

1 **SIR NEVILLE NICHOLLS:** Good morning all, the hearing is resumed. When  
2 we broke yesterday I indicated that today we would have the final submissions first from  
3 the Applicant, then Public Counsel, and then Intervenors in the order in which they had  
4 cross-examined previously.

5  
6 **MR. ELI EDWARDS:** Mr. Chairman.

7  
8 **SIR NEVILLE NICHOLLS:** Yes, Public Counsel.

9  
10 **MR. ELI EDWARDS:** In light of yesterday's proceedings I wish to make a  
11 submission, a legal submission to the Chairman and other Commissioners. It is based on  
12 section 46 of the Utilities Regulation Procedural Rules which deals with the supply of  
13 transcripts. It is still my view based on reading of the act that in order for the Public  
14 Counsel to properly represent the two Intervenors first and second I need that evidence in  
15 order to establish that the evidence given at the hearing is consistent with the affidavits  
16 and therefore based on the evidence what I heard, certain inconsistency arose or  
17 discrepancies in respect of the evidence of the various witnesses. The hearing yesterday  
18 went 12 days and up to that point we only had six transcripts. We have not been able to  
19 review the evidence of witnesses such as Mr. O'Sheasy, Mr. Worme and the accountant  
20 and these are very, very important witnesses for us to proceed. We need their evidence,  
21 but since question 46 is a question of law as to whether or not the transcripts should be  
22 provided it is also important that Section 52 of the rules be looked at since the issue of  
23 law is arising. I know that the Commission has giving permission for oral evidence to be  
24 taken to be followed by written evidence but it is important that in order to properly  
25 satisfy or establish our position as to whether our case has merit, the transcripts should be  
26 provided. I am very much aware and I know that the Fair Trading Commission has been  
27 very tolerant and sympathetic to our cause and as Public Counsel. I am not blaming this  
28 on them I am just mentioning this in the interest of justice and from that point of view I  
29 would wish and hope the Applicant would appreciate our position. After all Applicant  
30 had a very long time to prepare for this rate hearing, the Intervenors certainly did not and  
31 even during the course of the hearings we had literature coming in all the time. We were

32 never able to keep abreast of what we had to read. It is unfortunate but I think that if  
33 justice is not only to be done but should be seemed to be done, there is no point, I cannot  
34 at this stage even start to address the Commission by the way of closing if I do not have  
35 that evidence because I would need to put before you the evidence of the last witness to  
36 see where they are inconsistencies, whether even the transcripts are correct, but I do not  
37 have them. In those circumstances all I am asking is the Commission revisits the position  
38 with us as regards Section 46 and Section 52. I am asking for an adjournment in those  
39 circumstances unless you wish to hear me further as to the extent of my submission.

40

41 **SIR NEVILLE NICHOLLS:** Thank you Public Counsel. I have been advised that  
42 there are transcripts for three days 8, 9 and 10 that are outstanding, the delay is due to  
43 some technical errors and I believe that parties have been given up to day seven. I have  
44 listened carefully to what Public Counsel has said but his submission seems to be based on a  
45 assumption that the only evidence in this hearing is what has been given in cross-  
46 examination but as I indicated yesterday it was not by accident that the Utilities  
47 Regulations Act and the Procedural Rules provide for in fact affidavits and evidence to be  
48 given and the bulk of evidence in this hearing has been provided by way of affidavits and  
49 certain memoranda which have been put in evidence by the witnesses for the Applicant.  
50 In the evidence in chief all the witnesses for the Applicant including the expert witnesses  
51 indicated that they did not wish to change anything that was included in the affidavits  
52 the supporting memoranda. **COMMENT STRUCK FROM THE RECORD.**  
53 However, what the Commissioner will do, we will take Public Counsel's application  
54 under consideration and retire for a short while to discuss it and then we will resume  
55 probably in about ten minutes.

