



**Government of Antigua and Barbuda
Cabinet Response to
Justice Don Mitchell's APUA Report
Honourable Justin L. Simon QC
Attorney General and Minister of Legal Affairs**

The Cabinet has completed its in-depth review of the "Report to the Cabinet of Antigua and Barbuda in respect of the Public Utilities Authority" by Mr. Don Mitchell CBE, QC. Today, the Cabinet publishes the Executive Summary as submitted by Mr. Mitchell which enumerates the various recommendations contained in the full Report.

Additionally, Cabinet takes this opportunity to publish in a separate document its comments on the recommendations and its assessment of the Report.

**CABINET'S RESPONSE TO THE RECOMMENDATIONS CONTAINED IN
THE MITCHELL REPORT ON THE PUBLIC UTILITIES AUTHORITY**

Recommendation 1

That on the appointment of any future Commissioners they be instructed that they are to ensure the general manager is co-opted to and is present at all meetings except those that directly affect his conduct or that he should otherwise for some special reason be excluded from.

Comment: In accepting this recommendation, Cabinet is of the view that the Public Utilities Authority Act should be amended to provide, inter alia, for the General Manager to be an ex-officio member of the Board of Commissioners. This is the current position in many other Statutory Boards and the amendment would therefore allow for the General Manager not only to be present at Board discussions but would also importantly ensure "his thorough understanding of the decisions of the board and make more likely the efficient carrying out of the policies of the board."

Recommendation 2

That any future Commissioners should be obliged to go through a formal learning process of the proper behaviour and the rules of corporate governance at the commencement of their term. They should reinforce the learning process by holding periodic workshops and seminars on best business and management practices to ensure they achieve and maintain the highest standards.

Comments: Cabinet notes that this Recommendation expresses the need for ongoing re-enforcement of administrative best practices and accordingly affirms its commitment to these principles and practices in effecting the policies of this administration. While recognizing the efforts by some of the Statutory Boards to commence their training process by holding retreats, Cabinet will seek the requisite assistance in organizing workshops/seminars through the Ministry of Public Administration to allow for the more efficient discharge by statutory boards and senior public officers of their respective mandates. Issues of administration, management, practice and procedure, and the provisions of the recently-passed trilogy of Integrity legislation will form the core of these working and learning sessions.

Recommendation 3

That Cabinet should discuss with Mr. Symister his relocating to some other public service position where his talents can be put to good use.

Comments: Cabinet has noted with some concern that the Report has found that Mr. Symister as General Manager "was only permitted to attend meetings of the Commissioners when specially invited to make his report or to deal with specific matters"; that the Commissioners "continued to deal directly with the divisional managers even after his appointment"; and that the Commissioners "relayed their instructions to the divisional managers directly circumventing the GM". Within the context of that working environment, the Cabinet is of the view that a fair assessment of Mr. Symister's performance by the Investigator could not properly be made. In the circumstances, this recommendation is accordingly rejected.

Recommendation 4

That the Vortek contract or any other contract to purchase generators be prepared by senior counsel retained by APUA in Canada or in the country of sourcing to protect APUA's interests and vetted by senior counsel either locally or in the region well experienced in public utility generator contracts before Cabinet considers the question of guaranteeing any resulting loan.

Comments: The Report clearly indicates that a copy of the executed Memorandum of Understanding was not made available to the investigator. The document has not been presented to Cabinet whose approval is essential before it can have binding contractual effect. In the business world, it is the norm that such contracts would first be prepared by the Vendor's counsel and then submitted for review by the Purchaser's counsel prior to any agreement being reached. Cabinet accepts that, to the extent required, legal and technical advice should be sought from suitably qualified persons in respect of any contract involving any major equipment purchase whether or not the contract is a matter for Cabinet's further consideration.

In making observations on the role of Cabinet (and acknowledged as a matter outside the purview of the Terms of Reference) the Report states that Senator Aziz Hadeed by heading the family that owns APC and sitting in Cabinet as a Minister "is thereby saddled with a major conflict of interest". As a matter of public record, Senator Aziz Hadeed resigned from all his family Boards upon his Cabinet appointment, and has never represented APC or any other family business or commercial entity in Cabinet. The Cabinet additionally rejects the notion that any pressure was brought to bear by Senator Hadeed on its deliberations on any generator loan, generator purchase or the termination of the services of the APUA Commissioners nor is he the beneficiary of any new contract with this administration. Contrary to a statement in the Report, the record indicates that he supported APUA's proposed purchase of new generators and the Cabinet's approval of the purchase of used engines from Vortek given APUA's urgent need. For the avoidance of doubt the Cabinet wishes to state that it is a standard practice that any Minister with a personal interest in conflict with a public issue under discussion in Cabinet would recuse him/herself, but that the Cabinet reserves the right to allow the Minister's participation (without exercising his/her vote) once the personal interest has been disclosed.

Recommendation 5

That one of the first duties of the new Commissioners must be to ensure that the investigation of APUA Funding continues and that all necessary legal and financial advice is retained to ensure the success of that effort.

Comments: Cabinet views with dismay and concern the Investigator's finding that the decision to terminate the appointment of the Commissioners had given rise to what the Report describes as a "widely-voiced suspicion that pressure was brought to bear to have the Commissioners dismissed in order to ensure that the APUA Funding investigation did not continue". This is absolutely without foundation. The Cabinet had never been advised that a forensic audit or a formal investigation had been launched or was being conducted by the APUA Commissioners. The Cabinet recognizes the legal authority of any statutory authority to independently launch an investigation on any aspect of its operations and/or management where the authority considers it desirable, and the Government expects that one of the first tasks of the new Board will be to continue the investigation into APUA Funding and to forward its report to Cabinet with recommendations for the most appropriate course of action. The issue of APUA Funding pre-dates this administration and was never the subject of any public controversy, when the appointments of the Commissioners were revoked and it is therefore unfortunate that that investigation became a subject matter of the Report.

