

Response to the RIC Consultation for Rate Increases for T&TEC

The Regulated Industries Commission (RIC) on March 14th, 2023, extended its deadline by additional two weeks for comments on its proposal for Draft Determination for the Electricity Transmission and Distribution Sector 2023-2027. During its initial eight weeks consultation phase numerous comments criticism have been publicly voiced by the general populace and politicians on the need, timing, and approach to the proposed rate review. In commenting on the RIC's draft determination, this submission reviews the proposal against the RIC's legislative remit, and the regulatory principles of transparency, accountability, non-discrimination and regulatory credibility and certainty as articulated by the RIC in its numerous documents published on its website. It is critical that the RIC be credible, provides certainty, be transparent, act in a non-discriminatory manner and be accountable.

Independence

In numerous documents on the RIC's website the agency, states that it is an independent economic regulatory agency imbued with the remit to regulatory the electricity and water and wastewater sectors in Trinidad and Tobago. Those statements appear to be inaccurate for two reasons. Firstly, the public announcement of a rate review for the electricity sector was made by the Minister of Public Utilities on December 22, 2022, six days prior to those of the RIC, who stated that *"By the end of the year, the Regulated Industries Commission has indicated to me that they will begin their public consultation on a draft determination for a rate review in Trinidad and Tobago..."*. Secondly, in its 2005 document titled "Conducting Public Consultations – RIC's Final Position, the RIC stated: -

"... as with the RIC, the RIC does not render the final decision for a rate review or the issuance of a licence, it simply advises on existing regulatory policies, recommending either a rate reduction/ increase or the issuance of a licence, which assists in determining the final decision. Under this circumstance an individual interest will not be so drastically affected as to bring natural justice into play. However, Parliament, with the use of consultations simply ensures that no decision is taken without an awareness of an individual's position on a subject as all individuals have the right to be heard. As

such, based on the powers and duties of the RIC, there exist no need to conduct public hearings or hearings, as the act of the RIC does not amount to a final decision that would affect the rule of natural justice in totality. However, the RIC still has to recognise that there was always the right to be heard, which Parliament had ensured the RIC adheres to by stipulating that it “may consult”.

The aforementioned quotes beg the question as to who makes the final decision on this proposed rate review, the independent RIC or the Minister, and whether this entire process is indeed a sham as espoused by commentators during this consultation. The RIC therefore needs to make it abundantly clear as to its role in determining the rates for the electricity transmission and distribution sector, thereby bringing clarity to its role as an independent economic regulator.

The recent furor on the independence of key institutions in Trinidad and Tobago underscores the need for the RIC’s regulatory independence. It is therefore critical that all sitting Commissioners declare any real or potential conflict of interest as required by the RIC Act. It is expected that the Chairman of the RIC would have declared a potential conflict of interest, given that she was employed at a very senior level at Powergen which is 51% owned by T&TEC and at NGC’s subsidiary Phoenix Park Gas Processors Limited (PPGPL) when she was appointed Chairman of the RIC. Any conflict of interest must be the disclosure and recorded in the minutes of the RIC, without which the regulatory process becomes tainted and loses its credibility.

The RIC has stated on numerous occasions in its draft determination that there is a requirement to conduct a rate review for T&TEC every five years. The RIC reaffirms this position in its “questions and answers” post on its website dated March 20, 2023. The immediate concerns arising pertain to the rationale for the RIC not performing this critical legislative function. The RIC needs to make clear the reasons that hindered it from doing so, especially as monies obtained from service providers have funded the operations of the RIC and paid Commissioners and employees for many years. Surely Commissioners and functionaries were not paid to do nothing. In its 2013 and last published Financial Report, the RIC stated, “The RIC’s actual

expenditure in 2014 showed a similar pattern as the previous year, with the largest expense categories being Personnel and Accommodation, at 66.13%” or \$10,109,614. More recent information is not available as the RIC has failed to comply with its statutory obligation of having its Annual Report and Financial Statements laid before Parliament no later than six months after the end of its financial year. This is a serious issue, and the RIC needs to reassure the populace of its credibility and more so in the light of recent political statements over alleged non-functioning independent institutions.

