

PUBLIC UTILITIES COMMISSION
OF SRI LANKA

PUBLIC HEARING PROCEDURES

March 2019

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CHAPTER 1

GENERAL PRINCIPLES

1. Public Hearing.

- 1) Public Hearing is a function of the Commission prescribed under Section 18 of the PUCSL Act for the Commission to discharge the functions assigned to it by or under that Act or any other industry Act, where it deems necessary in the public interest to investigate or determine any matter with the participation of interested parties or persons.
- 2) These Public Hearing Procedures are established in order to carry out a Public Hearing in compliance with the provisions specified in the PUCSL Act and the particulars given in the Section 3.2 of the Regulatory Manual of Public Utilities Commission of Sri Lanka.

2. Matters subject to Public Hearing.

The Commission in discharging its functions, may decide the matters to be investigated or determined by holding a Public Hearing in the public interest.

3. General Principles.

- 1) The Public Hearing shall be held in any manner which is not inconsistent with the principles of natural justice.
- 2) Prior to conducting a Public Hearing, the Commission must approve holding it and the decision shall be published for information of the public.
- 3) The Commission approval shall include the following items:
 - a. The proposal of the Public Hearing
 - b. Areas of examination
 - c. The Instructor for the Public Hearing

4. Instructor

For each Public Hearing, the Commission shall appoint an Instructor (or more than one Instructor if required), who shall ensure that all required activities in the Public Hearing process are properly and timely executed (Instructor's responsibilities are given in Section 18)

5. Participation.

- 1) Participation in the Public Hearing is open for the public and voluntary. Also the Commission, based on the powers conferred to it by the PUCSL Act, decides to summon any person, residing in Sri Lanka, including a regulated entity, to a Public Hearing, always when in the opinion of the Commission this person may be able to give evidence or produce any document or other thing in his or her possession useful for the matter under analysis or when this person is required to

act as a witness and to require him or her to produce any document or other thing in his or her possession.

- 2) Witnesses can be
 - a. Witness in person
 - b. Documentary evidence
 - c. Electronic evidence

6. Participants.

- 1) Participants shall be:
 - a. All persons or entities that have been summoned by the Commission.
 - b. Persons or institutions willing to express their opinion only when such opinions are submitted in writing to the Commission
 - c. Consumer Consultative Committee
- 2) Depending on the nature of the matter under analysis, the Commission may admit foreign persons not residing in Sri Lanka and international or multinational entities with or without permanent representation in Sri Lanka.
- 3) The public may participate through oral presentation during the Public Hearing. This participation will not be required to be registered as a Participant; however, will require the authorization from the Panel Head (Section 27) of the Public Hearing. The Panel Head will decide about the pertinence of the subject and the appropriateness of the presentation.
- 4) The Participants may appear/speak personally or through duly accredited representatives. Representatives are not required to be legal professionals.

7. Consumer Representative.

- 1) For each Public Hearing the Commission will designate a Consumer Representative, who shall always be a Participant in the Public Hearing. The Consumer Representative shall be nominated by the Consumer Consultative Committee. In the event that there are consumers with diverse and opposed interests, the Consumers Consultative Committee may nominate more than one Consumer Representative.
- 2) The fact that the Consumer Representative is a Participant shall not preclude any consumer or group of consumers from participating in the Public Hearing.

8. Offences.

- 1) According to Section 18 (7) of the PUCSL Act, an act done or omitted to be done in relation to the Commission, whether in the presence of the Commission, or otherwise, shall constitute an offence of contempt against, or in disrespect of, the authority of the Commission, if such act would, if done or omitted to be done in relation to the Court of Appeal have constituted an offence of contempt against, or in disrespect of, the authority of such Court.
- 2) According to Section 18 (8) of the PUCSL Act, any person—
 - a. who fails without cause to appear before the Commission at the time and place mentioned in the summons issued by the Commission; or

- b. who refuses to be sworn, or affirmed or having been duly sworn or affirmed refuses or fails without cause to answer any question lawfully;
 - c. who refuses or fails without cause, to produce or show to the Commission any document or other thing which is in his or her possession or power and which is in the opinion of the Commission necessary for arriving at the truth of the matter being inquired into by the Commission,
- shall be guilty of the offence of contempt against, or in disrespect of the authority of the Commission.