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59

60 **(BREAK 10:25 A.M. TO 10:45 A.M.)**

61

62

63 **SIR NEVILLE NICHOLLS:** Good Morning again, the hearing is resumed.  
64 Public Counsel we have considered the application that you made earlier and we will  
65 refer you to Rule 44 of the Utilities Regulation Procedural Rules and I will read Rule 44:  
66 “The Commission may make provisions for oral argument to be made by the parties  
67 immediately following the close of evidence, although written argument may be filed at  
68 that time instead of oral arguments, if directed to do so by the Commission”. I think the  
69 making of oral arguments immediately following the close of evidence is the practice that  
70 has been followed in the past by the Commission and is in keeping, as I understand it,  
71 with court practice. As I said yesterday, I am not aware in the procedure in our courts at  
72 the end of evidence that Counsel is provided with transcripts before they make any oral  
73 submissions but in addition the Commission has been even more generous than the Rules  
74 require us to be by allowing Intervenors to put in written submissions 5 business days  
75 after receipt of last set of transcripts. The Commission will give equal weight to the  
76 written submissions and it will form an important part of Commission’s decisions making  
77 process. The applicant may, if it so wishes, respond to the Intervenors’ written  
78 submission if there is anything in the submissions to which it might wish to respond. I  
79 feel that we have been very fair. What I said yesterday was that at this stage now that the  
80 evidence has been concluded the Applicant has an opportunity to make its final  
81 submissions. Intervenors have a similar opportunity and what I said is that one would  
82 expect that in the time available they would be able to make to the Commission the  
83 salient points on which they based their intervention and objection to the application, so  
84 that is the precession.

85

86 **MR. ELI EDWARDS:** Mr. Chairman, do you wish me to respond?

87

88 **SIR NEVILLE NICHOLLS:** Not necessarily.

89

90 **MR. ROOSEVELT KING:** Mr. Chairman if I may, Mr. Chairman. Even from  
91 the point of the Procedural Hearing it was originally raised by the Applicant and it was  
92 supported by BANGO Sir, that there should be some time allocated between the end of  
93 the evidence and closing statements. The record should reflect Sir that you even stated

94 after I responded and even if the hearing has to go over there should still be time between  
95 the closing of evidence and the closing statements Sir. Sir we stated this as a matter of  
96 experience, yes the law is there Sir but if the participants are complaining that there needs  
97 to be time I am sure Sir that as a lawyer you would have learnt that the man was not made  
98 for the Law Sir, law was made for man. You have the discretion and we are asking for  
99 the time and you have the discretion to give the time. I will amuse Sir that part of your  
100 discretion is to be able to allow the time if there is hardship on any side Sir. That is how I  
101 read your discretion.

102

103 **SIR NEVILLE NICHOLLS:** Thank you Mr. King. This matter arose during the  
104 Procedural Conference and I indicated that it would be considered. We have considered  
105 it and in fact we finished evidence yesterday, I think, around 1:00 p.m. or thereabouts.  
106 We indicated that the hearing would be resumed today at 10:00 for the oral submissions.  
107 I think that is a reasonable interval, bearing in mind that Intervenors are limited to 15  
108 minutes and we have also given you the generous concession or allowance of making  
109 written submissions up to 5 days, you will have a period of five days after you received  
110 the last transcript within which to make your written submissions to the Commission. As  
111 I indicated a short while ago, the Commission will pay equal attention to those written  
112 submissions. As a matter of fact the written submissions might be more useful. There is  
113 always a danger when you make an oral submission that it would go in one ear and come  
114 out through the other one and be forgotten but if you have it in writing, then you can  
115 ponder over it for a longer period of time. So that is the position Mr. King.

116

117 **MR. ROOSEVELT KING:** Should I advise the Chairman Sir that BANGO is  
118 not ready with an oral submission Sir.

119

120 **SIR NEVILLE NICHOLLS:** I am surprised having regard to the quality of your  
121 representation; I am surprised that you were not ready to start yesterday after lunch.

122

123 **MR. ROOSEVELT KING:** Well Sir I am grateful for your vote confidence in  
124 BANGO, but Sir the bulk of the evidence in this hearing Sir, was rather large I mean

125 seriously large. We operated as a team and we were looking forward to be able to have at  
126 least that one day between.....

127

128 **SIR NEVILLE NICHOLLS:** You have much longer than that Mr. King.

129

130 **MR. ROOSEVELT KING:** 1 day Sir?

131

132 **SIR NEVILLE NICHOLLS:** You have much longer than that in which to make  
133 your written submission. You seem to be forgetting that.

134

135 **MR. ROOSEVELT KING:** But Sir when you do it like that Sir you are saying  
136 that the oral submissions are really a waste of time then Sir?

137

138 **SIR NEVILLE NICHOLLS:** I am not saying that I am saying that you are limited  
139 to fifteen minutes and you might not be able to cover in fifteen minutes. We have not  
140 put a limit on the length on your written submission

141

142 **MR. ROOSEVELT KING:** Sir, I am advising you Sir.

143

144 **SIR NEVILLE NICHOLLS:** Although I am not suggesting that you should make  
145 the written submissions as long as a PhD thesis, but anyhow that is the position that the  
146 Commission has decided on so we will move in to the oral submissions. If you do not  
147 wish to make an oral submission we cannot compel you to do so. CANBAR?

