work. OFCOMM undertakes reviews and develops recommendations on which the Commissioners will take decisions. It also provides information and assistance to stakeholders and receives and considers complaints and other submissions on behalf of the Commissioners. OFCOMM has no powers to take decisions on behalf of the Commissioners.

## ***2.1.2 Employment of Commissioners***

### **Appointment**

The Minister appoints the Commissioners with the concurrence of the Constitutional

Council, which verifies that the Minister's nominated candidates meet the necessary qualifications for appointment. The Minister also appoints the Chair of the Commission from among its Commissioners who, in turn, appoints a Deputy Chair.

Vacancies must be filled within three months of their occurrence.

Commissioners are required to be people of ability and integrity. At all times, the Commission must include at least one Commissioner with experience and qualifications in each of the following fields:

- engineering;
- law; and
- business management.

All Commissioners must be able to show relevant skills or experience in any of the above fields or in the following:

- economics;
- accountancy; or
- administration.

A Commissioner must also fulfil a number of other criteria, in particular that they must:

- be a Sri Lankan citizen;
- not have been convicted of a criminal offence nor be an undischarged bankrupt;

- not currently or have recently held political office; and
- not have financial or other interests in regulated industries.

A full list of eligibility criteria is contained in section 5 of the PUCSL Act (click [here](#)).

**Public Utilities Commission of Sri Lanka Act, No. 35 of 2002 – section 5**

(1) The members of the Commission shall be persons with ability and integrity and have shown capacity in addressing problems relating to, engineering, law, economics, business management, accountancy or administration—

(2) A Person shall be disqualified from being appointed, or continuing as a member of the Commission if—

- (a) he or she is not a citizen of Sri Lanka; or
- (b) he or she has been convicted of a criminal offence; or
- (c) he or she is, or has been, an undischarged bankrupt or has made any arrangement with his or her creditors; or
- (d) he or she is, or has been within three years prior to his or her nomination for appointment, a member of Parliament; or
- (e) he or she is a member of a Provincial Council or any local authority; or
- (f) he or she holds any post in any political party recognized for the purposes of parliamentary elections; or
- (g) he or she or a connected person, has any financial or other interest amounting to a conflict of interest, directly or indirectly, in any company or undertaking which carries on any public utility industry.

**Removal**

To maintain the independence of Commissioners from Government and other stakeholders, the grounds for their removal are strictly limited. A Commissioner can only be removed where he or she

- is an undischarged bankrupt;
- is declared to be of unsound mind according to Sri Lankan law;
- cease to meet the conditions of eligibility for appointment;
- fail to discharge their functions (such as attendance at Commission meetings) for three months or more; or
- are guilty of misbehaviour.

The Minister initiates removals, but these have to be approved through a transparent process (click [here](#)). The Minister sends to Parliament a full statement of the reasons for the removal of a Commissioner together with any defence made by the Commissioner concerned. Parliament must then vote, by a majority of all Members of Parliament (not just those present), to approve the removal.

**2.1.3 OFCOMM**

The Commissioners appoint the Director-General and Deputy Director-Generals. The Commissioners also appoint a Corporate Secretary and are free to appoint other staff where they consider this to be necessary. The Commissioners

determine the remuneration and other terms and conditions of employment for all staff.

In line with our intention to minimise the costs of regulation, our organisational structure emphasises flexibility, thus avoiding duplication and making the most efficient use of resources.

OFCOMM is organised into two main divisions, each headed by a Deputy Director-General, as well as a support division. These divisions are organised on the basis of function rather than skills or industry:

- The **Technical and Consumer Affairs Division** has responsibility for technical affairs, such as safety and quality standards, and consumer affairs, such as complaint handling.
- The **Economic Affairs Division** has responsibility for regulating prices, competition issues and compliance with licences.

The divisions are responsible for day-to-day activities that fall within their remit, such as processing licence applications. For issues where regulatory reviews are required, project teams will be formed with staff drawn from throughout OFCOMM depending on the expertise required.

We are concerned to avoid our work being dominated by any one regulated industry - leading to other industries being overlooked. However, we also remain aware of the need to have sufficient access to industry-specific skills and experience

to understand the needs of particular regulated industries. To do so, we:

- make use of consultants with the requisite skills and experience, either on an 'as required' basis or under long-term support arrangements; and
- consider the level and range of industry-specific expertise represented among OFCOMM's staff in our recruitment decisions.

## 2.2 The PUCSL as an independent regulator

**In this section we give you an idea of our purpose, what we need to do and what we can do for the industries we regulate. Rather than giving you a detailed list of these things, we give you a general overview. It is important to refer to the relevant parts of this Manual, the PUCSL Act and any other industry-specific legislation for details on specific matters.**

This Manual is a guide to our approach – it must always be read in the light of the relevant legislation where our objectives, duties and powers are formally set out.

### What is an economic regulator?

We are the economic regulator for all industries that are regulated by us. An economic regulator is responsible for

overseeing and, in some cases, controlling the prices, service quality and level of competition in industries falling under its remit. In some industries, as set out in industry-specific legislation, we also have other regulatory roles, such as the safety of services. More information on the scope of our regulatory responsibilities in individual industries is given in Part II of this Manual.

In general, economic regulation is applied where industries have a monopoly - and therefore competition alone is not sufficient to protect consumers. Such monopolies may be legally imposed or may result from the nature of the industry (so that, for example, it is generally unlikely that you will see two electricity transmission grids serving the same geographical area).

The role of economic regulators in helping define policy differs from country to country, depending on the particular needs of each country and its institutions and traditions.

### **Why is independent regulation desirable?**

Regulators have a great deal of power over industries that are vital to your health, livelihood and well-being, such as electricity. They need to be able to act fairly, striking a balance between the needs of all stakeholders in the industry.

This might include, for example the need to protect the interests of consumers where these are challenged by utility or government actions. It also includes considering the need to create long-term stability in the regulation of the industry, so that investors, operators and consumers

are able to take decisions with some certainty over the future industry. It covers allowing adequate prices to finance efficient operations and investments. And, it includes developing the industry in a manner that promotes the policy objectives of government, while at the same time doing so in a way that considers the concerns of consumers, investors, operators and other stakeholders.

To be able to do all this, regulators need to be independent from governments and from other stakeholders. This does not mean that regulators can make policy – government continues to do so. But it does mean that they must be able to take decisions on how best to implement policy in their own right without being directed by government or others.

### **Independent regulation in Sri Lanka**

The PUCSL Act establishes us as the independent economic regulator for public utility industries in Sri Lanka. Industry-specific legislation sets out our powers, duties and functions with respect to individual public utility industries. In some cases these may extend beyond economic regulation to include other roles such as safety regulation.

Under industry-specific legislation, we are currently responsible for the electricity industry. As and when further legislation is passed, bringing additional industries within our remit, new sections will be added to Part II of this Manual, setting out our roles in those industries.

Our role will differ for each industry but generally involves licensing (or other concession) issues, regulating prices,

service standards and market conduct. For further details of what we do please see below.

The PUCSL Act contains various measures to protect our independence. These are described later in this section.

## 2.3 Our objectives, functions, powers and duties

**In our work we need to act in conformity with the objectives and duties laid down for us in legislation, undertaking the functions required of us, and using the powers given to us. This section describes those objectives, functions, powers and duties.**

### 2.3.1 How are our objectives, duties and functions determined?

Our specific objectives, functions, powers and duties are determined by the PUCSL Act and industry-specific Acts. Therefore, if you have a specific query you should also refer to the relevant Act or Acts.

### 2.3.2 What are our specific objectives?

Under the PUCSL Act we have to carry out our work in a way that we think is best calculated to:

- protect consumers;

- stimulate competition;
- promote efficiency in regulated industries;
- encourage an efficient allocation of resources;
- benchmark utilities services against international standards; and
- make sure that those involved in a regulated industry do not find it too difficult to finance their business.

### How can we achieve this?

Our objectives need to be considered together. In certain cases there will be a need for us to balance some objectives against others. For example, a decision may ensure consumer protection but could be seen by other stakeholders as not promoting an efficient allocation of resources. We must always have the flexibility to consider competing priorities and make decisions which we believe will lead to the greatest benefits to the public welfare.

But what do our objectives mean to you? We set out below our thoughts on some of the concepts underlying our specific objectives.

**Public Utilities Commission of Sri Lanka Act, No.35 of 2002 – section 14**

...the Commission shall exercise, perform and discharge the powers, functions and duties conferred on or assigned to it by or under this Act and any other industry Act, in a manner which it considers is best calculated:

- (a) to protect the interests of all consumers;
- (b) to promote competition;
- (c) to promote efficiency in both the operations of, and capital investment in, public utilities industries;
- (d) to promote an efficient allocation of resources in public utilities industries;
- (e) to promote safety and service quality in public utilities industries;
- (f) to benchmark, where feasible, the utilities services as against international standards; and
- (g) to ensure that price controlled entities acting efficiently, do not find it unduly difficult in financing their public utilities industries.

### **What is a consumer?**

Consumers, in general terms, are those people who now, or in the future, buy and use services and/or goods. Each sector will have a specific definition of "consumer".

### **What is competition?**

Competition exists where there is a choice of firms offering goods or services. This choice may be of a one-off nature, for example, the award of a licence, or on a continuing basis, for example, the choice of which petrol station to use.

### **What do we mean by "promoting efficiency"?**

Efficiency requires that businesses provide goods and services at the lowest cost possible (including an allowance for reasonable profits). It also requires that

users of goods and services pay a price that reflects the true cost of providing them, so that they can make appropriate decisions on what to buy.

### **What is benchmarking?**

Benchmarking is the process of comparing the performance, whether financial, service quality or on some other basis, of businesses to identify which are the best performers and the extent to which others fail to meet these performance levels.

### **What are international standards?**

International standards represent "best practice", whether in terms of cost efficiency, performance or similar, that is achieved in public utilities industries outside Sri Lanka. They therefore provide targets which Sri Lankan utility services should be measured against. In benchmarking utilities services against these standards we will take account of factors such as the relative level of development of Sri Lanka and other countries, social concerns, the relative costs of labour and materials and similar considerations.

### **What are price controlled entities?**

Price controlled entities are those businesses in which we either set or approve the prices and tariffs that they are allowed to charge to consumers of their services.

### **2.3.3 Our functions**

While our functions differ for each regulated industry, section 17 of the PUCSL Act sets out our broad functions. For example, one of our functions was to prepare this Manual. Our other functions under the PUCSL Act include:

- carrying out all of our powers, duties and functions set out in the PUCSL Act;
- consulting, where appropriate, with those individuals or groups who may be affected by our decisions;
- where we think it is appropriate, advising the Government on issues relating to those industries within our remit;
- collecting, documenting and circulating utilities industry information. However, in some instances we may not be able to circulate some information, for example, information that is sensitive or confidential (Section 5.3 of this Manual contains further guidance);
- issuing, amending and revoking licences and monitoring compliance with licence conditions;
- enforcing the provisions of licences (in other words, making sure licensees comply with their licences);
- regulating tariffs and other charges collected by regulated entities;
- resolving disputes in the industry;
- setting and enforcing standards relating to the safety and quality of the regulated industries;
- exercising regulatory and inspection functions; and
- carrying out any other activities which we consider are appropriate in our work.

For an explanation of some of our other more specific functions, please refer to the relevant parts of this Manual.

### **2.3.4 What are our powers?**

We also have various powers given to us under the PUCSL Act. Our powers are different from our functions and duties, because unlike functions and duties, we have a choice over whether to exercise our powers. Under the PUCSL Act, our powers are wide ranging. Set out below are examples of our powers, broken down into various groups for your ease of reference.

#### **Director-General**

In relation to the Director-General, the Commissioners can:

- appoint Deputy Directors-General for specific industries;

- delegate certain decision making powers to a Director-General, and decide whether they can delegate their powers, functions and duties to any other of OFCOMM's staff; and
- remove a Director-General (or Deputy Directors-General) from office.

### Public hearings

We have an important role in relation to public hearings. As such our powers are extensive and allow us to:

- hold a public hearing if we think it is necessary in the public interest;
- summon, as reasonably required, anyone to attend public hearings, if we think they are able to give (relevant) evidence;
- obtain evidence from such witnesses (and require that person to give evidence) as we think desirable, and to examine that person as a witness; and
- make an order, award or direction.

Section 3.2 of this Manual explains in more detail what our role and powers are in public hearings.

### Protecting competition

We have extensive powers to help us in protecting competition. For example, we can:

- carry out investigations into anti-competitive practices, abuses of dominant positions, and merger situations;
- make orders in relation to the above activities, for example prohibiting dominant positions; and
- in relation to regulated utilities, enter, inspect, and search premises. We can also inspect and take copies of, or seize and detain, all relevant records and documents.

For further information on our role in promoting competition, see Section 4.4 of this Manual.

### Finance

To help preserve our independence, we are allowed some control over our financing. We can:

- invest moneys into, and transfer or sell, securities (such as shares and bonds). This must be done with the approval of the Minister of Finance;
- temporarily borrow money that we may reasonably require to perform or discharge our duties and functions; and
- revise our expenditure during the course of a year if circumstances change.

Section 3.6 gives further information on financing.

## Staff

As a regulator, we need the help of many employees if we are to carry out our objectives and functions, and exercise our powers. To help us in that respect, the Commissioners can:

- appoint any staff to OFCOMM that the Commissioners consider necessary for the exercise of our powers and performance of our functions and duties;
- dismiss and exercise disciplinary control over OFCOMM's staff; and
- make rules in relation to various other matters concerning OFCOMM's staff.

## Other powers

Set out below is a list of our miscellaneous powers that do not easily fit into other categories. These include the ability to:

- sue others, in the same way that ordinary members of the public can;
- request, as reasonably required, information. This can include books, accounts, or any other information that is reasonably required to carry out our functions;
- regulate the procedure of our internal meetings;
- engage the services of consultants or advisors that we

think are necessary to help us discharge our functions;

- make rules for any matters for which rules are authorised or required under the PUCSL Act; and
- publish the names and addresses of anyone convicted under the PUCSL Act.

## 2.3.5 Our duties

Our duties reflect our functions. We have wide-ranging duties that we must comply with. For example:

- Commissioners must appoint a Director-General of the PUCSL (it is the Director-General's role to take care of our day-to-day activities); and
- we are under a duty to ensure that Commissioners, the Director-General and staff of OFCOMM and those who work for us sign declarations of secrecy.

We also have a number of *specific duties*. For example, these include:

- keeping records of public hearings; and
- forwarding appeal petitions to the Court of Appeal.

For your ease of reference, we have set out these specific duties under the relevant sections of this Manual.

## 2.4 How policy is made

**We do not make policy – that is the role of the elected Government. The Government can give guidance to us on the policies that we need to take into account in our work. We can also advise the Government on policy issues either when we are requested to, or on our own initiative.**

### 2.4.1 When can the Government give policy guidance to us?

The Government can draw up and give us general policy guidelines to follow. The matters in which it can do this are set out in detail in the PUCSL Act.

### 2.4.2 What are some of the things which the Government can issue guidelines on?

Guidelines can be formulated and issued by the Government on:

- any matter identified in or under a relevant industry Act for which guidelines can be made;
- matters concerning the fulfilment by public utility services of national targets for sustainable economic growth (for example, for different areas in the country or different socio-economic groups);

- certain measures taken by the Government; and
- the setting down and achievement of certain priorities and objectives.