Finally, on March 24, 2023, the Minister in response to comments on the RIC being funded by T&TEC stated that the RIC was an independent regulatory agency. However, a review of the RIC Act reveals that the Minister approves the maximum limits of remuneration for the staff of the RIC (Sections 18 and 22). This suggests that the organizational structure and compensation package is approved by the Minister. Further, Section 30 of the RIC Act requires the Minister to approve the RIC’s operational budget, and the Cess that is imposed upon service providers (LEGAL NOTICE NO. 133, Vol 59, No. 103, 18th June, 2020). This is verifiable for the RIC’s 2013 Annual Report which states, “The RIC derives its income via an allocation known as a cess, which is levied on the service providers that are listed in the 1st Schedule of the RIC Act.”, and “A Budget of \$16,192,923 for the financial year was approved by the Minister of Public Utilities, by Cess Order dated May 13th, 2014.”. It begs the question as to the RIC’s independence when its finances are subject to Ministerial control. The RIC needs to reassure the populace of its credibility as an independent institution in the light of the provisions of the RIC Act and public utterance by the Minister.

Consultation

In its January 2018 document titled “Guidelines for Public Consultation Process of the Regulated Industries Commission”, the RIC stated that it will be guided by the consultation period identified in the document, specifically: -

“The RIC proposes to modify the duration of the consultation period from 4-8 weeks to between 4-12 weeks, depending on the level of importance in the conduct of the core functions of the RIC, the complexity of the subject matter, the impact on and likely

interest in the proposal by stakeholders and the urgency required. The durations may be considered as outlined below: a) Twelve weeks- for consultations on issues which are expected to be of wide significance and interest. This is the maximum consultation period that the RIC would normally expect to allow; b) Eight weeks- for consultations on issues which are less likely to have a very wide impact or be the subject of substantial interest.”

Clearly the RIC did not adhere to its own decision on the length of the consultation period necessary for this rate review which must have wide significance and interest. The initial consultation period was eight weeks, with a two-week extension. This approach adopted by the RIC conflicts with its procedural approach contained in its consultation documents. The approach questions the RIC’s credibility.

In the same document on public consultation the RIC stated: - *“The RIC’s primary method for the collection of responses/comments is through written submission as indicated above. The RIC may also use the oral comments and feedback received (which will be reduced to writing) from the RIC’s stakeholder involvement and engagement opportunities. The key consideration in this component would be as follows: The RIC may, depending on the complexity of the particular issues, have two (2) rounds of Public Consultation,”*

The rate review for the electricity transmission and distribution sector is an extremely complex matter and warrants a second round of public consultation as it would allow stakeholders to digest the RIC’s responses to queries and issues raised during the first round of consultation. It would also bring credibility to the regulatory process utilized. The RIC however appears to suggest only one round of public consultation in its notice of extension dated March 14, 2023. To ensure credibility to this consultation process the RIC needs to expressly state upfront the number of rounds for this consultation.

One commentator, on the electronic media suggested that the Commissioners of the RIC and not its functionaries should be fielding questions at these public consultations. The RIC Act appears to give credence to this comment and suggests that the Commissioners is the RIC. However, except for the RIC’s Chairman, who is at these public consultations the absence of the other

Commissioners, begs the question the veracity of these consultation, given that the Commission of itself is not present. Credence is given to this point of view when one considers that the RIC advertised the position of Executive Director during the public consultation process. This advertisement which closed on March 17, 2023, only gave a two-week notice, thereby suggesting that the RIC already have a preferred candidate, be it the incumbent Executive Director or as rumored a former Commissioner of the RIC. The Minister would have granted approval for this this position not on the organizational structure and the compensation package as required by Section 22 of the RIC Act. This cast a shadow on the credibility of the RIC process and its integrity to conduct this rate review exercise.

As previously stated above, the RIC made it abundantly clear that *“Parliament, with the use of consultations simply ensures that no decision is taken without an awareness of an individual’s position on a subject as all individuals have the right to be heard.”* The RIC also stated, *“The RIC may also use the oral comments and feedback received (which will be reduced to writing) from the RIC’s stakeholder involvement and engagement opportunities.”* While one may accept that the presence of police officers at public consultation may be desirable the presence of so many heavily armed police officer can be intimidating and inhibit frank and open discussions. Further, there is a reasonable expectation that there would be Rapporteur present at these meeting to reduce these oral comments and feedback in writing, which the RIC stated would be made available on its website. The process is therefore equally import as to the final decision to be made and it appears that the approach used flies in the face of regulatory credibility, transparency, and accountability.