9. Stages of a Public Consultation

- 1) Public Hearings shall consist of:
 - a. Preparatory stage, during which all preparatory work will be done, to have it done before the public hearing's day
 - b. Public Hearing stage, during which the participants will be requested to make their presentations and the Commission might make further enquiries to the participants and present other evidences
 - c. Post Hearing stage, during which the Commission will produce and publish the Final Report or its extract.
- 2) All information produced and presented during each stage will be made public, with the exceptions prescribed in the Relevant Industry Act and sub sections (3), (4) and (5) of Section 15 of the PUCSL Act and subject to the limitations specified in the Right to Information Act.
- 3) The Commission decisions based on the Public Hearing results shall be made in accordance to the powers conferred to the Commission by Section 18 (9) of the PUCSL Act.

10. Venue.

All Public Hearings shall be held at a venue determined by the Commission depending on the nature of the public interests to be addressed.

11. Consolidation of Participants' Interests.

At any moment during the Preparatory Stage, Instructor may require Parties with common interests, to consolidate their representation into a single, unified representation. In the event that these Participants disagree on the unified representation, Instructor may designate the representative.

12. Publication of the Notice .

- 1) The notice for a Public Hearing shall be published with sufficient time in advance, not less than twenty-eight days, so as to substantiate the Preparatory Stage, in all three languages in newspapers. The text of the notice shall be clear and comprehensive. The notice shall also be published in the PUCSL Website.
- 2) Persons summoned to attend the Public Hearing shall be duly notified about the notice of the Public Hearing containing the Commission's decision.

13. Registration in the Public Hearing File.

All publications referring to the Public Hearing will be properly registered in the Public Hearing File.

14. Evidence.

For the admission and production of evidence, the principle of flexibility and informality shall apply, and in case of any doubt, the evidence shall be admitted.

15. Advisory.

The Instructor and the Panel Head may request the assistance, verbally or in writing, from internal or external experts and use their reports as evidence, appropriated archived in the official hearing File.

16. Appeals.

Provisions and decisions adopted by PUCSL about organization and other matters within the competency of these procedures, shall not be appealed, neither by Participants nor by those not admitted as Participants, with the exception of objection to the implementation of procedures established in Section 19 of the PUCSL Act.

CHAPTER 2

PREPARATORY STAGE

17. Start.

- 1) Once the PUCSL has published the notice of Public Hearing, the Preparatory Stage will start and it will be overseen by one or more Instructors designated by the Commission.
- 2) The Preparatory Stage is comprised of all activities required to substantiate the Public Hearing, and inform the public and the Participants of its purpose as well as all related facts and information necessary to carry out the Consultation.

18. Instructor's Responsibilities.

In addition to the responsibilities mentioned in the other sections of this document, the Instructor is responsible for the followings.

- 1) Open the Public Hearing File
- 2) Publication of the Public Notice
- 3) Recommend the date in which the Public Hearing will be held and the duration of the Public Hearing
- 4) Inform the Commission and ensure the availability of Commission Members for the Public Hearing
- 5) Recommend the venue where the Public hearing will be held
- 6) Recommend the closing date for submitting information in writing for being considered as part of the Public Hearing
- 7) Determine the means by which the Public Hearing will be recorded.
- 8) Decide about the legitimacy of Participants, Participants' representation, and Participants' unification. Interested natural or legal persons not admitted as participants, can appeal the Instructor's decision to the Commission.
- 9) Determine the relevance of evidence admitting that which is determined germane to the issue of the hearing.
- 10) Produce Consolidated evidence. (According to Clause 11)
- 11) Ensure the availability of live interpretations of the Representations to the Hearing Panel (Clause 35)
- 12) Take all the required approvals from the Commission to facilitate the smooth functioning of the Public Hearing and take all other measures needed to comply with the Public Hearing procedures.

19. Registration as a Participant.

- 1) Natural or legal persons, organizations, public entities or authorities requesting to participate in a Public Hearing as a Participant shall submit in writing all personal or institutional information, permanent legal address and proof of their representation powers (in the event that they are representing a third party). They shall also submit a detailed description of the subject to be brought for information and all the documentation required to support such request and offer evidence and affidavits. All information and documentation can be expanded or complemented before the closing date of the submissions, if needed. All such information shall be submitted to the Instructor and shall be included in the Public Hearing File.
- 2) Any natural person can request the Consumer Representative to represent them in any particular issue concerning him or her. The Consumer Representative shall always accept the request when they judge that the reasons provided for this request are pertinent to the case at hand. If the Consumer Representative verifies that there are conflicting interests from different consumers, the Consumers Consultative Committee can nominate more than one Consumer Representative to properly address each one of the interests.