### 2.4.3 How can we advise on policy?

We can provide advice on policy measures and their costs, either at the request of the Government or on our own initiative (where we consider that changes to policy with regards to public utilities industries might be to the public benefit). When providing policy advice we will do so taking account of the objectives set for us. Such advice will generally be in writing and published either by the Government or by us.

Our role in providing advice on policy does not mean that we make policy - the decision on whether and how to use our policy advice continues to rest with the elected Government.

## 2.5 Regulatory principles

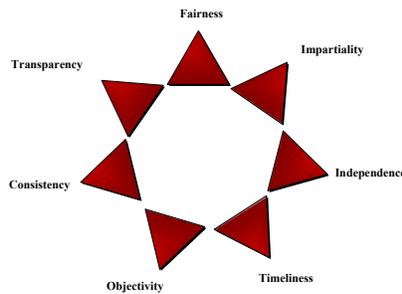
**Our actions will be guided, and decisions made, using the statutory principles set out in the PUCSL Act. This section describes these principles and how we will apply them.**

We are committed to implementing these principles. In order to do so, we will:

- consult widely with stakeholders;
- minimise the cost of regulation; and
- communicate in clear, simple language.

### What are the principles?

The PUCSL Act identifies a number of guiding principles that we will follow. These are shown below.



## 2 - Our regulatory principles

**Public Utilities Commission of Sri Lanka Act, No.35 of 2002 – section 14**

The Commission shall exercise, perform and discharge its powers, functions and duties under this Act and any other industry Act reasonably with fairness, impartiality and independence and in a manner that is timely, transparent, objective and consistent with this Act and such other Act.

### Fairness

We will make decisions in a manner that conforms to generally accepted good practice and that takes account, so far as possible, of our objectives, duties and functions.

### Impartiality

We will treat all views, comments and complaints received and all issues considered by us in an unbiased manner, taking account of our legal obligations.

### Independence

Our decisions will be free from undue influence. As described elsewhere in this Manual, various mechanisms exist to protect our independence.

### Timeliness

We recognise that delays cost money and cause frustration. We will endeavour to respond to issues that arise as quickly as possible.

## Transparency

We will generally publish all evidence, decisions and related documents, unless prevented by confidential or legal constraints. We will inform all stakeholders of our procedures and issues that we are considering. We also publish, annually, a report detailing our activities and their costs.

## Objectivity

We will weigh each argument based on its merits, evidence and guidance provided by policy, law and judicial rulings.

## Consistency

We will develop decisions that are in keeping with our legal obligations under relevant legislation and we will try, where we believe it is helpful, to follow the same approach as used in earlier "similar fact" decisions.

## 2.6 Protecting our independence

**Our role is to balance fairly the sometimes conflicting requirements of the wide range of stakeholders in the sectors we oversee. In order to ensure that we are well placed to carry out this role, measures have been put in place to maintain our independence from the undue influence of any single stakeholder. Some of these are summarised below.**

### 2.6.1 What guarantees are there of our independence?

The PUCSL Act creates a number of legal guarantees:

- *separation from government* – we are a separate legal entity;
- *independently appointed* – the concurrence of the Constitutional Council is required before appointments can be made by the Minister;
- *protection from politically-driven removal* – the grounds on which Commissioners can be removed are limited to those laid down in the PUCSL Act, and any removal must be confirmed by a majority vote of Members of Parliament;
- *our own funding* – we have our own sources of income (from license fees and other levies); and
- *restrictions on future employment* – for a period of three years following completion of their term, Commissioners may not become involved in employment or other interests where they use or disclose information obtained during their work as Commissioners.

### ***2.6.2 The risk of regulatory capture***

The measures taken to protect our independence contained in legislation do not guarantee that we will never be subject to ‘regulatory capture’ – (that is, where we favour the interests of one group of stakeholders over those of other groups). There are more subtle ways in which we can be captured than those for which the measures discussed above were created to prevent.

The most common form of regulatory capture occurs when a regulator comes to see issues from the perspective of one group of stakeholders. This is generally because that group is better informed, allowing it to be more influential in its arguments, and is in more frequent contact with the regulator, allowing it more opportunities to make its arguments. A particular group may also have more opportunities to meet with the regulator informally, increasing its ability to influence them, or be able to offer employment and other opportunities to staff of the regulator.

### ***2.6.3 Processes for avoiding capture***

The best way to avoid capture is to draw information from as many sources as possible and to operate in an open and transparent manner, allowing all to see how decisions are reached. The processes set out in this Manual for regulatory reviews and the emphasis that we place on wide public consultation reflect this.

Other measures that we are taking to protect against regulatory capture are described in this Manual. They include:

- the formation of a Consumer Consultative Committee with a remit to consider the interests of all consumers and of smaller consumers in particular;
- an information disclosure policy that emphasises publication of our own documents and of comments and other material received from stakeholders, subject to commercial confidentiality; and
- the inclusion in the contracts of senior OFCOMM staff of similar restrictions on future employment to those applying by law to Commissioners.

### ***2.6.4 How stakeholders can prevent capture***

The measures that we are taking to protect against regulatory capture can only work if *you* make use of them. It is vital that all stakeholders take advantage of the opportunities to comment on and review our work that we offer through our consultation and disclosure processes and participate in the various forums that we are creating to meet with stakeholders.

## SECTION 3: The PUCSL's Processes

### 3.1 Regulatory reviews

Regulatory reviews lie at the heart of our work, and form the main mode of investigation that we generally adopt for significant issues, although not for all decisions that we take. They are intended to provide a means to allow us both to obtain a wide range of views and comments from stakeholders, as well as to allow us to make clear our thinking and the reasoning behind our decisions.

#### 3.1.1 Initiating a regulatory review

The regulatory review process described in this Manual represents our commitment to consult with stakeholders on important regulatory issues of particular significance to the industry concerned. The process described is not appropriate for our day-to-day decision-making and we do not use it for this purpose.

Examples of the type of significant issues where we may undertake a regulatory review include:

- licensing or other legal requirements trigger a review,

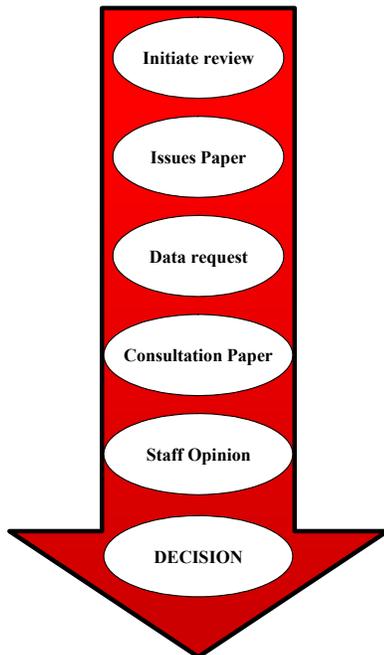
such as price control reviews required under licences;

- a decision is required on a regulatory issue that we consider will set an important precedent for our future approach to regulation of the industry concerned;
- we consider that changes in our approach to the regulation of aspects of an industry may allow us to further our objectives better, and that the desirability of such changes should be investigated;
- changes in Government policy impact on an industry that we regulate and we consider that we need to consider these impacts and the actions we should take in response in detail;
- we have been requested by the Government to provide advice on its policy with respect to regulated industries; and
- major mergers and acquisitions, which may require the exercise of our competition functions, occur or are notified to us.

### **3.1.2 The regulatory review process**

This section provides the general guidelines that we will follow for regulatory reviews. These guidelines are indicative only and we may deviate from them where the circumstances of a particular case merit this. If industry specific legislation requires a different approach we will follow the approach required by the relevant law.

The figure below provides an overview of the general regulatory review process.



**3 - The regulatory review process**

### **3.1.3 Management of a review**

At the outset of a review, we will create a Project Team (the “Team”). This Team will comprise individuals with the skills expected to be required for the review in question. The following two members of the Team are likely to have the most contact with stakeholders:

- a Task Leader, drawn from our staff, will be appointed by the Director-General. They will have overall responsibility for the review, reporting to the Director-General or Deputy Director-General as relevant, and for coordinating the activities of the Team; and
- a Case Officer, appointed by the Task Leader to provide a point of communication between the Team and stakeholders.

For all matters under review, the Commissioners will make the final decision. The Team is created to undertake any analysis and consultation and to ensure the Commissioners are presented with the full facts of the case.

Initially all enquiries, comments and questions relating to a review should be submitted to the relevant Case Officer who will direct them to the appropriate party. In general, we will try to respond to all enquiries within 10 working days. For complicated requests we will provide an acknowledgement of receipt and an indication of when a full response will be provided.

Reviews currently in progress and the relevant Case Officers are listed on our website (click [here](#)).

### **3.1.4 Processes for obtaining information**

We will generally begin the process of obtaining information as part of a review with the issuing of a data request to the relevant parties. The data request will:

- explain the reason for the request and the use that will be made of the data;
- indicate what data is required; and
- provide a deadline by which it is required.

We will generally allow at least 10 working days for responding to a data request. We may allow additional time in certain circumstances.

Where necessary, we will supplement this initial data request through further written requests or through interviews with relevant staff. We also invite interested parties to provide us with any additional information that they consider relevant to the issue under review.

In certain circumstances we have legal powers to require the provision of information necessary to carry out our duties. These powers will generally be used as a last resort or where we believe there is a danger of valuable information being destroyed if we do not act quickly.

Further information on our powers to obtain information is set out in Section 5.3 of this Manual.

Click [here](#) to read the relevant parts of the Act.

### **3.1.5 Consulting with stakeholders**

We will make every effort to consult widely stakeholders, including with:

- consumers and their representatives;
- the Consumer Consultative Committee;
- licensees and other service providers;
- industrial and commercial bodies;
- other regulatory bodies, where appropriate; and
- local, Provincial and central Governments.

### **Issues Paper**

The consultation process will generally begin with an *Issues Paper* that is intended to set out the context for the review and identify what we believe to be the key issues to be decided and any preliminary thoughts we may have on these.

<b>Table of Contents for a typical <i>Issues Paper</i></b>
<p><b>Introduction</b></p> <p>This will set out the legal duties that have led to the review and legal powers of the PUCSL to undertake the review.</p>
<p><b>Cause and objective of review</b></p> <p>This section will describe the reason for the review and the central objective of the review.</p>
<p><b>Approach to review</b></p> <p>This section will describe the approach to be adopted to the review. For example, it will set out whether the PUCSL will be undertaking surveys, financial analysis, engineering studies or other analytical techniques.</p>
<p><b>Timetable for review</b></p> <p>This section will set out the likely timetable, including initial dates for any public consultations that are planned, dates for the publication of key documents and by which comments must have been received on key documents.</p>
<p><b>Contact details</b></p> <p>This section will contain the contact details for a PUCSL staff member to whom further questions may be directed.</p>

Written comments will generally be invited on the *Issues Paper*. In line with our general commitment to transparency, we will generally publish comments received and the names of those providing comments except where a stakeholder specifically requests that their name and/or comments be kept confidential. Comments may be provided by email, fax or letter.

*Issues Papers* will be published on our website and will be available from our

Information Centre. In some cases we may also publish advertisements summarising the main points under consideration. Click [here](#) for a list of current *Issues Papers* on which comments are invited.

Where we consider the issues under review to be of particular importance — for example, due to the large number of stakeholders affected — then we may also make copies available from our information centre. Where the issues under review are unclear—such as where we are considering wider policy issues - we may supplement the *Issues Paper* with one or more stakeholder forums at which we will invite discussion and comments.

### **Consultation Paper**

Following the *Issues Paper* we will generally publish at least one *Consultation Paper*. This will describe our initial thoughts based on the analysis to date. This paper will provide an opportunity for stakeholders to comment prior to our developing a *Staff Opinion*. Publication arrangements for this paper will be the same as those for the *Issues Paper*.

<b>Table of Contents for a typical <i>Consultation Paper</i></b>
<p><b>Introduction</b></p> <p>This will set out central issue(s) that were considered as part of the review, the status of the review at the date of publication and the indicative date at which the Commission expects to make a decision (which may change as the review develops).</p>
<p><b>Cause and objective of review</b></p> <p>This section will describe the reason for the review and the central objective of the review.</p>

**Evidence gathered and analysis undertaken**

This section will describe the evidence that has been gathered to-date (e.g. comments received on consultation documents and workshops, official data submitted, subject to any confidentiality requirements) and the analysis that has been undertaken of the data.

**Issues raised by the analysis**

This section will set out the implications of the analysis for the issues that are being considered. It will indicate any further questions that arise from the analysis.

**Contact details**

This section will contain the contact details for a PUCSL staff member to whom further questions may be directed.

**Staff Opinion**

Following the receipt and review of comments on the *Consultation Paper*, the Team will generally prepare a *Staff Opinion*. This will represent the recommendations of OFCOMM, as distinct from the Commissioners, on the issues under review. It does not represent the decision of the Commission.

The *Staff Opinion* will be presented to the Commissioners by the Director-General. The Commissioners may choose to request the Director-General to publish the *Staff Opinion* for comment by stakeholders or to require the Director-General to amend the *Staff Opinion* where the Commission considers that it is not ready for publication, including where the Commission believes that the opinion is flawed or inadequately supported by the evidence presented. Publication arrangements for the *Staff Opinion* will be similar to those for the *Issues* and *Consultation Papers*. Comments will

generally be invited on the recommendations contained in the *Staff Opinion* and whether these are workable, appropriate and a sensible response to the issues under review.

**Table of Contents for a typical Staff Opinion paper**

**Introduction**

This will set out central issue(s) that were considered as part of the review, the status of the review at the date of publication and the indicative date at which the Commission expects to make a decision.

**Cause and objective of review**

This section will describe the reason for the review and the central objective of the review.

**Response to consultation document**

This will set out responses and comments received to. It summarises issues raised and the impact on the analysis that had been undertaken.

**Staff proposals**

This will include preliminary indication of the results of analysis by OFCOMM. It does not represent a decision by the Commissioners.

**Contact details**

This section will contain the contact details for a PUCSL staff member to whom further questions may be directed.

**Decision**

The Commissioners' decision will be taken following a review of the *Staff Opinion*, where prepared, and of the comments received on this *Opinion*. The Commissioners may choose to:

- issue a decision in accordance with the *Staff Opinion* presented to it;

- issue a decision that represents a modification to the *Staff Opinion*; or
- require the Director-General to prepare a revised *Staff Opinion* to be published for further comment and thereafter to issue its decision.

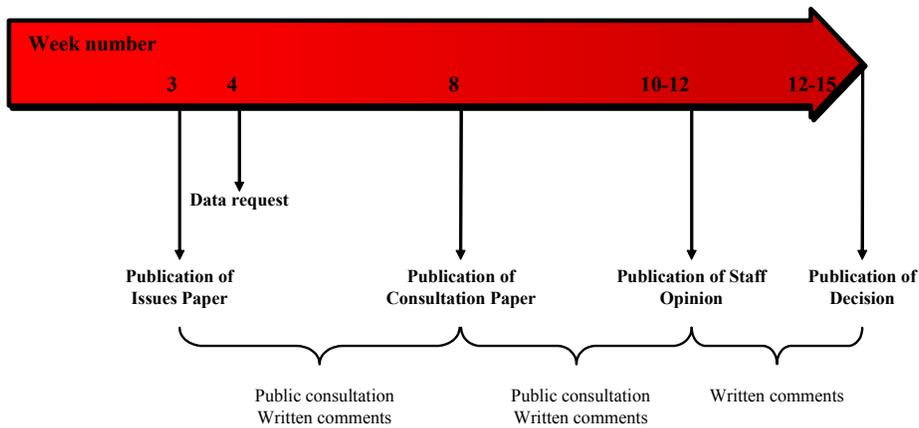
### 3.1.6 The review timetable

The timetable for a regulatory review will vary depending on the issues under review, the data required, the types of analysis required and the time allowed for comments. For example, a review to

determine allowed prices over several years for an electricity distribution licensee is likely to take a longer period of time than a review of whether a license should be granted to a new electricity generating plant.