Recommendation 6

That Cabinet instruct APUA to secure any necessary professional assistance from within and without Antigua and Barbuda and to prepare and present without unnecessary delay to Cabinet for approval and public discussion a draft plan for the future of electricity generation.

Comments: Cabinet is aware that APUA is in possession of a plan which is currently under review. Cabinet anticipates that the new Board will continue public consultations on the issue of power generation and alternative energy source and will provide for Cabinet's consideration a comprehensive energy policy for Antigua and Barbuda both in the medium term and the long term. The Government has been seeking assistance, independently of APUA, in formulating a comprehensive energy policy which will, among other things, target increased efficiency and revenue maximization as Cabinet recognizes the challenge which small economies face on the issue of electricity generation amid rising fuel cost.

Recommendation 7

That APUA be directed by Cabinet to secure professional assistance in the development of draft plans for its future direction. These plans are to be for the widest public discussion and eventual approval by Cabinet and Parliament.

Comments: The partial or total privatisation of APUA or its separation into autonomous corporations is a complex issue which necessitates careful study. APUA Electricity Division not only produces electricity but provides administrative, distribution, and maintenance support services and any comparison of its employee figures with those engaged at APC may be too simplistic if these additional factors of production are not taken into account. Cabinet has noted this recommendation for its further long term consideration.

Recommendation 8

That APUA should be instructed to retain senior counsel locally or in the region with experience in the area of public utility contracts and seek an opinion on the existing Karib Cable contracts. Based on the advice received such remedial action as is recommended should be taken by APUA.

Comments: The Cabinet recognises that the Investigator did not conduct any review of the extent and efficacy of these contracts in spite of his finding that APUA commenced the installation of Karib Cable network services "without the benefit of any proper written agreement". The Cabinet will advise the new Board as a matter of urgent priority to have the APUA/Karib Cable contracts (where such exist) and/or relationship reviewed by legal and technical experts for report to the Board and Cabinet with recommendations on such remedial action as deemed necessary.

Recommendation 9

That the Digicel contract as negotiated be rejected by Cabinet unless Cabinet is otherwise advised that it is in the best interest of the country. APUA should be instructed to retain senior counsel locally or in the region with experience in telecommunications contracts to advise on the terms and content of the proposed contract with Digicel.

Comment: Cabinet notes the recommendation and will seek the necessary technical and legal advice in reviewing the proposed contract. Cabinet wishes to reiterate that the proposed contract will be subject to Cabinet's due diligence study prior to any approval, and that in their report to Cabinet APUA is expected to rationalize the need to privatize APUA PCS.

Recommendation 10

That one of the future tasks of APUA must be to act urgently to make recommendations to Cabinet to rationalize the use of free utilities in Antigua and Barbuda.

Comments: The Cabinet agrees that the award of free utilities by the Commissioners to themselves without the approval of the Governor General was without legal authority and without knowledge of the Cabinet. The Cabinet has noted the recommendation and will act accordingly particularly in light of the past wanton abuse by the former administration. In respect of duty free concessions on vehicles, there is in effect a government policy which does not include APUA Commissioners in their capacity as commissioners. The Cabinet wishes to categorically state that at no time was any application received by the Cabinet from the Board for any duty free concession on a vehicle for any of the Commissioners.

Recommendation 11

That the new Commissioners be instructed, as previously indicated, in the proper functioning of a board of directors and conduct themselves appropriately.

Comments: The observance of this recommendation will be addressed as a matter of course as per the comments made under Recommendation 2.

Recommendation 12

That if the dismissed Commissioners can be persuaded to take back up their appointments the Governor- General might be invited to do so. For the reasons given, this should not include the Chairman.

Comments: The Cabinet has noted that recommendation along with the finding of the Report that the failings of the Commissioners "were due to the cultural and historical milieu in which they found themselves". The Cabinet expects all public officers to follow the proper procedures in this new dispensation and refers all such officers to the 'Code of Conduct' published in the Schedule to The Integrity in Public Life Act, 2004. It is a matter of public record that the Ministry of Legal Affairs, in an effort to sensitize the general public to the principles of transparency and accountability on which the UPP campaigned, prepared and published a Synopsis on the Trilogy of Integrity Legislation in booklet form which was distributed to the various Ministries and Statutory Corporations and appeared as an insert in The Daily Observer. This administration remains committed to these fundamental principles of public service and has so demonstrated by its commissioning of the investigation which produced this Report, and this without any public prompting.

There has been an interesting recent development. By letter dated January 9 2006 and addressed to the Attorney General, Digicel has threatened legal action against Mr. Don Mitchell and the Government if the Report is published claiming that the Report is libelous in its allegations made in respect of that company. By letter dated 12 January 2006, the company through its local attorney John E. Fuller Esq. has reiterated its concerns and has requested the Attorney General to give a clear undertaking that the report will not be published with the offending paragraphs in respect of Digicel. Cabinet has decided to seek an independent legal opinion from senior counsel and to suspend the publication of the Report pending receipt of the Opinion which will advise on Cabinet's proper course of action in respect of the Report's publication.

The Cabinet seeks the understanding of the public on its decision to suspend the publication of the Report pending its receipt of the legal opinion sought and the advice given therein.

Cabinet again wishes to thank Mr. Don Mitchell for readily accepting the assignment and providing his Report with the various Recommendations within a short period.