20. Documentation.

Participants are entitled to produce evidence and submit documentation in order to sustain their positions with regard to the matters to be treated in the Public Hearing

21. Documentation Adequacy.

- 1) The Instructor may request a registered Participant to amend the documentation or to produce additional documentation, if deemed necessary, establishing a term for complying with this request. In the event of non-compliance, the inadequate documentation shall be declared void and removed from the File.
- 2) The Instructor shall determine the witnesses that will be accepted and if needed or so decided by the Commission take their affidavits at a date determined by the Commission.
- 3) The Instructor can designate experts and establish the issues about which the expert opinion shall be requested, and the date when the expert shall submit his or her position in writing.

22. Report to the Commission.

At the end of the Preparatory Stage, the Instructor shall prepare and submit to the Commission a report indicating the following elements:

- 1) The Participants to the Public Hearing
- 2) The documentation, evidence and related material admitted during this stage.
- 3) The documentation, evidence and material not admitted and declared void during this stage
- 4) Experts' opinions produced during this stage
- 5) The Agenda for the Public Hearing
- 6) Any other element that should be taken into account during the Public Hearing

23. Report Publication.

Once approved by the Commission, but not later than 10 working days prior the date fixed for the Public Hearing, the Instructor shall publish this report on the PUCSL Website

24. Agenda for the Public Hearing.

The Instructor has to prepare a detailed Agenda for the Public Hearing with the following standard format:

- 1) Introductory presentation made by the Instructor, presenting main facts and findings included in the Report to the Hearing Panel and presentation of the agenda
- 2) Presentations to be made by the Participants, in the following order
 - a. Licensees that are Participants in the Public Hearing
 - b. Other Participants
- 3) Presentations to be made by internal or external experts appointed by the Commission about their reports presented as evidence
- 4) Licensees answers to objections made by other Participants who have submitted objections
- 5) Questions and requests for clarifications from the Panel Head directed to Participants attending the Public Hearing
- 6) After all preceding item of the agenda are completed, the public in general will have the possibility of asking questions or rising objections. The number of interventions shall be limited to the available time.
- 7) The agenda will specify the available time to be used for each one of the presentations, the available time for answering objections and clarify questions and the available time for the public interventions.
- 8) The Public Hearing Stage shall be completed within one day, subject to the exceptions established in section 34

CHAPTER 3

PUBLIC HEARING STAGE

25. Evidence and documentation.

During the Public Hearing the only evidence and documentation that can be admitted shall be that which is produced and recorded during the Preparatory Stage.

26. Introductory Session

Before the official commencement of the Public Hearing, an Introductory Session shall be held. The Introductory Session shall cover the particulars given below.

- 1) The Objective and the background of the Public Hearing
- 2) General Rules of the Public Hearing
- 3) The representations can be made either in Sinhala, Tamil or English languages
- 4) Details of the time allowed for the representations and the rules for concluding the representation on time.
- 5) Participants shall refrain from destructive criticism of the Government, the Government Policy or any of its institutions.
- 6) Participants are not allowed to involve in or carrying out any business promotional activities during the hearing sessions.
- 7) Participants shall refrain from clapping or making any sort of disturbance.
- 8) The conditions and limits that should be followed by the presenters
- 9) Any other information which is considered to be relevant

Maximum time allowed for the Informational Session shall be 30 minutes.

27. Hearing Panel (Panel).

- 1) Hearing Panel and the Panel Head of the Hearing Panel shall be appointed by the Commission
- 2) The Public Hearing shall be presided by the Commission. The Chairman of the Commission or any other official appointed by the Chairman of the Commission will be the Panel Head.
- 3) The Panel Head shall direct the execution of the Public Hearing following the agenda proposed by the Instructor and published on the PUCSL Website. For specific aspects to be addressed during the Public Hearing, the Chairman of the Commission may delegate the conduction of specific acts to other members.

28. Oral Presentation.

All testimony of the Participants shall be made verbally before the Hearing Panel. Written documentation in addition to that which was presented during the Preparatory Stage shall not be admitted, unless there is an explicit reopening of the evidence and documentation production period as established in section 41.

29. Oath

Every Participant shall produce evidence under oath.