In all cases we will attempt to allow adequate time for stakeholders to provide comments and sufficient notice of public consultations.

Below we set out an indicative timetable that is intended to provide an overview of the order and length of different activities. In the example provided the whole review takes three months. Depending on the particular case in question this may be longer or shorter.



### 4 - Indicative regulatory review timetable

*Not all regulatory reviews will follow this timetable in full. Actual reviews may take shorter or longer periods and may involve either fewer or additional consultation documents, depending on our views on the importance of the issues under consideration.*

## 3.2 Public hearings

### **Public Utilities Commission of Sri Lanka Act, No.35 of 2002 – section 18**

The Commission may, in discharging the functions assigned to it by or under this Act or any other industry Act, and where it deems necessary in the public interest hold a public hearing in order to investigate or determine any matter. The public hearing shall be held in any manner not inconsistent with the principles of natural justice.

### **When we hold public hearings**

In the course of carrying out our functions, we can hold public hearings to determine or investigate any matter where we think it is necessary in the public interest. Given the costs involved in holding such a hearing, we will generally only do so when the issue to be investigated is of major importance to Sri Lanka — such as advising on a significant change in policy towards public utilities industries.

### **Public hearings explained**

A public hearing is:

- a public investigation or inquiry;
- which is held in a public forum (that is, open to the public); and
- in which those who are affected by the application may participate.

It is a formal proceeding and must be held in a way which is not inconsistent with the principles of natural justice. It will

provide stakeholders with an opportunity to observe and, where relevant, participate in the process and allows us to make a fully informed decision.

The outcome of a public hearing will consist of an award, order or directions being made or the dismissal of a case.

### **Who is in charge of the hearing process**

We are in charge of the hearing process. However, hearings are open to the public and if you have interests which are likely to be affected then you may also have a role to play.

### **Being called to a public hearing**

If you are called to one of our public hearings or have an interest which may be affected then you can either attend or send someone to act as your authorised representative. It is important to be aware that if you are summoned and you fail to turn up without a reason you will be guilty of an offence. Please see below for further details of this.

### **Do you have a right to be heard?**

If the matter relates to the business of a licensee we are bound to allow the licensee to be heard.

Other stakeholders will be able to attend public hearings and to provide comments in writing. They will not have an automatic right to be heard but we will endeavour to make sure that a full range of

views and stakeholders are represented during the course of a hearing.

### **How do you prepare for a hearing?**

You should prepare for a hearing by collating all information/ material that is relevant to the matter. Such information/ material may be presented in person or by an authorised representative who could be a lawyer. There is however no requirement to do so through a lawyer.

### **Can you attend a public hearing just to listen?**

Yes, the hearings are open to the public.

### **Where are hearings held?**

Hearings will be held at our offices or at a location notified by us.

### **How is evidence that you give treated?**

The evidence you give will be treated, and have the same privileges, as if you were giving evidence in a court of law.

### **How can you get further information on what happened?**

We will take minutes of the hearing, document the evidence given and produce a statement which will set out all the facts that were considered. We will make this available to the public.

Our awards and orders will also be published in the *Gazette*.

### **Length of public hearings**

It is difficult to say how long a public hearing will last as every case is different. Hearings may last from one day to more than one month depending on what we are considering and how complex it is.

### **What you need to be aware of if you are involved in a public hearing**

If you do not abide by certain rules you will be guilty of the offence of contempt against us. You must be aware that such an offence can be tried by the Court of Appeal of Sri Lanka.

We will not go into detail in this Manual on contempt and the rules associated with it—check with a lawyer if you are unsure. However, you should be aware that if you:

- do not appear (without cause) when we requested you to do so by summons; or
- refuse to be sworn or affirmed or answer any question lawfully; or
- refuse or fail without a reason to show to us certain documentation etc. which we have requested,

you will be guilty of the offence of contempt. This is a serious offence.

### **Appealing a public hearing decision**

You can appeal against a public hearing decision if you are aggrieved by the decision we made.

Your appeal must:

- be submitted to us within 30 days after the date of the communication by which the decision was notified to the appellant;
- be made in a particular manner;
- follow a certain process;
- be copied to certain people; and
- be accompanied by a "fee".

We will then have to carry out certain duties in respect of that appeal, for example, copy it to the Court of Appeal of Sri Lanka.

The Court of Appeal will then either decide on the question or hand it back to us with certain directions or decisions.

For details of other appeals please also see Section 3.4 of this Manual. For more information on public hearings and how to make an appeal following a public hearing, please see the PUCSL Act.

### **Enforcement of orders, awards or directions made following a public hearing**

Those who do not comply with any decision made following a public hearing will be guilty of an offence. They may be fined (up to the value of Rs 1,000,000 – if they continue breaching a decision they will be fined an additional Rs 500,000 for each day the breach continues).

### **Our extra powers which help us handle public hearings**

We have some extra powers to help us in dealing with public hearings. We have the power to:

- gather and receive evidence;
- question, as we think necessary, any person as a "witness";
- call upon anyone who lives in this country to attend one of our public hearings either to give or produce evidence, act as a witness or produce any documents etc. which they hold;
- admit any evidence;
- require evidence of witnesses to be given on oath or affirmation;
- make orders, awards or directions (we can also give reasons for our decisions); and
- dismiss any matter or stop from considering a matter if we think

it is not very important or does not have sufficient ground for action or that further proceedings are not needed or are not desirable in the public interest.

We also have a fairly general power which enables us to give all such directions and do all things which are necessary or helpful for a quick and fair hearing.

### How do you find out about what hearings are on?

You can find out about when public hearings are on by contacting our Information Centre or from our website (click [here](#)).

## 3.3 Publication of PUCSL decisions

Awards, orders and significant decisions made by the Commission will be published on our website (click [here](#)). Copies of decisions will also be available from our Information Centre. Where decisions affect a large number of disparate stakeholders, copies of the decision may also be published in newspapers.

We will generally separately publish the evidence and other justifications for our reasons and our decision on our website. Copies of these will also be available from our Information Centre.

In general, we will publish our decisions, evidence and justifications in English although, where we consider that the nature of the stakeholders affected by the

decision or the importance of the decision merit it, we may also publish these or a summary of them in Sinhala and/or Tamil.

Where we make orders, awards or directions following a public hearing, as described in Section 3.2 of this Manual, then these will be published in the *Gazette* in all three languages.

## 3.4 Appealing against PUCSL decisions

**You can appeal against certain decisions that we make. An appeal may be made in the manner set out in industry specific legislation or to the Court of Appeal for judicial review. Judicial review can be complicated and difficult to understand. We have summarised below some of the key elements of judicial review. Please remember, however, that we are not able to set out everything you need to know – you should obtain legal advice if you wish to pursue such a course of action.**

### Appealing against our decisions

You may appeal against our decisions, directions, actions or omissions ("Decisions") using either the judicial review process or in the manner provided for in the relevant industry-specific legislation.

### Why can our Decisions be subject to "judicial review"?

The reason you have the right to request the Court of Appeal to judicially review our Decisions is because:

- our powers are determined by legislation and are not part of a private contract between you and us; and
- we perform "public" duties and functions.

Please note that not every matter can qualify as a subject for judicial review.

### Judicial review explained

Judicial review is a process which allows people with a **sufficient interest** in a Decision made by a public body, such as us, to ask a judge to review the lawfulness of that Decision.

The purpose of the remedy of judicial review is to ensure that you are given fair/reasonable treatment by us.

Judicial review cannot be compared to an ordinary appeal as it is **not** an appeal from a Decision. Instead it is a process which reviews the way in which a decision was made. The judge's concern is therefore whether we, as a decision-making authority, have:

- gone beyond our powers;
- committed an error of law on the face of the record;

- failed to adhere to fundamentals of fair administrative procedure;
- reached a decision which no reasonable tribunal would have reached; or
- abused our powers.

### When you can apply for judicial review

In order to bring proceedings for judicial review, you must have what is known as "standing". This simply means that you must have a "sufficient interest" in the matter to which your application relates. The sufficiency of interest however depends on the nature of the remedy sought from the court.

### When judicial review can be refused

The courts will not generally make the remedy of judicial review available if there is some other alternative remedy of appeal which you could use or if some other body has control over the dispute.

Therefore, where an alternative remedy does exist, you should give careful consideration as to whether it is appropriate for your problem before making a claim for judicial review.

### Procedure for judicial review

The procedure for judicial review is fairly expeditious and is set out in Rules of the Supreme Court. We do not propose to set

out the procedure here, however, it is important to note that:

- your application to the Court of Appeal must be by way of a petition and affidavit accompanied by necessary documentary evidence in support of your case;
- though there is no specific time limit given by law to file an application for judicial review it is necessary for you to do so within a *reasonable* time; and
- you are under a duty to take necessary steps to serve notice to the other side quickly and to support your application with due diligence.

### Is judicial review appropriate for your case?

This is not something which we can answer in this Manual. However, it is important to realise that judicial review may not be appropriate in every instance. It is therefore important that you seek appropriate legal advice when you are considering such proceedings.

### Other appeal mechanisms

The industry-specific legislation may also contain appeal procedures which you can use, for example, review by Ministers and appeal to the Court of Appeal in the case of licence modifications under the Sri Lanka Electricity Act. For further details of such appeals, please refer to the relevant parts of this Manual. For appeals

from public hearings please see Section 3.2 of this Manual.

## 3.5 Minimising the costs of regulation

### 3.5.1 *The costs of regulation*

**We are aware that our decisions may have an impact on business, customers and the economy in general. We are concerned to minimise our costs, only intervening where this is justified by the resulting public benefits.**

Before taking a decision or beginning a review, we may undertake a *Regulatory Impact Assessment* (RIA). This will compare any additional costs that may be created against the benefits of the proposed regulatory decision.

Examples of where regulations create costs include:

- **Market distortions** – imposing regulatory controls limits the ability of service providers to respond to consumer needs through new service offerings and pricing strategies. It may also protect incumbents from new entrants, to the detriment of consumers, and creates wasteful competition between service providers and others to benefit from regulatory protection rather than responding to market pressures.

- **Asymmetric information** – in making decisions we will try to gather as much information as possible in order to inform our decisions. However, in many circumstances we will still have less information than industry participants. This may mean that we find we have to try a number of differing regulatory approaches until we find out which is best. In doing so, we make mistakes and introduce new uncertainties and instability for stakeholders, which may have higher costs than the problem we are trying to solve.
- **Protection of consumers** – we may impose some requirements on the market participants that may have associated costs. For example, we may impose safety standards on the industry, obligations to keep consumers informed. These obligations will impose direct costs on the relevant market participants.

**Compliance costs** — market participants may be required to collect and distribute information or other material in order to allow us to carry out our functions. This may include, for example, keeping separate accounts for regulated activities, attending meetings and providing more detailed analysis of changes to prices and quality standards than may be required in an unregulated industry. These compliance costs will impose costs on market participants.

**Unintended consequences** – markets subject to regulation are interrelated with other markets, either regulated or

unregulated. In some cases imposing obligations in one area or one market will have spill-over effects in other areas of the business or other market players.

### **3.5.2 Measuring the costs of the PUCSL's actions**

Any RIA that we undertake will vary in detail depending on our initial view of the costs that a decision may impose. If a quick consideration indicates costs are likely to be minimal then a full assessment will not be carried out. However, if an initial view indicates that the costs may be significant we will try to undertake a more detailed analysis. The costs are likely to be more significant if a larger number of consumers or businesses will be affected and/or the cost to any single consumer or business is likely to be large.

In assessing the cost of our decisions, we will try to identify the following information:

- policy objectives and the issues addressed;
- scale of the risk or issue to be addressed;
- different regulatory options to address the problem;
- who will be affected by each option, either directly or indirectly;
- any potential unintended consequences of each option; and

- the relative cost of each option.

Once we have identified the relevant information to take into account, we will identify the costs of the different options.

In some cases we will be able to undertake internally an assessment of the expected costs of a regulation. This will be the case when similar policies have already been implemented or when qualified members of our staff are able to undertake an assessment of the costs. In other instances, a more sophisticated analysis may be required, involving customer surveys, information requests on affected parties or public consultation. For example, if we estimate the cost of compliance will require 100 hours of time from a particular type of staff member, we would assess the cost of compliance as 100x(typical hourly wage of that position).

We will balance our assessment of the costs against potential benefits. Consequently, requirements that impose significant costs may be justified if they result in greater benefits. However, if a regulation likely to lead to significant costs is being considered, we will carefully consider alternative approaches to achieve the same benefit. We may also consult stakeholders on these alternatives.

### ***3.5.3 Minimising the costs of the PUCSL's actions***

In many cases, the same policy or regulatory objective can be achieved by different means. Following a cost assessment, we will try to choose the regulatory option that minimises the costs for the industry as a whole. Alternative

approaches may produce slightly different results, all of which lie within a potentially acceptable range (for example, regulations that require an electricity company to have fewer than 10 hours of outages per year versus 5 hours per year or 15 hours per year). In these cases we will try to consult with relevant parties to determine an acceptable trade-off between the costs and benefits of particular outcomes within this range.

### ***3.5.4 Reducing our operating costs***

As well as assessing the costs and benefits of regulations, we will also continually review the costs of our operations. We will look at the potential for reducing these through outsourcing and removing unnecessary bureaucracy. We have also adopted a functional structure, allowing us to share expert staff between the industries that we regulate and therefore allowing us to reduce the costs of regulating each individual industry.

Our annual workplans and budgets will show how we have assessed our resource requirements.

## **3.6 Organisation and funding of the PUCSL's work**

**We take our responsibilities as a publicly accountable body extremely seriously. This section describes how we publish information on our funding and activities as well as how we**

determine the charges to be paid to finance our operations.

### **3.6.1 Preparation of work plans and budget**

We develop annual work plans as the basis for the preparation of our funding requirements for the coming year. This sets out:

- our assessment of the main issues in public utilities industries that we expect to address in the coming year;
- the activities that we will be undertaking with regards to each of these issues; and
- our estimates of the likely resources required and an indicative timetable for each activity.

We will, in September, finalise the work plan and budget for the coming year. The budget will be published in the *Gazette*.

We are not permitted to exceed our estimated expenditure, as revised by us from time to time, by more than 10% in any one year. If, during the course of a year, it becomes apparent that our costs are likely to exceed those included in our existing budget, as revised from time to time, by more than 10%, then we will publish a revised estimate of our total costs for the year in the *Gazette*.

### **3.6.2 Sources of funding**

We will have our own Fund (effectively a set of bank accounts), rather than being financed from the general Government budget. By doing so, our independence is strengthened.

The sources of our funding are:

- levies on industries that we regulate, as authorised by the relevant industry Acts;
- money that we receive in the exercise of our functions, including from the grant or renewal of licences; and
- any money that we receive as loans, gifts or grants from any source.

If our revenues in a year exceed our expenditures, we will carry forward any surplus to meet the expenditures of subsequent years. We will be able to invest the money that is not immediately required, subject to controls set by the Minister of Finance.

Where our costs exceed our revenues, we are able to borrow temporarily to fund the shortfall. Any borrowings will, generally, be repaid in the following year. The Minister controls the total amount that we are allowed to borrow.