Licences

Within recent times much publicity has been given to the process of award of a Licence albeit in the realm of firearms. It appears therefore that the process is equally as important as the issuance of a Licence. The RIC on its website states that there are only four service providers licensed to provide services identified at Schedule 2 of the RIC Act, namely: - WASA for Water and Wastewater services, T&TEC for transmission and distribution of electricity and Trinity Powers and Powergen for supply of electricity. Section 68 of the RIC Act deemed this four entities to be Licenced. All other entities that are providing actual or potential services

identified at Schedule 2 of the RIC, albeit TGU, Desalcott, Seven Seas, Lightsource BP, are operating without a Licence. LEGAL NOTICE NO. 133, Vol 59, No. 103, 18th June, 2020, identifies T&TEC, WASA, Trinity and Powergen as service providers that pay cess. TGU, Desalcott and Seven Seas appears to be exempt from such an obligation. Yet, these entities are allowed to operate without the establishment of a committee to enquire as to the process used to grant approval to operate and exemption from payment of cess.

As previously stated above, *“the RIC does not render the final decision for a rate review or the issuance of a licence, it simply advises on existing regulatory policies, recommending either a rate reduction/ increase or the issuance of a licence...”*. In the interest of transparency and accountability, the RIC needs to state what advice was provided to the Minister and Cabinet as it relates to an exemption from a Licence by TGU, Desalcott, Seven Seas and Lightsource BP. Surely, the Minister and Cabinet are not above Parliament. The RIC Act clearly states in Section 37 that no person or entity shall provide a service listed in the Second Schedule without the authority of a Licence. The Act also set out the procedure that is to be followed prior to the award of a Licence and the terms and conditions that are to be included in the Licence. Contravention of the RIC Act is considered an offence and is liable to summary conviction to a fine of three hundred thousand dollars and in the case of continued offence sixty thousand dollars for each day thereafter. Surely the RIC, the Minister and these entities did not knowingly contravene the Act. It will be remiss of anyone to accept that the RIC is legitimizing TGU unlicensed operations as part of this rate review exercise. It is also remiss of anyone to accept that the role of the RIC is simply to advise on the issuance of a Licence given that the terms and conditions of any Licence as set out in Part IV of the RIC Act are aligned with the core RIC’s role and functions. To suggest otherwise implies that the RIC is not an independent economic regulator but rather an extension of the political directorate.

The RIC’s Act adopts a technologically neutral approach to electricity supply, transmission and distribution. Consequentially, renewable energy falls under the RIC’s purview. This includes the grant of any Licence to a person or entity to render a service to or for the use of any other person or service provider. There is a need for clarity by the RIC on the issuance of Licence and the legitimizing of unlicensed service provider via this rate review exercise.

Supply Price of Electricity

The RIC's draft consultation document is specific to the electricity transmission and distribution sector. The document appears to be silent on the transfer price for electricity supply provided to T&TEC from the suppliers of electricity. The transfer price for electricity appears to be computed as follows by the RIC: - Fuel Cost + Conversion Cost = Cost of Price of Electricity Generation. While theoretically sound, the RIC assumes that conversion cost is the same for all suppliers of electricity to T&TEC. This is at variance with the RIC's statements within the consultation document of differences in heat rates and TGU being the most efficient supplier of electricity. As to how the RIC came to that conclusion is unclear as there are no studies of studies of efficiency and economies of operation of suppliers of electricity. Further, assuming that there is one standard price for electricity supply suggests that all three firms exhibit identical cost structures and economies of scale. This is at variance with standard economic theory and practice. It also goes against the substantive of the RIC Act which requires the RIC to facilitate competition amongst service providers. It is incumbent upon the RIC to recognize that T&TEC operates downstream of the suppliers of electricity and the efficiency of the input price impacts upon the end price offered to consumers. The RIC needs to make known if all the suppliers of electricity, TGU, Trinity Powers and Powergen, were granted an exemption to Part V of the RIC Act. The RIC also needs to clarify the reason underpinning the preferable treatment to TGU viz a viz non-payment of cess.

The RIC referred on numerous occasions to "take or pay" contractual obligations imposed upon T&TEC in the Power Purchase Agreements and states "*T&TEC has contractual arrangements to purchase electricity from generators based on take-or-pay contract.*". This suggests that T&TEC is required to take electricity from TGU, Trinity Powers and Powergen at their installed capacity, even when T&TEC's demand is less than supply. Alternatively, it suggest that T&TEC must pay each service provider for electricity generated at their installed capacity. This suggests that both used and unused capacity is paid for by T&TEC.