30. Order.

In the event of any disturbance produced by the Public Hearing attendees, the Panel Head may request the person(s) causing the disturbance to take leave of the room, and if needed, may request assistance of the police to enforce the order.

31. Public Hearing Start and Development.

The Panel Head shall make the opening statement and then invite the participants to make their representations according to the Agenda.

32. Presentations by the Participants.

- 1) All representations shall be limited to the time as stated in the Agenda.
- 2) All representations shall be related to the written representations and production of evidence or documentation during the Preparatory Stage.

33. Questions and Clarifications.

- 1) After each presentation is completed, the Panel Head shall invite other Parties to ask questions and request for clarifications in written about the representation
- 2) Once all representations are completed, the Panel Head shall invite each Participant to answer or clarify the written requests for questions and clarifications presented by other Participants. The Panel Head will establish the time available for each Participant to present the answers and clarifications
Once all questions and clarifications have been answered, the Members of the Panel will take the time needed to request clarifications and ask the questions they deem necessary.

34. Extension of the Public Hearing Duration.

If the Public Hearing cannot be completed in one day, the Panel Head may decide a prolongation of it, taking the required provisions for its implementation. The Panel Head has also faculty to decide upon any suspension or postponement of the Public Hearing, if deemed necessary based on substantial criteria and reasoning. The decision and justification shall be put in writing and signed by three Members of the Panel, and shall be entered in the official Public Hearing File.

35. Interpretations

Live interpretations on the representations of the Public Hearing in Sinhala, Tamil and English shall be available to the Hearing Panel.

36. Minutes of the Public Hearing

Minutes of the Public Hearing should be taken in writing and shall be included in the Public Hearing File.

37. Recording of Hearings.

- 1) Hearings shall be recorded through any available means, and a transcript of the hearing shall be a part of the Public Hearing File. Such transcripts shall include a verbatim report of the Public Hearing; nothing shall be omitted there from except as is directed on the record by the Panel Head; and shall be certified as true by all the members of the Hearing Panel.
- 2) Any person may record, with prior leave of the Panel Head, all or any portion of a Hearing by way of camera, video, or voice recorder of any kind, subject to whatever conditions the Panel Head may impose.

CHAPTER 4

POST HEARING STAGE

38. Closing.

Once the agenda for the Public Hearing has been fulfilled, the Panel Head will announce the Public Hearing's closing.

39. Final Report.

- 1) Within 30 days or at such other time as the Commission shall deem appropriate after the closing of the Public Hearing, the Instructor shall submit to the Commission a Report, giving due regard to the nature of the proceeding, the magnitude of the record, and the complexity and importance of the issues involved. The Report shall contain:
 - a. A concise statement of the case and the issues for resolution; and
 - b. The order or award with reasons therefor relating to the matter before it or part thereof, or give a direction with reasons therefor according to Section 18 (9) (a) of the PUCSL Act; or
 - c. Dismissal of any matter or part of a matter according to Section 18 (9) (b) of the PUCSL Act; or
 - d. Refrain from further hearing or from determining the matter or part thereof, according to Section 18 (9) (b) of the PUCSL Act.; and
 - e. The evidence or exhibits relating thereto and the reasons therefore separately stated and discussed.
- 2) The Final Report shall be signed by the Panel Head and all attending members of the Panel and the Instructor, and shall be included in the File.

40. Close of the File.

No later than 30 days after the submission of the Final Report, the Instructor shall close the Public Hearing File. Thereafter, there shall not be received in evidence or considered as part of the Public Hearing File any document, letter or other evidence submitted except as provided in the section 41.

41. Reopening of Proceedings.

- 1) Notwithstanding the provisions of the previous Sections, any participant may file a motion for reopening the proceedings for the purpose of taking additional evidence at any time after the presentation of evidence has been completed. Copies of such motion shall be served upon all Participants, and shall set forth clearly the facts claimed to constitute grounds requiring reopening of the proceedings. Within ten (10) days following the service of such motion, the Commission shall notify the Participants if the motion has been granted or not, establishing the reasons leading to that decision.
- 2) The Commission may also *motu proprio* reopen the proceedings for reception of further evidence at any time, after notice to the Participants and opportunity to be heard.

42. Publication.

20 days after the Instructor submits the Report, the Instructor shall post it to the PUCSL website. According to the magnitude and nature of the case, the Instructor will decide at what extent the Report will be published in mass media.

43. Notification.

Regardless of the publication established in the previous point, all Parties shall be duly notified of the Report.