### **3.6.3 How charges are set**

We make charges for various specific activities. These charges are to recover additional administrative costs directly associated with, for example, the provision of documents or registering of details and not to raise revenues for our general regulatory functions, such as the costs of staff undertaking price reviews.

The charges that we make include:

- charges for handling applications for licences and exemptions and their modification or extension;
- charges for providing hard copies of documents and other materials;
- charges for handling complaints. The costs associated with dispute resolution are separately recovered according to regulations that are available on our website and described elsewhere in this Manual.

Our primary source of funds is from Regulatory Levies. These are charged to licensees in the form of a Levy Order. Licensees can recover these levies from the consumers that they serve.

Setting charges involves a three-stage process:

- determining the costs to be recovered from these charges. This will be the difference between our budgeted costs for

the coming year, less any expected surplus from the current year and forecast income from other sources;

- allocating the costs between the various industries that we regulate; and
- allocating the costs to be recovered from each industry between the various licensees or consumers, as appropriate, within that industry.

We try to allocate our costs between industries in a way that is broadly proportional to the amount of staff-time spent on the regulation of each industry. As we are not able to accurately measure this, we use the turnover of each industry as a means of estimation. In general, those industries with the largest turnovers are those that will require more of our time.

We allocate costs between industries in proportion to the sum of the reported turnover of those service providers that we licence or otherwise authorise in each industry. This provides us with a single measure that is common across all industries.

For example, if we need to allocate our costs between two industries, one with a turnover of Rs 20,000,000 and the other with a turnover of Rs 5,000,000, then the first industry will be allocated 80% of our costs and the second 20%.

Within each industry we prefer to allocate costs on the basis of the number of final customers served by each licensee. As licensees are allowed to recover

Regulatory Levies from customers, this effectively means that customers pay our costs. As customers are the ultimate beneficiaries of much if not most of our work, we believe this is fair.

For example, in the electricity industry, we will allocate our costs to be recovered from the industry between distribution and transmission licensees in proportion to the total numbers of final customers connected to their networks. These licensees will pay the necessary Regulatory Levy and will add this to the charges they make to their customers. Generators will not need to pay any Regulatory Levies as they do not directly serve any customers.

Where it is not possible to determine the numbers of final customers served by each licensee then we will require licensees to charge a levy per unit of product sold. This levy will be determined by dividing the share of our costs attributed to that industry by the number of units or customers we estimate will be served during the course of the coming year.

In some cases we may exempt smaller licensees from the need to pay Regulatory Levies or to charge these to consumers, as applicable. This will reduce the administrative costs for both us and these licensees. The current Levy Orders applicable to licensees and the level below which exemptions apply are available on our website (click [here](#)) and copies are available from our Information Centre.

### ***3.6.4 How charges are checked***

It is important that our work is carefully reported and all the relevant expenditures accounted for.

In particular, we are required to keep books of accounts recording our income and expenditure, assets and liabilities and all other transactions. The Auditor General audits these accounts and reports on them to us.

### ***3.6.5 Reporting requirements***

We are committed to keep the public informed of all the activities we undertake and the expenses and revenues associated with the performance of our functions. You will be able to find this information in our annual reports and audited accounts.

### **Preparation of the annual report**

Within three months of the end of each year, we will prepare a report of our activities during that year and our proposed activities for the following year.

The annual report will contain:

- a general survey of the developments during the year of all the matters within our scope, and in particular of developments in promotion of consumer interests;

- a report of activities completed during the year or ongoing and a comparison of these against those contained in the work plan for the relevant year;
- an initial assessment of activities being undertaken during the current year and how these relate to the work plan for this year;
- details of the development and expansion of the public utilities in Sri Lanka; and
- details of enforcement orders, if any, that we may have issued within the year.

Alternatively, you can request a copy of the annual report to be sent to you by contacting our Information Centre. A small charge is made for this to cover the costs of delivery.

### **Reporting to Parliament**

We will submit the annual report and a copy of our audited accounts to the relevant Minister by the end of March at the latest, and this will be placed before Parliament.

We will clarify any matter arising from our report and accounts to Parliament or a Committee of Parliament, at the request of the Minister.

### **Obtaining the annual report**

It is important that the general public in Sri Lanka is able to examine and evaluate our activities and costs. We encourage this by making our annual report and budgets publicly available.

You can obtain a copy of our annual report from our Information Centre or our website (click [here](#)).

## SECTION 4: Consumers and the PUCSL

### 4.1 Asserting your rights

**As a consumer of utility services/goods, you will want to make sure you get the best deal possible. To help you with this:**

- you have certain rights; and
- we are here to help you assert these rights in your dealings, as consumers, with regulated entities.

**Public Utilities Commission of Sri Lanka Act, No. 35 of 2002 – section 28**

The Commission shall in the exercise of its powers under any industry Act or any regulation made thereunder, protect the rights of the consumer –

- against the marketing of goods and services which are hazardous to life and property;
- against unfair trade practices;
- to be heard and to be assured that their interests will receive due consideration; and
- to consumer education.

Our functions in relation to consumer protection are very briefly set out in the

PUCSL Act. It is also worth referring to the legislation which covers the industry you are dealing with.

The PUCSL Act states that we are to protect the rights of consumers:

- against the marketing of unsafe goods and services;
- against unfair trade practices;
- by allowing consumers to be heard and informing them that we will duly consider their interests; and
- in respect of consumer education.

Whilst the above does not give you much detail in describing what exactly we do, in this section of the Manual, we give you a few ideas of how we can help in advancing the interests of consumers in the light of the provisions of the PUCSL Act. In particular, when looking at consumer issues, we concentrate on:

- promoting effective competition, where appropriate (please see Section 4.4 of this Manual for further details); and
- regulating only where necessary (please see Sections 2.5 and 3.5 of this Manual for further details).

Lastly, when looking at consumer interests, it is important that you, as a consumer, are aware of the role and work of the Consumer Consultative Committee. For further details of what the Consumer Consultative Committee does, please see Section 4.3 of this Manual.

### **What are we trying to achieve for consumers?**

There are four key principles which we think are important in relation to consumers. These are:

- **choice** - consumers want choice, the freedom to choose, the ability to change a supplier if they can get a better deal elsewhere;
- **information** - which is accessible and which informs consumers of how the market works, what rights they have, how they can go about certain matters;
- **protection** – this is vital, especially in relation to matters such as safety of goods and services; and
- **redress** – consumers must have an avenue available to them to make complaints and get redress.

We have set out below some of our key functions which help consumers get the choice, information, protection and redress which they need and want.

### **4.1.1 Working with you to deliver safe services**

One of our key roles is protecting the public from dangers arising out of the provision of goods or services by a regulated entity in the utilities industry. For example, under the Sri Lanka Electricity Act, one of our functions is to protect the public from dangers arising from the generation, distribution, supply or use of electricity. We have a team of inspectors who undertake this work.

### **How do we try and achieve the delivery of safe and high-quality services?**

We aim to do this by:

- making sure service providers comply with their obligations;
- making sure regulations are in place to protect the public;
- monitoring regulated entities regularly;
- taking enforcement action where necessary; and
- setting standards for safety, quality and performance which must be attained by service providers.

In undertaking this we approve and certify installations and the activities of service providers in public utilities industries, set and monitor standards of performance,

investigate and resolve complaints and may choose to undertake reviews and hearings into matters we consider are of major importance to the public utilities industries and the consumers they serve.

### **4.1.2 Helping you to be properly informed about what you buy**

#### **Why is information so important?**

We think you, as individual consumers, are best placed to decide what to buy provided you have the best information and are protected from unfair business practices. It is vital therefore for information to be accessible – this also means ensuring that those with disabilities can access information readily.

We can therefore not only determine standards, but also arrange for the publication of those standards.

#### **Aiding you to find out about your rights as a consumer**

It is important for you, as a consumer, to know what your rights are, what sort of services or quality of goods you are entitled to expect and how you can make complaints if you feel aggrieved.

We will help you in this by making sure that you know exactly what regulated entities should be doing, what standards and service levels they should be reaching and what you can do if you feel they are not complying with their obligations.

In particular, for example, if you have suffered loss or damage as a result of a failure of a regulated entity to meet standards which it should do, we can provide you with the possibility of gaining compensation.

### **4.1.3 Supporting you if you need to make a complaint on standards or services**

One of our many functions is that we can determine disputes. Given that we are the body which decides what standards of overall performance in connection with the supply of goods or services must be met, we are well placed to determine disputes on such matters.

Therefore, if you need to make a complaint, we can help you.

## **4.2 Resolving disputes**

**Sometimes you may have a disagreement with someone else in a public utilities industry. In certain circumstances, you can refer the disagreement to us, and we will try and resolve it. Set out below are answers to some of the most common issues that arise in relation to our role in resolving disputes. We also explain where you can find further details about how disputes can be resolved.**

**Public Utilities Commission of Sri Lanka Act, No. 35 of 2002 – section 17**

Subject to the provisions of this Act, the Commission shall, among other things...

- (i) determine by mediation disputes arising in any public utilities industry;...

Under section 17(i) of the PUCSL Act, it is one of our functions to attempt to use mediation to resolve disputes in the first instance, before other mechanisms are used.

In some cases, industry-specific legislation, as described in Part II, also involves us in the resolution of disputes under that industry.

### ***4.2.1 The types of disputes that we resolve***

In principle, anyone who supplies or receives goods or services in an industry that we regulate can bring a dispute to us for resolution. However, it is important that you are aware that mediation is a voluntary process. Except where regulations, licence conditions or similar provisions require disputes to be referred to us, we can only become involved in resolving disputes through mediation where both parties agree to this.

Generally, the disputes that we resolve fall into three categories. These are disputes between:

- a consumer and a regulated public utility (such as Ceylon Electricity Board). Examples of such disputes might include

where a consumer thinks he should be paid compensation because his or her electrical equipment was damaged due to a voltage surge or power interruption; and

- two or more regulated entities. An example of these disputes might include allocating responsibility between transmission and distribution licensees where a voltage surge or power interruption has taken place; and
- a regulated entity and any other affected party

We can only resolve disputes in relation to industries that we have the statutory power to regulate, and that are not criminal offences or offences set out in industry-specific legislation.

Where disputes are covered by provisions in industry-specific legislation or regulations then these will be treated as described in the relevant section of Part II of this Manual.

### ***4.2.2 Mediation explained***

Mediation is a voluntary process in which we will intervene between conflicting parties to promote reconciliation, settlement or compromise. Mediation may take many forms, but the common goal is for the parties to reach a mutually agreeable position.

We have set out a number of guidelines for mediation that we may use to help

resolve your dispute in a manual entitled, *Alternative Regulatory Practices and Alternative Dispute Resolution* (the ADR Manual). A copy of the ADR Manual is available on our website (click [here](#)). Copies are also available from our Information Centre.

The form of mediation that we will adopt will depend on the type of dispute that we are asked to resolve. For further information, you should consult the ADR Manual.

### **4.2.3 When mediation may not be appropriate**

Sometimes mediation may not be appropriate, or it may not be possible to reach a resolution to a dispute through this process.

In such cases, we expect the parties involved to apply other methods to resolve their dispute. These include:

- consultation processes;
- legal advice;
- references to established practice and precedent;
- arbitration; and
- courts of law.

### **4.2.4 How long will it take?**

Disputes vary in nature, and we cannot in advance give a specific timetable that confirms when a particular dispute will be

resolved. A timetable might also be misleading, because new evidence or a new issue often needs to be considered some time after the dispute arose or after it was referred to us. If so, this would add to the length of time taken to resolve the dispute.

## **4.3 The Consumer Consultative Committee**

The Consumer Consultative Committee (CCC) is created under section 29 of the PUCSL Act (click [here](#)). It represents the interests of smaller consumers, both existing and potential, of regulated industries and acts as a counterweight to government, service providers and larger consumers in advocating views before us.

### **4.3.1 Organisation of the CCC**

The CCC consists of fifteen Committee Members. They meet regularly and more frequently if required. All participate on a voluntary basis.

The Committee Members are selected to represent a range of consumer interests. The CCC membership is comprised as follows:

- one representative each from 9 provinces – three appointed for three years, another three for two years and remaining three for one year ;

- three persons representing consumers in each of the public utilities industries listed under the our Act – one appointed for three years, another one appointed for two years and the remaining one appointed for one year ; and
- one representative each from major national commercial associations (maximum three) – appointed; one for three years another one for two years and the remaining one for one year.

We review the composition of the CCC every three years. As our remit expands across more utility industries, we expect to add additional utility representatives to ensure that consumers in all regulated industries are represented.

Committee Members are not paid, but receive meeting allowances covering travelling, subsistence and out-of-pocket expenses.

The CCC is supported by a small office, which undertakes review and research activities, conducts consultations, prepares and publishes consumer materials and provides administrative support. The office is provided by an external consultancy under a contract which is retendered every three years. The selection of the consultancy will be undertaken according to published procedures developed by the CCC and approved by us.

The CCC can also obtain expert advice by inviting individuals or organisations to participate in various consultation groups. These groups provide expert advice to the

CCC on matters relating to individual utility industries or on regulatory and policy matters. Where it considers it appropriate, the CCC can make payments to cover the expenses of consultation group members. A list of existing consultation groups and their members are available on the CCC's website (click [here](#)).

### **4.3.2 Appointment of Committee Members**

We will initially appoint fifteen Committee Members for the CCC. This number may be varied as the composition of the CCC changes. The exception to this will be the initial Committee Members, who will all be appointed in the same year with five being appointed for a one-year term, five for a two-year term and five for a three-year term.

All Committee Members may apply for reappointment. At our discretion, we may choose to reappoint a Committee Member for a second term without interviewing other applicants. No such discretion applies when a Committee Member is applying for reappointment for a third or subsequent term.

All candidates are required to complete an application form and will be interviewed by a panel that includes at least one of the Commissioners, the Director-General and an independent assessor.

We will consult with the Minister prior to making our final decision on the appointments of CCC members.

The primary qualities required of Committee Members are an interest in and

appreciation of consumer issues, an enquiring mind and sound judgement. Prior knowledge of regulated industries and of economic regulation is not essential as training will be given.

A person shall be disqualified from being appointed or continuing as being a member of the CCC if:

- he or she has any financial or other interest amounting to a conflict of interest, directly or indirectly, in any company or undertaking which carries on business in any public utilities industry;
- he or she is an employee in a public utilities industry;
- he or she is an employee in any Government department or statutory corporation;
- during the three year period prior to appointment to the Committee, he or she has been a member of Parliament, a member of a Provincial Council or any Local Authority;
- he or she has been convicted of a criminal offence;
- he or she has been declared insolvent.

All Committee Members will be required to comply with the same provisions regarding conflicts of interest and secrecy as apply to Commissioners. We can remove Committee Members where we consider these requirements to have been breached or in cases of gross misconduct.

A member of the Committee may resign from the CCC by letter in that behalf addressed to us, and such resignation shall take effect from the date on which the resignation is accepted in writing by us. Where a member of the Committee vacates CCC by death, resignation or other cause, we after consultation with the Minister appoint another suitable person in his or her place, for the remainder of the term, of the vacating.

### **4.3.3 Role of the CCC**

The functions of the CCC under the PUCSL Act include:

- advising us on appropriate standards for the service provided to consumers, particularly smaller consumers;
- monitoring the extent to which the needs of consumers of regulated public utility industries are being met; and
- promoting awareness of the standards prescribed and the rights of consumers in respect of these.

In addition to these statutory functions, the CCC can provide advice to us, either at our request or on its own initiative, on consumers' interests regarding issues under review in regulated industries.