The RIC further states that "*Under the terms of the Power Purchase Agreements (PPAs), T&TEC has to pay for the fuel that is converted into electricity by the generators. T&TEC buys fuel from the National Gas Company (NGC) at a pre-determined price that is influenced by the*

Government.” The aforementioned quote suggests that natural gas is purchased by T&TEC for each supplier of electricity as if they operated at full capacity. The RIC needs to make it abundantly clear how this “take or pay” contractual obligation works and its impact on the proposed rate increase. The RIC needs to make know the installed capacity of each supplier of electricity to T&TEC, what is actually supplied to T&TEC, what is actually demanded by consumers, what is the unused capacity for each supplier of electricity and the quantum of natural gas actually supplied to generators and what is actually paid for by T&TEC. This request is not materially different from those made by the commentator in the printed media of March 19, 2023, who is still awaiting a response from the RIC.

Rate Review

The RIC must be commended for its presentation on Incentive Based Regulations. However, the RIC should be aware of the knowledge gap between theory and practice, which can be bridged through this public consultation. Surly, the RIC is aware that there are those amongst us who are *“qualified by reason of training and extensive experience in economics, finance, engineering, law, business, human resource management or public administration”*, who may have served as Commissioners at the RIC or the PUC. Drawing from the wealth of knowledge of these individuals can bring credibility to the RIC going forward.

The RIC in its proposed Reporting Templates at the end of the Draft Consultation Document, identified Investment and Dividend Revenues as non-regulated revenues. The RIC needs to put forward its reasons for the reversal of the decision of the PUC to include those revenues in regulated revenues. The PUC in Order No. 85 of 1997, states *“The Tribunal is also of the view that since T&TEC is a State enterprise its 51% share holding in Powergen is ultimately owned by the people of Trinidad and Tobago who are also customers of T&TEC. It is only fair that the people of Trinidad and Tobago must benefit from the dividends which T&TEC receives from Powergen and which must be used to offset the cost of electricity. If T&TEC does not pass on the dividends to the people of Trinidad and Tobago the question arises - to whom must the dividends be passed?”*. This question is still applicable and a reason for its omittance and a reversal of that decision must be advanced by the RIC to provide credibility and certainty going forward.

The same line of reasoning of the learned PUC may be put forward as it relates to the sale of natural gas by NGC to Powergen and TGU. NGC is a State enterprise and is ultimately owned by the people of Trinidad and Tobago. It is only fair that the people of Trinidad and Tobago benefit from the buoyancy of international gas prices. If NGC does not pass on the windfall revenues through lower gas prices to the people of Trinidad and Tobago via T&TEC, the question arises - *to whom must the windfall revenue be passed?*

The RIC may choose to adopt the position that the question posed is above 'its pay grade', however, the RIC must be aware that in most regulatory jurisdictions, gas is considered a regulated industry given its importance to energy generation. Indeed, the RIC must be aware that Section 37(2) of the RIC Act allows the Minister, on the advice of the RIC, to amend the First and Second Schedule to include NGC and natural gas. Has the RIC, as set out at Section 6(1)(a), provided such advice to the Minister, given the importance of natural gas to electricity generation?

In the Reporting Template and the substantive document the RIC considers "*pole rentals and installation..... are not incidental to T&TEC's core business and therefore, the RIC's decision is that these services will remain unregulated.*" The RIC therefore considered the revenues derived from pole rental and installation as non-regulated revenues. This is at variance with previous PUC Orders which considered poles and the installation of poles as an integral part of T&TEC's core network and included the revenue derived from pole rental as regulated revenue. Given the principle of cost causality, the cost of pole installation and maintenance must be allocated to the entity that causes the cost to be incurred. The hardening of distribution network infrastructure is conditioned, inter alia, by the load attributed to the said infrastructure. Cost must therefore be appropriately allocated, and revenues derived accordingly included as regulated revenues. The exclusion of revenues obtained from pole rental as regulated revenues suggests that the cost of pole installation and maintenance are recovered from an alternative revenue stream. The RIC therefore needs to identify the revenue stream from which pole installation is recovered and to whom does the unregulated revenues obtained from rental of T&TEC's distribution network be passed?

The RIC is mandated “In the performance of its functions, the Commission shall have regard to the public interest and in particular— (a) to maximum efficiency in the use and allocation of resources to ensure as far as is reasonably practicable, that services are reliable and provided at the lowest possible cost” (Section 6(3)). This is an obligation imposed on the RIC and which this proposed draft consultation document must have as its central theme. The document made broad statements on economic theory and methodology and presented no evidence of how values were derived. In computing cross-subsidy, the document discussed short run marginal cost and long run cost of production and present in tabular form cross subsidy calculation. No data is present to validate the RIC’s calculation. Further, it would be more appropriate for the RIC to advise the Minister to consider a cross-subsidy than the grant of a “Utility Card”. A cross-subsidy is both transparent and non-discriminatory against similarly situated customers as compared to a “Utility Card” that is discriminatory and non-transparent when void of a means test.