The CCC discharges these functions through a number of activities. These include but are not limited to:

- organising Consumer Network for sharing consumer views and

- concerns with each other and with the CCC;
- conducting public consultations on utility sector reforms to be able to advise on how best to promote consumer interests. These consultations are conducted in each economic region;
- conducting surveys related to consumer issues in utilities;
- reviewing and advising us on amendments to performance standards and conditions covering the quality of service provided by regulated utilities;
- making recommendations to us on the information required by consumers and consumer associations with respect to regulated utility services;
- obtaining and providing feed back on consumer concerns to the public utilities under our purview;
- reviewing the benefits and costs to consumers of further deregulation in utility industries; and
- providing information and advice on consumer matters to us when we are undertaking regulatory processes such as price reviews and issuing or modifying licences.

A major part of the work of the CCC is conducting public awareness campaigns to

educate consumers on their rights and to increase consumer participation in the regulatory and policy-making process. It publishes a variety of material for this purpose, including a handbook on the rights of consumers. Copies of these materials can be obtained from the website of the CCC (click [here](#)) or from our Information Centre.

#### ***4.3.4 The Consumer Network***

The Consumer Network provides a forum within which consumers can share their views and concerns with each other and with the CCC, and through which they can participate in regulatory and policy matters. It also provides a means for the CCC to consult with consumers and to survey them.

The CCC invites individual consumers and consumer associations in those utility industries that we regulate to participate in the Network. It may also invite other consumer organisations to participate, as it sees fit. You can contact the Network via the CCC's website (click [here](#)) or by writing to it.

The CCC holds an annual meeting of the Consumer Network to which all members are invited, and may also organise other workshops as part of consultation exercises. Details of all meetings and workshops and agendas are posted on the CCC's website (click [here](#)). The CCC may also contact members of the Network directly by email or in writing to invite comments on matters under consideration, or may post these on its website for comment by Network members.

The CCC is particularly concerned to ensure that consumers in more remote areas are given full opportunities to participate in its work. The Network therefore makes full use of information technology to promote dialogue between its members and the CCC.

### **4.3.5 Reporting by the Committee**

In advance of each financial year, the CCC develops its proposed work plan for the coming year and estimated budget. It also publishes a report containing information on its activities during the preceding year and its audited accounts for the year.

### **4.3.6 Funding the CCC**

The CCC is financed from our fund. The annual budget of the CCC and its office will be included in the estimated budget submitted by us to Parliament.

The CCC's funds are managed by its office. The CCC will be responsible for the funds that we provide to it.

### **4.3.7 Contacting the CCC**

Office of the CCC is located in our office in Colombo. You can contact the CCC as follows:

*Chairman – CCC*

*Public Utilities Commission of Sri Lanka*

*Level 06, BOC Merchant Tower, No. 28*

*St. Michael's Road,*

*Colombo 03.*

Telephone: (+94 11) 2392608

Fax: (+94 11) 2392641

e-mail: [ccc@puosl.gov.lk](mailto:ccc@puosl.gov.lk)

You can write, fax or email in any of Sinhala, Tamil and English.

Copies of all material prepared by the CCC are available from our Information Centre.

## **4.4 Working towards competitive markets**

**We are the body that regulates competition in the public utilities industries.**

**As part of our function in trying to promote competition in public utilities markets, we can regulate, conduct inquiries into and investigate:**

- anti-competitive practices;
- monopolies;
- acquisitions and abuses of a dominant position; and
- merger situations.

**(For details of what these all mean please see the paragraphs below.)**

**We can either conduct inquiries on our own initiative or on a complaint or request made by someone else. As part of our role in carrying out inquiries or investigations, we will consult with:**

- regulated entities who may be affected;
- the person raising the complaint; and
- the Consumer Consultative Committee.

### 4.4.1 Criteria for anti-competitive practices

**Public Utilities Commission of Sri Lanka Act, No. 35 of 2002 - section 22**

The Commission shall, in relation to each public utilities industry, regulate and inquire into anti-competitive practices, monopolies, acquisitions and abuses of a dominant position, and merger situations and may carry out an investigation, either of its own motion or on a complaint or request made to it by any person, with respect to:

(a) the existence or suspected existence of any anti-competitive practices...

### What actions will we be looking at?

If you are a regulated entity and:

- you are party to an agreement (written or oral); or
- you, acting together with one or more other regulated entities, have made a decision; or
- you are involved in any practice or conduct (either by yourself or with another regulated entity);

which **affects or is likely to affect trade** (domestic or international) and

which has the **object or effect of distorting or preventing competition** in Sri Lanka, then you may be subject to an investigation or inquiry by us.

### What can we do?

Where we become aware of anti-competitive behaviour, or suspect it, we can investigate or make inquiries into that behaviour. We have certain powers and the ability to impose sanctions on you. Please see below for further details of this.

### What sort of activities will we look at?

Anti-competitive practices can potentially cover a number of circumstances. Some of the activities which we will be particularly concerned about include price fixing, or activities which:

- remove or substantially damage a competitor in the market;
- prevent a new competitor coming into the market;
- stop a market player from taking part in competitive conduct; and
- limit or control a consumer's access to a regulated entity or tie a consumer to a particular entity, for example, not giving a consumer adequate freedom to change supplier.

### 4.4.2 Criteria for dominant positions

**Public Utilities Commission of Sri Lanka Act, No. 35 of 2002 - section 22**

- (b) the acquisition, existence or suspected existence of abuse of a dominant position which may affect domestic trade or economic development in one or more markets in which a regulated entity operates...

#### What actions will we be looking at?

If you are a regulated entity and you (as an individual or as a member of a group of companies):

- provide or use a **certain percentage** of a utility network; or
- provide or have access to a certain percentage of a utility service;

then you will be taken to hold a "dominant position". If you abuse that dominant position you may be subject to an inquiry and/or investigation by us.

We will be assessing if that behaviour (or suspected behaviour) may affect domestic trade or economic development in one or more markets in which you operate.

The "certain percentage" we refer to above, in relation to the provision of a utility network or utility services, will either be more than 40% or the percentage

prescribed, if any, in regulations made by the Minister in charge of Commerce.

#### What can we do?

We can investigate or make inquiries into your behaviour. We have certain powers and the ability to impose sanctions on you. Please see below for further details of this.

#### What sort of activities will we look at?

Abuses of a dominant position can potentially catch a number of circumstances. In particular we will look at whether you, as a regulated entity, impose unfair purchase or selling prices on consumers, or if your conduct is such that it:

- removes or substantially damages a competitor in the market;
- prevents a new competitor coming into the market;
- stops a market player from taking part in competitive conduct in a market; or
- limits or controls a consumer's access to a regulated entity or ties a consumer to a particular entity, for example, not giving a consumer adequate freedom to change supplier.

### 4.4.3 Mergers

**Public Utilities Commission of Sri Lanka Act, No. 35 of 2002 - section 22**

(c) the creation or suspected creation of a merger...

**What actions will we be looking at?**

If you are a regulated entity and:

you have acquired, or are about to acquire any third party shares or assets (whether directly or in an indirect way) resulting in a change of control of that third party;

**with the intention or effect** that you and the target are, or are together likely to be, in a dominant position in a market in a public utilities industry (or if you both are involved in, and hold a dominant position in the same utility network or service, in a public utilities industry, whether or not in the same geographical area);

then you may be subject to an inquiry and/or investigation by us.

**What can we do?**

We can investigate or make inquiries into your behaviour. We have certain powers and the ability to impose sanctions on you. Please see below for further details of this.

**4.4.4 What should you do?**

Remember if you are a regulated entity and you think, or it would be reasonable to consider, that your activities fall within the above categories **then you must tell us immediately.**

If you are a regulated entity and you are already being investigated we will allow you to put your case forward. You can also give evidence.

**4.4.5 What should a third party do?**

If you are a third party and you believe any of the behaviour described above is taking place by a certain regulated entity, you can notify us and we will help by inquiring into and/or investigating the matter.

**The investigation process**

We can inquire into and investigate any of the above practices. In the case of anti-competitive practices and mergers we will look at whether they operate against the public interest. In the case of dominance we will look at whether there has been an abuse of that dominant position.

In deciding whether an anti-competitive practice or merger operates against the public interest, we must take into account all matters which we believe are relevant. In particular, we must pay attention to the appropriateness of promoting competition and promoting the interest of consumers for that market.

We must also consider other matters and principles in the case of merger situations. For full details of this please refer to section 24(4)(c) of the PUCSL Act.

#### **4.4.6 Our enforcement powers**

After we have carried out our investigations we can make a number of orders. For example, we can authorise anti-competitive practices and merger situations even if they exist, provided that they are not operating against the public interest. We can do the same with dominant positions, provided that there has not been an abuse of that dominant position.

We can attach conditions to our authorisations. In certain circumstances we can also stop mergers from going ahead.

If we decide that an anti-competitive practice or a merger situation exists and is against the public interest or there is an abuse of a dominant position, we can also:

- appoint someone to supervise the conduct of activities or safeguard certain assets;
- end that practice or abuse; and
- order for a de-merger.

We also have a general power to take any action which we think fit for solving or stopping the negative effects which such practices have on competition.

#### **4.4.7 Our other powers**

We also have certain powers to enter and search premises and inspect or take relevant records of regulated entities if we

believe they fall into any of the above-mentioned practices. You should be aware that as long as we are authorised, on reasonable grounds, with an entry warrant (which is issued by a Magistrate) we can:

- enter, inspect and search the premises in which any regulated entity carries on its business, or any other premises (at all reasonable hours of the day);
- inspect, take copies, seize and detain any relevant records of documents of that regulated entity; and
- no one is allowed to obstruct us from doing so.

If you wish to know more about this, please refer to section 25 of the PUCSL Act.

#### **4.4.8 Sanctions available for a breach of the rules**

Any person or company who does not comply with an obligation or an order made by us, in respect of the competition rules will be guilty of an offence. This means that on conviction:

- individuals will be subject to a fine and/or imprisonment;
- companies will be fined; and
- the court can order such persons to stop carrying out certain activities or to do certain things.

The PUCSL Act details the amount of the fines and the length of the prison sentences that can be given. There are also fines for continued offences.

You should be aware that if an offence is carried out by a body of persons, for example a company or a partnership, all directors, officers and partners of that company or partnership may be guilty of an offence.

You should also be aware that we can publish names and addresses of all persons convicted.

#### **4.4.9 Principle of consistency**

We must, so far as possible, ensure that we deal with questions relating to the above and the regulation of competition in the public utilities industries in the same way as the same matter would be dealt with under the relevant competition legislation.

In line with this principle of consistency, we must take account of any relevant decision or statement made by any relevant competition authority.

### **4.5 Registering a complaint**

**We have a central role to play in helping resolve complaints in the public utilities industries. This section describes how you can submit a complaint and how we will handle this.**

#### **4.5.1 Complaints that the PUCSL will consider**

We will consider any complaint from consumers, or other stakeholders, related to an industry or activity that we oversee. In each case, we will review whether the matter raised falls within our specific functions, powers and duties, as defined in relevant legislation (click [here](#) for more information).

We expect those complaining to us to have initially attempted to resolve their complaint directly with the operator or other entity involved. To facilitate this, in many cases we have required operators to develop Customer Charters setting out the service that you can expect, how you can complain that they have not met this level of service and how they will attempt to resolve these. In some cases, these Charters also include performance standards that operators will meet and details of the compensation payable if they fail to do so.

A list of operators and the contact details for registering complaints with them is provided on our website (click [here](#)). Copies of the Customer Charters applicable to individual operators can be obtained from the same source.

#### **4.5.2 When to submit your complaint**

A complaint can be submitted to us at any time. However, in most cases, we will not consider the complaint if you have not first tried to resolve the issue with the party in question. We will also, in general, not consider complaints submitted

more than six months after the incident to which the complaint relates, unless you can satisfy us as to the reasons for the delay in submission.

You should, in general, provide us with written evidence that you have submitted a complaint to an operator or other party and that you have made reasonable efforts to resolve this. We will also expect to see written evidence from the operator or other entity involved as to how they have handled the complaint, once we have received your evidence.

### 4.5.3 Where to submit your complaint

Complaints should be sent to our Consumer Affairs section at the following address:

*Public Utilities Commission of Sri Lanka  
Level 06, BOC Merchant Tower, No. 28  
St. Michael's Road,  
Colombo 03.*

e-mail: [info@puosl.gov.lk](mailto:info@puosl.gov.lk)

Alternatively they can be submitted using the forms on our website (click [here](#)).

Complaints should generally follow the format below:

<b>Complaint form</b>
Date of submission:
Name:
Contact details:
Address

<i>Daytime contact telephone number(if available)</i>
<i>E-mail address (if available)</i>
Against whom are you filing a complaint:
<i>Industry</i>
<i>Service provider</i>
<i>Account name and number</i>
<i>Service address</i>
Describe the problem:
Describe measures that have been taken to-date to remedy the problem:

We regret that we cannot accept anonymous complaints. You should also be aware that we will be required to show your complaint to the service provider to which the complaint refers.

### 4.5.4 The process for dealing with your complaint

Upon receiving a complaint we will verify that it relates to a matter that we have jurisdiction over. We will then:

- contact the party against whom the complaint has been made, describe the nature of the complaint and invite them to comment;
- review your complaint in the light of their comments and, possibly, contact you for further information. We may also again contact the party against who the complaint has been made following receipt of this further information;

- where we consider the complaint is justified, seek to resolve it. Please see Section 4.2 of this Manual for more information on how we resolve complaints.; and
- where we consider the complaint is unjustified, we will dismiss it and provide you with our reasons in writing.

If we feel that your complaint relates to an issue of wider interest then we may choose to deal with it through a regulatory review, following the process set out in Section 3.1 of this Manual.

#### ***4.5.5 The timetable for dealing with a complaint***

We will always acknowledge receipt of complaints and tell you whether we think it is appropriate for us to deal with them. We will generally do so within five working days of receipt.

Where we are able to deal with a complaint, we will write to the other parties involved inviting them to provide their comments. We will generally do so within ten working days of receiving the complaint. The time taken for comments to be provided will vary depending on the complaint, but we generally expect to receive them within ten working days of writing to the parties involved. We will then write to you inviting your responses and requesting further information, if required, within another five working days.

## SECTION 5: Operators, Investors and the PUCSL

### 5.1 Licensing

**In many of the public utilities industries that we regulate, licences are the main instrument of control. As such, the processes relating to issuing and revoking them are of major importance. This section describes these processes in general – industry-specific issues are described in Part II of this Manual.**

#### 5.1.1 The role of the licence

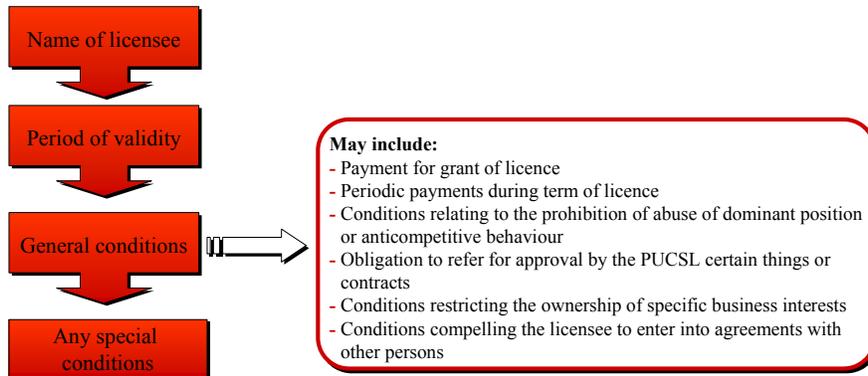
Licences will be required in order to undertake certain regulated activities in Sri Lanka. The activities for which licences

will be required will be identified in the relevant industry-specific Acts.

Some persons may be exempt from obtaining a licence. You can read about the different mechanisms to get an exemption in the relevant industry-specific sections in Part II of this Manual.

In some cases, depending on industry-specific legislation, we may issue contracts. The resulting differences are described in Part II of this Manual.

Licences may include the following elements:



#### 5 - Elements that may be included in a licence

### 5.1.2 Issuing a licence

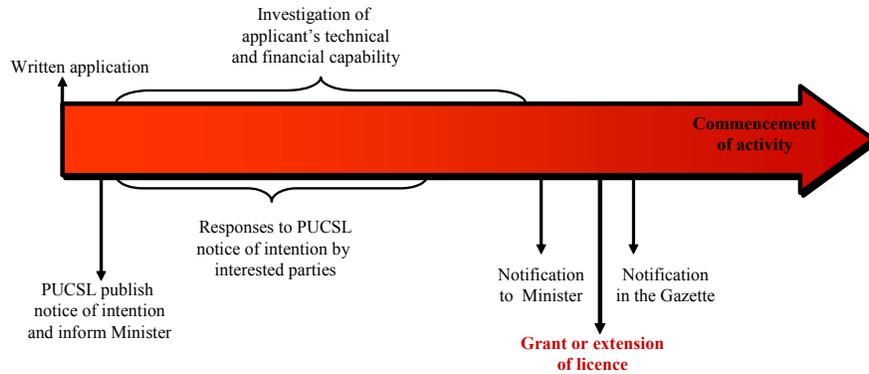
If you intend to undertake an activity for which a licence is required you should submit a written application to us. Similarly, if you want an extension to your current licence you should submit a written application. Applications must be accompanied by all the relevant information and documents, and the appropriate fees, prescribed by regulation.

The detailed application procedures are set out in industry-specific regulation and rules.

You may also be required to apply for an exemption to the requirement to hold a licence. Whether this is so is detailed in the relevant industry-specific legislation and regulations.

Where we intend to issue a licence we will generally publish a notice to this effect in a way which we consider appropriate to bring this to the attention of the persons that may be affected by the decision.

Once we have taken into consideration all representations and are satisfied about the applicant's technical and financial capabilities, we will notify the Minister with responsibility for the industry concerned, where required under industry-specific legislation, of our final decision before granting or extending the licence. A notification of the grant or extension of a licence will be published in the *Gazette*.



## 6 - The licence award process

### **5.1.3 Modification of a licence**

Modifications may be made to the licence during its period of validity. In general, this requires us to publish a notice of our intention to make such modifications, with reasons, and to send copies of this notice to both the licensee concerned and the Minister with responsibility for the regulated industry in which the licensee is operating. Where the licensee agrees to the proposed modifications then, following consideration of representations received in response to this notice we will make modifications to the licence terms accordingly, and send copies of these modifications to the concerned licensee and Minister.

Where the licensee does not accept the modifications that we have proposed, then following an investigation, we must report to the Minister with responsibility for the relevant regulated industry on how the modifications will remedy or prevent effects adverse to the public interest that we have identified. We must specify what matters that operate against the public interest should be taken into account in this report. Copies of the report will be provided to the licensee, who can make representations (within a certain time limit) to the Minister.

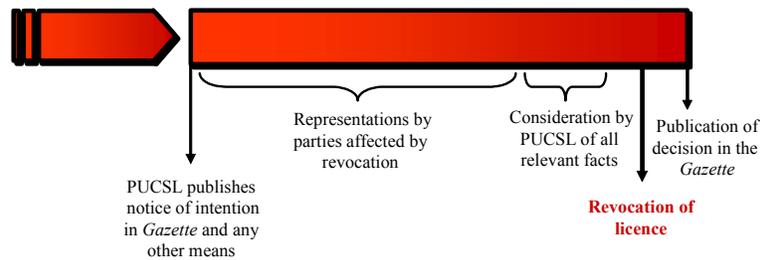
The Minister will advise us whether to give effect to the modifications or not. A copy of this advice will be provided by us to the licensee and will also be published by us. We will send copies of the proposed modifications in the light of this advice to the licensee and the Minister.

If the licensee continues to refuse to accept the modifications then he/she can appeal to the Court of Appeal.

### **5.1.4 Revoking a licence**

With the concurrence of the Minister, we have the ability to revoke licences and exemptions where licensees or exempted parties fail to fulfil conditions specified in the licence or exemption.

Before a revocation, we must publish our intention in the *Gazette* and use any other means that we may consider appropriate to bring the proposed revocation to the attention of the person or persons likely to be affected by the revocation. Representations can then be made against such revocation.



## 7 - The licence revocation process

### 5.2 Regulating prices and quality

In many cases, we are required to set or approve the prices that service providers in regulated industries can charge and the quality of service they provide. This section provides general information on our work in these areas. More details are provided in the industry-specific descriptions contained in Part II of this Manual.

#### 5.2.1 Determining allowed prices

This regulation takes two main forms:

- setting the maximum revenues that can be recovered in any one year from charges to consumers; and
- either approving or setting the charges of service providers,

consistent with any revenue control that may apply.

Our role in price regulation differs in each public utilities industry. You should refer to Part II of this Manual to understand our role in each industry that we regulate.

In general, we will set maximum revenues and/or prices, where we are responsible for doing so, using the regulatory review process set out in this Manual.

Where we are responsible for setting or approving charges, as well as maximum revenues, we will do so using policy guidelines approved by the Cabinet of Ministers and guidelines that we have developed and that are consistent with our objectives, duties and functions. Copies of guidelines that are in force are available on our website (click [here](#)). In most cases we will follow the regulatory review process set out in this Manual in developing or making substantial amendments to our guidelines, but not each time that we set or approve charges in accordance with guidelines we have developed.

### **5.2.2 Reviewing regulated prices**

The frequency with which we review the maximum revenues of service providers and their charges will vary by industry and operator, depending on the particular needs of each and any industry-specific legislative requirements.

In selecting appropriate periods, we will strike a balance between the need to provide incentives for service providers to reduce costs and to give them certainty over future prices to promote investment against the need to protect consumers from excessive prices.

Our guidelines on setting or approving charges (click [here](#)), where we are responsible for this, will generally set out how frequently we expect to review charges and in what circumstances we will consider interim reviews.

### **5.2.3 Setting quality standards**

Alongside the regulation of prices, in many cases we are responsible for setting quality of service standards (as well as safety and other standards) to be met by service providers. As with our role in price regulation, the extent to which we do so differs from industry to industry and within industries by type of service provider. You should refer to Part II of this Manual for a description of our role in individual industries.

The process for setting quality standards is similar to that for reviews of allowed maximum revenues and charges. We

publish a number of standards and explanations for the selection of these, along with the performance of service providers against them, on our website (click [here](#)). Copies are also available from our Information Centre.

Where we propose to make significant changes to the coverage of these standards, to the choice of standards or to the penalties and awards associated with failure to reach or success in exceeding these standards, then we will generally hold a regulatory review. This will follow the processes set out in this Manual. In some cases the consideration of quality standards will form part of a wider review (for example, of allowed revenues).

### **5.2.4 Enforcing quality standards**

The PUCSL Act requires us to set and enforce standards relating to safety, quality, continuity and reliability (see [here](#)). However, it does not provide explicit enforcement powers. Instead, our ability to enforce the standards that are set comes from three main sources:

- where we also regulate allowed revenues and charges, we are able to adjust these to take account of the performance of service providers against quality targets. The provisions for this are included in the guidelines on price regulation that we issue (click [here](#));
- in some cases we can impose penalties and rewards directly linked to performance against quality standards through the

conditions in the licences or alternative permissions issued to service providers; and

- on occasion, industry-specific legislation, may provide direct powers for us to impose penalties for failure to meet service quality standards.

### 5.3 Obtaining information

**As the public utilities regulator, we must have access to all relevant information, as far as possible, so that we can make properly informed decisions. This section describes our information gathering powers under the Act, and also outlines our information disclosure policy.**

**Public Utilities Commission of Sri Lanka Act, No.35 of 2002 – section 15**

(1) The Commission shall have the following power as reasonably required to carry out its functions:

- (a) to request any person, included a regulated entity, to furnish to the Commission periodically, or as and when required by the Commission, any information, books accounts or other documents which are required by the Commission and are in the custody or under the control of that person.
- (b) to summon to attend at a public hearing held under section 18 any person who, in the opinion of the Commission, may be able to give evidence in relation to any matter before the Commission.

(2) Any person to whom a request for information has been made shall duly furnish the Commission

with the information, books, accounts or other documents.

(3) ...provided however, that a person referred to in this section shall not be compelled to produce a document which he or she could not be compelled to produce in civil proceedings before a court or to furnish information which he or she could not be compelled to give in evidence in any such proceedings.

**Public Utilities Commission of Sri Lanka Act, No.35 of 2002 – section 25**

(1) Where the Commission reasonably believes ...the Commission shall have the power exercised by an officer of the Commission authorized in that behalf, on reasonable grounds, with an entry warrant issued by a Magistrate and on production, if required, thereof:

- (a) to enter, inspect and search at all reasonable hours of the day the premises in which any regulated entity is carrying on its business or any other premises; and
- (b) to inspect, take copies or seize and detain any relevant records or documents of that regulated entity.

and no person shall obstruct any officer acting in the exercise of his or her powers under this section.

#### 5.3.1 Our general powers to obtain information

Our general powers to obtain information are given to us under section 15 of the PUCSL Act. To help us carry out our functions, we can:

- request *any person* to give us information, books, accounts or other documents that is in its possession or control; and

- summon *any person* to attend a public hearing, if we think that person may have evidence on the matter in hand.

A “person” can be anyone, including ordinary individuals, businesses, and regulated entities.

Although our powers to obtain information are wide ranging, we must only exercise them if they are reasonably required to help us carry out our functions.

Our specific information gathering powers include those in relation to:

- public hearings (see Section 3.2 of this Manual);
- competition (see Section 4.4 of this Manual); and
- individual regulated industries (see Part II of this Manual).

### **Different types of documents**

A document does not have to be printed on paper for it to be considered a 'document'. A document also includes information that is contained in an electronic record, stored, recorded or copied in optical or magnetic media and produced by any means.

Therefore documents can include many other items in addition to printed paper. For example: e-mails, computer word processing and spreadsheet files, and information stored on hard drives, diskettes and CD-ROMs.

### **Your duty to give information**

If we make a request to you for information, then in most cases you must give us the information or you will be guilty of an offence and may be fined by a Magistrate.

There are two situations in which you will not have to give us the information:

- where you have a reasonable excuse (this will be assessed on a case-by-case basis); or
- where you could not be forced to give the document or evidence in civil court proceedings.

### **Confidential information**

If the information that we collect is stated to be confidential or commercially sensitive, and it relates to the affairs of a business or individual, then as a general rule, we cannot disclose it without consent.

However, we are allowed to disclose that information:

- if the disclosure is required by a court of law; or
- if we think that disclose is necessary for the public benefit; or
- if the disclosure enables a licensee to comply with its licence (which requires the disclosure of that information).

### **5.3.2 Collecting information for regulatory reviews**

As the type of regulatory reviews we can carry out vary so much in nature, so too does the information we collect when we carry out regulatory reviews. It is important however that as far as possible we have the relevant information at each stage of the regulatory review, as this will help ensure that we have a position from which to make a properly reasoned decision.

Regulatory reviews, and the processes we use for obtaining information during them, are set out in more detail in Section 3.1.

### **5.3.3 The type of information that we collect**

We collect and prepare various types of information during the course of carrying out our role as a public utilities regulator. Examples include:

- company information;
- financial information;
- statistical information;
- industry research and analysis;
- minutes of our official meetings; and
- evidence of breach and compliance.

### **5.3.4 Our disclosure policy**

It is important that we act in a transparent way. Therefore, as a general rule, we will publish, or be prepared to publish, all non-confidential information that we hold. However, in certain circumstances, it may be wrong or inappropriate for us to reveal information. For example, this will be the case where the PUCSL Act or other legislation restricts us from revealing the information, for example, where it is commercially sensitive.

### **5.3.5 How you can obtain information from us**

Depending on the information you require, it may be available from different sources. For example, certain information is available on our website, whereas other information may only be available in hard copy.

You can request information from our Information Centre in writing, by telephone, by email or by fax. Alternatively, you can visit our Information Centre, located in our Colombo office, in person.

*Public Utilities Commission of Sri Lanka*

*Level 06, BOC Merchant Tower, No. 28,*

*St. Michael's Road,*

*Colombo 03.*

Telephone: (+94 11) 2392607

Fax: (+94 11) 2392641

e-mail: [info@pucsl.gov.lk](mailto:info@pucsl.gov.lk)

When requesting information in writing, you should include the following details:

- your name and address;
- the information or documents you would like to access; and
- the way you would like the information to be sent to you, for example, in hard copy, or via e-mail (if it is capable of being sent in different formats).

Depending on the nature of the information you request, a fee may be payable for providing the information.

## SECTION 6: Other Agencies

### 6.1 Agencies with whom the PUCSL coordinates

We coordinate our activities with a wide range of agencies whose jurisdiction impacts on the decisions we make. This section describes how we coordinate in an effective manner.

For example, decisions by agencies with the following responsibilities will have an impact on the decisions we make:

- **other regulators:** for example, the Consumer Affairs Authority, where we will need to establish arrangements for the effective exchange of information and for consistency of approach where our jurisdiction overlaps with other regulators;
- **the environment:** for example, the Central Environmental Authority must approve electricity generation projects prior to us licensing those projects;
- **urban and rural planning:** for example, the Urban Development Authority must approve plans for a new housing

complex before we can license the provision of electricity services;

- **national, provincial and local government:** for example, Provincial Councils will have to be consulted prior to the construction of new rural electrification projects which may require a license from us; and
- **irrigation and other water usage:** for example, hydro-electricity projects that affect water sources used for irrigation may require approval of relevant ministries before they can be considered for a license.

It is important for us to coordinate with these agencies and ensure that:

- we are aware of decisions they have made;
- they are aware of our decisions; and
- a clear working relationship exists to facilitate decision-making in areas where multiple agencies have a role.

The rest of this section sets out how we meet this requirement.

## 6.2 Memoranda of understanding

The PUCSL Act requires us to prepare formal Memoranda of Understanding (MoUs) with some agencies where there is the potential for overlapping jurisdictions or with whom it is particularly important to coordinate. The MoUs are intended to outline how we will:

- co-operate and exchange information with the agency in question; and
- coordinate to ensure a consistent approach in areas where both bodies have an input.

The agencies specified in the Act with which such MoUs must be signed are the:

- Central Environmental Authority;
- Urban Development Authority; and
- Telecommunications Regulatory Commission.

The Minister can also nominate additional regulatory bodies with which we must sign MoUs. Sustainable Energy Authority is one of the agencies which Minister nominated for us to have a MoU.

The latest versions of existing MoUs are published on our website (click [here](#)).

Where we are not required to develop a formal MoU, then we may choose to enter into an informal written understanding,

even where not required by legislation or the direction of the Minister.