Similarly, the RIC made statements of an RPI of 1.1 and efficiency factor (X) of 2.7 for the duration of the proposed regulated period. The data sets that informed the RIC calculations and the method used to derive these values must be presented for a proper assessment of the veracity of the RIC’s statements. The RIC must be aware that the shortcomings of price cap regulation is that inflation is never constant year on year and the efficiency factor generally offset information asymmetries in cost for services and less so increases in productivity. The importance of the data sets and method is heightened given that the RIC appears to rely heavily upon T&TEC’s Fully Distributed Cost Approach. There is no cost methodology approved by the RIC as required by Section 6(1)(h) of the RIC Act. This cost methodology facilitates a robust assessment of cost allocations, appropriateness of cost drivers and the treatment of joint and common costs.

The Reporting Templates suggests that T&TEC is to report revenues and receivables by services types. This suggests that the RIC has aprior determined the costs for the given service type that matches the same revenues. It is therefore reasonable to expect the RIC to present this cost of service information for public consumption. Alternatively, it is not unreasonable to expect the RIC to minimize statements of arbitrary reduction in T&TEC’s costs in specific areas without

providing any information on what cost items are reduced or omitted and how these new costs impact outcomes.

The RIC must be aware that in accordance with the matching principle of accounting, increases in receivable lead to decreases in capital. Continuous increase in receivables is unsustainable and may lead to a revaluation of assets and capital withdrawal by the shareholders of the organization. The RIC appears to be aware of this when it states that *“T&TEC’s financial performance has been weak as it maintained an average annual deficit of \$1,132 million over the period. T&TEC’s receivables position was also very weak, with \$1,624 million owed to the utility at the end of 2021; 81.8% of which is attributable to the Government and Government agencies.”*, and *“One indicator that is typically used to measure the relative efficiency of a utility’s commercial practices is the “Collection Period” (i.e. Accounts Receivable in days). Delayed collections can lead to significant cash flow problems. Table 6.7 reveals consistently high levels of receivables including receivables from the Government and Government agencies.”*. The RIC must ensure that T&TEC’s collects from the Government and Government agencies to strength its financial performance. Alternatively, the RIC is not effectively regulating the sector as it allows the Government to weaken T&TEC’s financial viability. The onus is therefore on the RIC to ensure an appropriate collection strategy by T&TEC for monies owed by the Government and Government agencies. Is the RIC not the independent economic regulator whose role, as stated at Table 12.4 of the consultation document is to *“Ensure the financial viability and sustainability of the service provider [Section 6(1) (c) and 67(3) (a) (b)]”*?

Finally, the Reporting Templates requires T&TEC to report on “ring fenced” and Public Sector Investment Programme (PSIP) projects. In reviewing these types of projects, the RIC stated, that \$738.60 million of the \$1,944.04 million spent by T&TEC on capital works/projects over the period under review, was spent on projects under the Government’s PSIP, and for ring-fenced projects. The RIC further stated *“These capital works should not have been funded by tariff revenues, but by the Government. It is noteworthy that of the \$738.60 million spent by T&TEC on these capital works/projects, only \$33.70 million in funding was provided by the Government.”*. The draft document suggests that the RIC included many of these projects in the regulatory asset base for the period under review. There is a need for the RIC to provide cogent

argument for the inclusion of these projects into the rates bases and what measures that are put in place to inhibit the reoccurrence of future PSIP and ringed fenced project being funded by tariffs?

Conclusion

In the Trinidad Newsday of Sunday March 26, 2023, the Chairman of the RIC spoke to the \$7 Billion owed by T&TEC to NGC. She suggested that T&TEC's inability to pay NGC is in part due to the revenue collected from its current rates. While that may be so, a significant part is due also to the PPA between the government of Trinidad and Tobago and the suppliers of electricity. The RIC has remained silent on this critical issue, and it needs to be part of current rate review discussion. The continuous absence of Commissioners at these public consultations suggests that the RIC as defined in the RIC Act is not present. The presence of functionaries, including those who may be considered suitable candidates for the Executive Director is troubling.

This response to the public consultation raises critical issues that require an informed written response from the RIC. Failure to consider and address these concerns suggests that the consultation is a sham and the proposed rates a foregone conclusion.

For and on behalf of the people of T&T

Jack Warner