## **PART II: INDUSTRY-SPECIFIC PROCEDURES AND PROCESSES**

## SECTION 7: The Electricity Industry

### 7.1 The PUCSL and the electricity industry

Under the PUCSL Act No. 35 of 2002 and the Sri Lanka Electricity Act No. 20 of 2009, the PUCSL is made responsible for the regulation of the electricity industry. This section briefly describes the electricity industry in Sri Lanka. It also outlines the regulatory role of the PUCSL and how its processes and procedures differ from the general approaches described in Part I of this Manual.

#### 7.1.1 Overview of the industry

There are three main elements to the electricity industry:

1. **Generation:** power stations, using various fuels and other inputs, produce electricity.
2. **Transmission:** electricity is transported at high voltages over long distances from the power stations closer to industry, households and others who require it. The transmission grid is operated as a single system,

due to its electrical characteristics.

3. **Distribution:** electricity from the transmission grid is transferred to lower-voltage distribution lines for transport over the remaining distance to individual consumers, where it passes through the relevant meter and into the wiring system of the consumer. There may be many distribution systems in a country, but each individual system has only one operator.

In Sri Lanka, historically, each of these elements have been largely performed by the publicly-owned Ceylon Electricity Board (CEB), and by the Lanka Electricity Company (LECO) within Greater Colombo.

Under the Sri Lanka Electricity Act No. 20 of 2009 (SLEA) (click [here](#)), CEB and LECO are undergoing a process of functional ring fencing in order to introduce greater transparency and managerial focus into the industry and to create clear relationships between its components, enabling the price and quality of service to be better monitored and enforced.

The outcome of this process will be an industry organised along the lines of the internationally-used "Single Buyer Model", made up as follows:

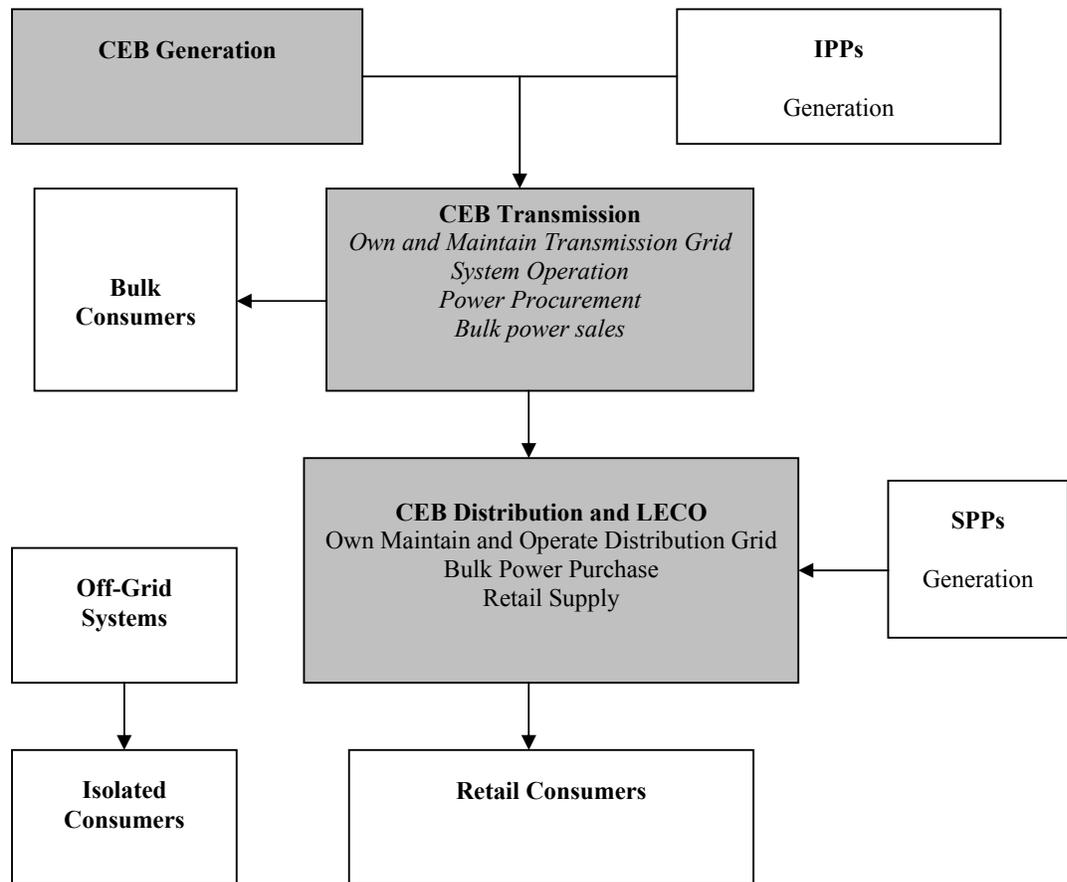
1. **Generation:** CEB's existing hydro and thermal generating stations will have Power Purchase Agreements (PPAs) with CEB transmission division. Privately-owned generating stations (known as Independent Power Producers, IPPs) will continue to operate, as will existing small power producers (SPPs) which use hydro and other renewable sources of industry, and captive power plants owned by industry and others. New generating stations will be procured as required by CEB through a competitive tendering process overseen by the PUCSL.
2. **Transmission:** the ownership and operation of the transmission network will continue to be with CEB. Ceylon Electricity Board will buy electricity from generators under Power Purchase Agreements (PPAs). CEB will also be responsible for

identifying, with the approval of the PUCSL, when new generating capacity is required to meet demand and for procuring this through a competitive tendering process, again with the approval of the PUCSL.

3. **Distribution:** the ownership and operation of the existing distribution networks of CEB and LECO, connected to the transmission grid, will continue to be the responsibility of CEB and LECO

The existing small-scale independently-owned and operated distribution systems that serve communities that are not connected to the distribution grid will continue to operate. These systems generate their own electricity for sale to customers connected to their individual networks.

An overview of the electricity sector is provided below.



- The structure of the electricity industry

A list of current licensees can be found on our website (click [here](#)), where you can also find further information about the latest changes to the structure of the sector (click [here](#)).

### **7.1.2 The regulatory instruments used**

In addition to the SLEA, we are also required to comply with various regulations issued by the Minister with responsibility for the electricity industry. These regulations are identified at appropriate points in the following section.

We issue licences to the most important entities in the electricity industry. These contain a number of conditions with which these entities must comply, and which are either set out in the SLEA or are imposed in line with our duties and objectives. We also issue exemptions in a number of cases from the requirement to hold a licence. The types of licence we issue are listed in the following section.

The licences require compliance with a number of rules and guidelines, covering, for example, allowed prices and performance standards, as well as the preparation of various technical codes by licensees, covering the safe operation of the electricity industry. These rules, guidelines and codes are identified at appropriate points in the following section.

### **7.1.3 Rural electrification**

Expanding electrification is an important issue for Sri Lanka. As well as the expansion of the distribution grid by the Distribution licensees, this will also include the continuing development of off-grid systems to serve remote communities.

The PUCSL will facilitate this process, working with Provincial Councils and others as required. However, it will not be responsible for its funding, which will be provided by Government and multilateral and bilateral donor agencies.

## **7.2 How the PUCSL's approaches apply to the electricity industry**

### **7.2.1 Our functions**

**The regulation and oversight of the electricity industry is in our hands. We therefore have to ensure that our approaches conform with both the PUCSL Act and the SLEA. This means that we must comply with our functions as described in both Acts.**

Not only do we have an obligation to undertake those broad functions set out in Part I of this Manual, but we must also carry out the functions specific to the electricity industry, as set out in section 3 of the SLEA (click [here](#)). The objectives set out in the PUCSL Act and the SLEA are complementary to each other.

Our overarching role under the SLEA is to act as the economic, technical and safety regulator for Sri Lanka's electricity industry. Our other functions include:

- advising the Government on, and undertaking, licensing, regulatory and inspection duties for generation, transmission,

distribution, supply and use of electricity in Sri Lanka;

- approving, when necessary, technical and operational codes and standards to be developed by licensees;
- publishing a statement (in connection with certain provisions of the SLEA) that sets out the rights and obligations of consumers, after consultation with transmission and distribution licensees;
- setting and enforcing technical and other standards relating to the safety, quality, continuity and reliability of electricity supply services and metering services;
- promoting the efficient use and conservation of electricity;
- pursuing any matter relating to our functions; and
- carrying out any other activities which we consider are appropriate to our work.

We also have similar functions to those set out in Part I of this Manual, in connection with regulating tariffs and charges, consulting with relevant persons and collecting and recording information.

## What are our specific SLEA objectives?

Just like the PUCSL Act, we have a duty under the SLEA to carry out our work in a way that we think is best calculated to:

- protect consumer interests, for example, in promoting efficiency, economy and safety by those in the generation, transmission, distribution and supply business and those people using electricity;
- ensure, as far as it is economical to do so, all reasonable demands for electricity in Sri Lanka are met;
- promote the efficient use of electricity supplied;
- protect the public from dangers arising from the generation, transmission, distribution, supply or use of electricity; and
- give effect to any guidance on environmental objectives set by the Central Environmental Authority or a Provincial Council.

Again, we also have more general objectives under the SLEA in relation to competition and financing of licensable activities.

## How can we achieve these objectives?

As with all of the objectives set out in Part I of this Manual, it will always be key for

us to have flexibility in considering competing priorities. We will try to make decisions which we believe will lead to the greatest benefits for all stakeholders.

As regards the interests of consumers, as well as protecting them by encouraging efficiency, economy and safety, we also consider such things as the:

- terms on which electricity is supplied, including prices charged;
- availability and reliability of supply of electricity;
- quality of services in the electricity supply industry; and
- way certain rights are used, for example the right to enter your premises.

## **7.2.2 Policy guidance**

### **When can the Government give policy guidance to us?**

As stated in Part I of this Manual, we do not make policy –such provisions are made in the SLEA for the Government to give policy guidance to us. The issue of policy guidelines in the electricity industry is slightly different to that under the PUCSL Act.

### **What is the process for issuing guidelines on policy to us?**

The Minister in charge of the subject of power and energy can draw up policy

guidelines for the electricity industry. Once drawn up, they must forward those guidelines to the Cabinet of Ministers for consideration.

Once the policy guidelines have been issued, we must take account of them when carrying out our functions. For further details of this stage, please see Section 2.4.1 in Part I of this Manual.

The SLEA specifically identifies that, without limiting the powers of the Minister to formulate general policy guidelines, such guidelines can specifically include:

- setting targets to be met by the electricity industry for sustainable economic growth for different areas in the country or different socio-economic groups;
- setting targets for fuel diversity and the choice of fuel for new electricity generating capacity;
- the priorities and objectives associated with meeting the targets set for sustainable economic growth; and
- measures to be taken to meet the targets for sustainable economic growth and for fuel diversity.

## **7.3 Electricity consumers and the PUCSL**

**Sections 40 – 42 of the SLEA detail**

further provisions which are aimed at protecting you, the consumer (a consumer in this context is a present or prospective consumer of electricity). In particular, the sections cover three main areas which are key to ensuring consumers get the right quality and level of service in the electricity industry. These are:

- the setting of performance standards;
- the collection and publication of information; and
- redress.

We have set out in more detail below a guide to what the SLEA prescribes in connection with these matters.

### **7.3.1 Performance standards**

#### **Standards of performance which are set by regulation**

The SLEA allows regulations to be made by the Minister in charge of the subject of power and energy determining the standards of performance which have to be met by distribution licensees for the supply of electricity and electricity supply services to tariff customers. A list of these regulations is available on our website (click [here](#)).

The SLEA allows the standards to vary between licensees so that, for example, off-grid distribution licensees are not required to meet the same standards for quality of service as grid licensees.

Making this distinction allows the standards to be tailored to the costs this imposes on licensees and the prices that consumers will pay.

### **Compensation**

If a distribution licensee causes any person a particular loss or damage, because of a failure to meet standards set out in the regulations, then a certain amount of compensation must be paid to that person. The standards are accompanied by preset penalties for failure to meet them, which provide some compensation for consumers and an incentive on licensees to deliver the required quality of service.

We collect and publish on our website (click [here](#)) information on the compensation paid by distribution licensees on an annual basis. This information provides a means for consumers and us to compare the performance of differing licensees. Licensees are required to provide this information—failure to do so is an offence under section 42 of the SLEA and can incur a fine of up to Rs 1,000,000 (click [here](#)).

### **Disputes in connection with enforcing standards**

A distribution licensee, tariff customer or any other affected party may request us to resolve any dispute relating to the enforcement of the standards of performance regulations mentioned above.

We will resolve such disputes in accordance with section 39 of the SLEA (see Section 7.3.2 of this Part).

## Overall standards of performance

We may, from time to time (after consultation with distribution licensees and other stakeholders who we think will be affected) determine overall standards of performance, which we believe should be reached by distribution licensees:

- for the quality of electricity supply and electricity supply services; and
- in connection with the promotion of the efficient use of electricity by consumers.

These standards will not include penalties payable directly to consumers. However, we collect information on [and publish] the level of performance of licensees against these standards on our website (click [here](#)) for the information of consumers. Failure to provide this information also constitutes an offence by licensees under section 42 of the SLEA.

We take account of the performance of licensees against these overall standards when determining the allowed revenues of licensees under their price controls—imposing penalties or rewards as appropriate.

Again, we can set different standards for different distribution licensees.

## Customer charters

All larger distribution licensees are required to publish Customer Charters, which include information on the performance standards to be achieved, the

compensation payable and how to register complaints. Copies are available from the complaints departments of these licensees, a list of which can be found on our website (click [here](#)) or can be obtained from our Information Centre.

## 7.3.2 Resolving disputes

**The SLEA envisages that at times there may be disputes between different people in the industry. It therefore contains specific provisions relating to the resolution of such disputes. This section briefly sets out how the dispute resolution mechanism under the SLEA operates. For a more complete description, you should refer to the SLEA and the relevant regulations.**

### The types of dispute we resolve

In addition to those contained in the PUCSL Act, and described in Part I of this Manual, the SLEA contains specific provisions, in section 39 (click [here](#)), concerning the resolution of disputes between:

- a licensee and a tariff customer on matters concerning various provisions of the SLEA related to obligations on licensees to provide a supply of electricity and on consumers to pay for this and provide rights of access to the licensee. These provisions are listed in sections 25 to 30 and schedules 1 to 3 of the SLEA; and

- any other disputes, between a licensee and a customer, another licensee or any other affected party.

### **Our role**

Section 39(3) of the SLEA requires us to issue rules on the dispute resolution procedures to be followed before disputes under this section are referred to us. These rules are available on our website (click [here](#)).

In general, we require that the parties to a dispute attempt to resolve this bilaterally initially, and that licensees provide a facility to receive and investigate complaints specifically for this purpose. We will only accept disputes where the parties have been unable to resolve them in this way, and where they can provide written evidence that a formal complaint has been made and that attempts have been made to resolve this bilaterally.

In the case of disputes relating to sections 25 to 30 and schedules 1 to 3 of the SLEA, we will mediate between the parties. In general, this will involve the use of mediation with a sealed arbitrator's decision, a process that is described in the ADR Manual, available on our website (click [here](#)). In this approach, we first take a decision on the dispute, as an arbitrator, and then seal this decision, which is not shown to the parties. We then mediate between the two parties, seeking to find a mutually acceptable resolution. If this is not possible within a predetermined timescale, then the sealed decision is opened and imposed on the parties. The rules that we will apply in resolving disputes of this type are available on our website (click [here](#)).

For other disputes, we can require that the parties resolve the dispute through binding arbitration or have recourse to the courts. We will generally refer disputes involving very significant sums to arbitration initially, unless the dispute involves the interpretation of a commercial contract between the parties which does not allow for arbitration, in which case we will refer the dispute to the courts. Decisions on whether to refer a dispute to the courts will be undertaken on a case-by-case basis.

Disputes that we accept will generally be resolved under the mediation with a sealed arbitrator's decision approach, described above.

The rules governing our decisions on which disputes to accept and which to refer to arbitration of the courts, as well as the approach we will take to resolve disputes, are available on our website (click [here](#)).

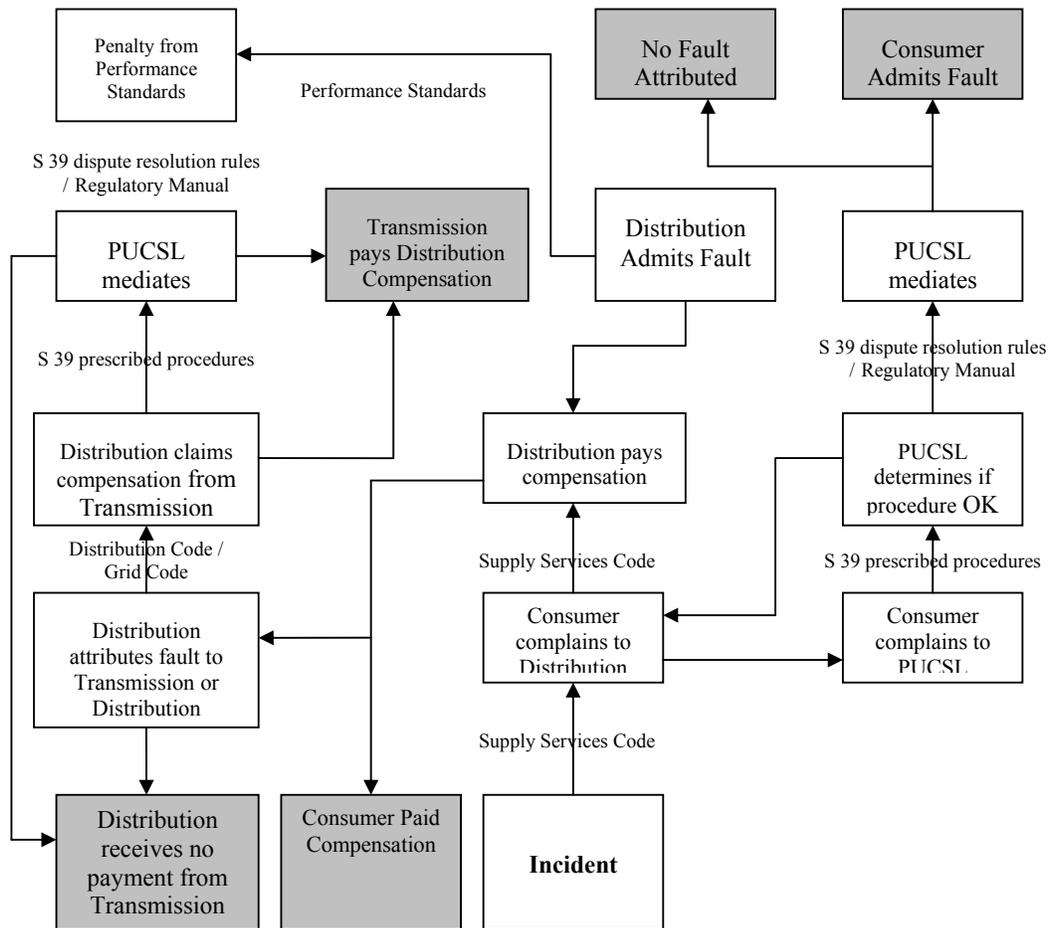
We are able to determine which party should pay the costs incurred by us in resolving the dispute. For disputes between parties other than a consumer and a licensee, these costs will generally be split between the parties, to provide an incentive for both to settle through the mediation process. For disputes between a consumer and a licensee, these costs will generally be recovered from the licensee, less a small contribution from the consumer concerned.

Please note that if we do make any decisions relating to costs or expenses, these will be final and enforceable in the District Court of Colombo. The rule governing our decisions on the assessment and award of costs emerging from the

resolution of disputes under section 39 of SLEA are available on our website (click [here](#)).

An example of the various steps involved in the dispute resolution process is shown

below. The example shown is for a dispute related to a claim for compensation due to damaged electrical equipment by a consumer supplied by an on-grid distribution licensee.



**8 - Example dispute resolution process**

### 7.3.3 Licensing

**The primary method of regulation of the electricity industry in Sri Lanka is through a licensing regime. This section sets out the type of activities in the electricity industry that require licences, what those licences will contain and what can be done with licences after they have been issued.**

#### Licensing under the SLEA

The licensing regime under the SLEA is essentially the same as that described under Section 5.1 in Part I of this Manual.

Specifically, under the SLEA, it is an offence to generate, transmit, distribute or supply electricity unless you are authorised to do so by a licence, or are exempt from the requirement to obtain a licence. Exemptions can apply to an individual or a class of persons. A list of the categories eligible for exemptions and whether these are class or individual exemptions is available on our website (click [here](#)).

Since licenses are often the main instrument that we use to control the activities of those who generate, transmit, distribute or supply electricity, this means that detailed rules, processes and procedures need to be published, through a set of regulations. As such, the Licensing Application Regulations, which can be found on our website (click [here](#)) should always be referred to before you make an application for either a licence or an exemption.

In view of the fact that it is an offence to carry out a licensable activity without a licence or exemption, if you are intending to carry out a licensable activity, it is very important that you refer to both the SLEA and the Licensing Application Regulations.

Licences are published on our website (click [here](#)), subject to the general requirements on the confidentiality of commercial information contained in our information disclosure policy.

#### Licence conditions

The Licensing Application Regulations also include licence templates, which will set out the different sets of conditions that will be in used in the relevant licences (that is, for generation, transmission, distribution and supply). These template licences are available on our website (click [here](#)).

Under the SLEA, licences will contain both general and special licence conditions.

##### *General conditions*

These are conditions that all licences may contain. A generation, transmission or distribution licence may include conditions, for example, that require the licensee to pay us for granting the licence; prevent the licensee from engaging in anti-competitive behaviour; and compel the licensee to adhere to our decisions, orders, direction and determinations.

##### *Special conditions*

These are conditions that are specific to particular types of licences. Some examples of special conditions that are contained in different licences are as follows:

- generation licences include a condition requiring the generator to sell the electricity it generates only to a person holding a transmission licence;
- transmission licences include a condition requiring the holder to forecast future electricity demand, to plan for the development of the transmission system and to procure the development of new generation plant to meet reasonable forecast demand; and
- distribution licences include a condition requiring the licensee to publish codes of practice in relation to consumer issues, containing provisions that we consider necessary for the protection of consumers.

As indicated above, you should refer to the SLEA for a wider list of the general and special conditions that licences can be expected to contain (click [here](#)). You should be aware that when deciding whether to grant licences, we may also consider whether to include additional conditions, depending on the circumstances.

## Application, grant and extension

If you intend to undertake an activity for which a licence is required, or wish to apply for an individual exemption, or if you want an extension of your current licence, you should submit an application to us. This can either be done through our website (click [here](#)) or in writing to the following addresses:

The licensing application regulations deal with both of these matters in greater detail, and therefore you should always refer to them before you make an application.

Please also see Section 5.1.2 of Part I of this Manual, which sets out the general procedure for granting or extending a licence.

## Modification

If you hold a licence, then during the period of validity of that licence, you may wish to apply for it to be modified. Alternatively, for various reasons we may wish to modify it.

We may always modify licences where the licensee agrees with the proposed modification. Where the licensee disagrees then the SLEA provides for the Minister in charge of the subject of power and energy to decide whether and what modifications should be made in the public interest. This decision is made following a reference by us to this Minister, including our views on how the public interest is best served.

Please see Section 5.1.3 of Part I of this Manual for a more detailed description of

the procedure used when modifying licences.

### **Revocation**

Under the SLEA, with the concurrence of the Minister we have the power to revoke any licence that we have issued. Please see Section 5.1.4 of Part I of this Manual for a description of the procedure used when revoking licences.

### ***7.3.4 Information gathering powers***

**We have set out our broad information gathering powers in Part I of this Manual. In addition to those, we can also request certain additional information under the SLEA.**

### **Information requests**

To help us in carrying out our functions and duties under the SLEA, we can make requests for certain information from any person. We can make use of this power when determining allowed prices or in our role in resolving disputes, although it is not limited to these functions.

We must do this by notice in writing, setting out the information to be disclosed and the time periods in which such information must be given.

### **Information notices**

If you receive such a notice, you must give us the returns or information, within

the time specified, unless prevented by any law.

### **Disclosure of information by the PUCSL**

We cannot publish or disclose any information which you give us, in respect of such a notice, without your prior consent, unless we have to disclose it:

- to a court of law;
- to discharge any of our functions under the SLEA;
- to enable compliance with a condition of a licence granted under the SLEA.

### ***7.3.5 Electrical Inspectors***

**It is important to ensure that particular standards are met when it comes to electrical plant and equipment. This section describes our power to appoint electrical inspectors, the duties that the inspectors have, and the regulations made in respect of the electrical inspectors.**

### **Power to appoint inspectors**

It is important that anyone who generates, transmits, distributes or supplies electricity, does so with equipment that meets the required health and safety standards. As such, section 6 of the SLEA (click [here](#)) gives us the power to appoint electrical inspectors for this purpose.

## Duties of inspectors

Electrical inspectors have various statutory duties. These include:

- to inspect and test, electric lines and electrical plant belonging to persons authorised by a licence, or exempted from the requirement of obtaining a licence;
- to examine, the generation, transmission, distribution or supply of electricity by those authorised persons;
- to inspect and test, if and when required by any consumer, any such lines and plant on the consumer's premises, for the purpose of ascertaining whether any requirement imposed by the SLEA in respect of those lines or plant or the supply of electricity through or by them, has been complied with; and
- to carry out such other functions as may be imposed on him or her by regulations or by us.

We do not require electrical inspectors to test every connection made to the electricity system—to do so would be extremely costly. Instead, inspectors are used to help resolve disputes regarding matters such as refusals by licensees to allow connections to their system or the costs of making such connections, the quality and safety of electricity supplies provided and over the reliability and accuracy of meters. Inspectors also undertake spot checks on the compliance of electricity lines and plants with the

SLEA, regulations and standards covering health, safety and technical performance. These regulations and guidelines are available on our website (click [here](#)).

Any stakeholder can also make a request for inspectors to check the compliance of an item of electrical plant or equipment with these regulations and guidelines. Such requests will be responded to within reasonable limits as regards time and expenses.

## Regulations

Under the SLEA, regulations may be made in respect of various matters concerning electrical inspectors. These regulations are available on our website (click [here](#)).

The regulations cover matters such as:

- when and how inspectors will undertake their work;
- the ability of inspectors to obtain information and records from licensees and exempted persons who generate, transmit, distribute or supply electricity; and the powers of inspectors to obtain access to premises and to use electrical plant and other facilities in the performance of their duties;
- the fees which are payable to the inspectors and who must pay those fees. At present, where inspectors are used as part of the dispute resolution process, then their costs are recovered as for our other costs. Where a person requests that they inspect an

item of plant or equipment for compliance then the costs are borne by the person making the request. In other cases, the costs of inspectors are recovered through our general budget;

- the procedure for the audit of the activities of electrical inspectors in order to test for competence and the proper performance of their duties; and
- the procedure for the resolution of disputes between an electrical inspector and a consumer or a licensee. In general, this will involve an internal review by another inspector followed by, if this does not resolve the dispute, a binding decision by a suitably qualified external contractor acceptable to both us and the complainant. In these cases, the costs of this contractor will be borne by the party who the arbitrator finds against.

**PART III: GLOSSARY, LEGISLATION  
AND OTHER DOCUMENTS**

## SECTION 8: Glossary

The definitions contained in this Glossary are intended to provide a layman’s guide to various words and terms used in the Manual. They do not replace the definitions contained in any legislation, regulations or rules and neither we, nor any other body, is bound by these definitions should the same words or terms arise in any context, including (but not limited to) within the Manual itself. This Glossary is not, and is not intended to be, an exhaustive list.

<b>Annual Report</b>	Document that we publish annually containing, amongst other things, a statement of funds received and expenditures, activities during the previous year and any planned activities for the upcoming year.
<b>CCC</b>	The Consumer Consultative Committee
<b>Chair</b>	The Chair (as defined in the PUCSL Act) of the “Commission”
<b>Commission</b>	The five Commissioners as a body
<b>Commissioners</b>	“Members” of the “Commission”
<b>Committee Members</b>	Members of the “Consumer Consultative Committee/CCC” (see Section 4.3)
<b>Constitutional Council</b>	Created under the 17 <sup>th</sup> Amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka (2001). The Constitutional Council consists of: the Prime Minister, Speaker, Leader of the Opposition in Parliament, one person appointed by the President, five persons appointed by the President, on nomination of both the Prime Minister and Leader of Opposition and a person nominated by members of parliament who are not part of the parties of the Prime Minister or Leader of the Opposition and appointed by the President
<b>Director General</b>	The Director General is appointed by the Commissioners to run the day-to-day operations of the office of the PUCSL under the direction of the Commission. The Commission may also appoint Deputy Directors-General
<b>Sri Lanka Electricity Act (SLEA)</b>	<i>Sri Lanka Electricity Act No. 20 of 2009</i>

<b><i>Gazette</i></b>	Official publication of the Government
<b>Incumbent</b>	The party already in the market
<b>Industry-specific legislation</b>	Laws pertaining to specific industries that we regulate, such as the “SLEA”
<b>Licenses (licensing)</b>	Legal instruments that specify the role, powers and duties of the licensee (i.e. the entity to which the license is granted).
<b>Members</b>	The Members of the “Commission” appointed in accordance with section 3 of the PUCSL Act
<b>Minister</b>	References to the “Minister” refer to the Minister in charge of the subject of policy development and implementation  Where other Ministers are referred to, then the responsibility of the Minister concerned is defined at the time of each reference
<b>Monopoly</b>	A single provider of a particular good or service in a given market
<b>OFCOMM</b>	The Office of the PUCSL
<b>Project review team</b>	Team responsible for undertaking a specific project within the PUCSL (e.g. price control review, license application review)
<b>Public utility</b>	A “utility” providing a public service
<b>PUCSL</b>	The Public Utilities Commission of Sri Lanka, comprising the Commissioners and OFCOMM
<b>PUCSL Act</b>	<i>Public Utilities Commission of Sri Lanka Act No. 35 of 2002</i>
<b>Regulated industries / regulated public utilities</b>	Those infrastructure industries or “public utilities” that we regulate, using the powers provided to us in industry-specific legislation
<b>Staff</b>	Employees of the PUCSL (excluding the Commissioners)
<b>Utility</b>	A provider of infrastructure services, such as water, electricity or transport



## **SECTION 9: Legislation**

### **9.1 Common legislation**

**Public Utilities Commission of Sri Lanka Act No. 35 of 2002** (click [here](#))

Establishes the PUCSL, describes its duties, powers and functions, sets out the process for the appointment and removal of Commissioners and the Director-General and for the funding and administration of the PUCSL.

### **9.2 The electricity industry**

**Sri Lanka Electricity Act No. 20 of 2009** (click [here](#))

Defines the specific duties, powers and functions of the PUCSL with regards to the electricity industry and, in particular, with respect to licensing, regulating tariffs and performance standards and dispute resolution.

## **SECTION 10: Other Documents**