148

149 **MR. MOGENS TOFT:** I would like you to explain what is the purpose of having  
150 the transcripts. I somehow fail to see when they are not up to date. You mentioned  
151 something that really stuck in my mind, you said that you talked about the transcript but  
152 you haven't seen the last transcript so how could you say there is not a mistake in it. I  
153 say that mainly due to my colleagues and my personal feeling is that the transcripts I  
154 think is a fallacy and the transcripts are not following pretty well the way they should be,  
155 that somehow has been overlooked. I have been in Ontario municipal hearings and the

156 transcript would have been handed out first thing in the morning so I am a little familiar  
157 with hearings and how it goes. That's why I realised I presented my case verbally  
158 because I am very dyslexic for me to submit it in writing might be hardship. That's why  
159 I did it otherwise I could have done everything in writing but due to that fact, that is why  
160 I preferred and I fail to see the concept of it. I cannot go into the legality because I am  
161 not a Lawyer I am a simple woodworking man. I think the hearing here is really a very  
162 important hearing because it could stand file for 25 years. What we are doing today is  
163 not a simple task. I volunteered my free time to come here with no compensation. I  
164 believe in the hearing, I believed in the fact that we were here to help to set electricity  
165 rate and I have very sincere but every night I come home the first thing I do, I see what  
166 the next day should be and now it is sort of running out in the sand. I feel just ashamed.  
167 That is all I have to say Mr. Chairman.

168

169 **SIR NEVILLE NICHOLLS:** Thank you Mr. Mogens Toft, although it isn't too  
170 clear to me the point you are making. Anyhow, Mr. Gibbs-Taitt.

171

172 **MR. MALCOLM GIBBS-TAITT:** Thank you Mr. Chairman. Mr. Chairman I  
173 am going to try desperately with one last submission hoping that it will gain your ear.  
174 You have said before in this hearing that in making your decision yesterday, you have  
175 given us five days after receiving the last transcript and I must say I think that is very  
176 generous of you and we accept it. However, we are here today and you are asking us to  
177 give a verbal presentation based on the facts and to tell the truth, the only facts we can  
178 relate to would be those presented in the written application of the Applicant. We could  
179 not seriously reply to any verbal sayings which may conflict with the affidavit of the  
180 witnesses on the other side. Mr. Chairman, to my best knowledge, in this hearing along,  
181 the Applicant has had four Lawyers assisting it, one with the eminence of Sir Henry  
182 Forde. Those of us who are Intervenors, we have Public Counsel, yes, who is here  
183 representing two Intervenors and further he is here legally placed to represent every  
184 consumer in Barbados. He is here given that right by statute. Is it true we have two other  
185 Lawyers amongst our midst but to my best certain knowledge they represent themselves.  
186 I cannot for the life of me understand how you can expect the rest of us Intervenors who,

187 not so long ago, the FTC called Lay Litigants, how you can seriously expect us to present  
188 a verbal application to an Applicant who this morning came here and gave us a volume  
189 almost as large as the application itself as their written reply and then took it back under  
190 very suspicious circumstances, claiming that they had something else to add. Not so long  
191 ago, when you were doing the depreciation hearing, the said Applicant asked you for time  
192 before they made their reply and their oral reply and you gave it Sir. We read the  
193 transcript this morning. Now if the Applicant then could have persuaded you and we on  
194 this side are unable to, Sir, I don't know what is the rationale behind it but should the  
195 decision go against us, we will only have yesterday to reflect on for us to seek a review of  
196 that decision and maybe even seek legal review on it because the impression would have  
197 been given yesterday that the Commissioners are no longer interested in what the  
198 Intervenors have to say or how they can research what they say and I think that is a  
199 tragedy. Is it the intention of this hearing that this matter is to go all the way to the  
200 Appeal Courts of Barbados because of some justice system that is flawed here?

201

202 **SIR NEVILLE NICHOLLS:** Mr. Gibbs-Taitt, what is your...are you making an  
203 application?

204

205 **MR. MALCOLM GIBBS-TAITT:** Mr. Chairman, all I am doing is trying my  
206 effort best to see if you can see the wisdom of allowing the Intervenors to similarly put  
207 their verbal case in the same way you will allow us to put the written case. That is  
208 basically what we are asking and I am hoping Sir that your reason for saying no is that  
209 you want this matter to go all the way to the Appeal Court of Barbados. That is all I am  
210 saying.

211

212 **SIR NEVILLE NICHOLLS:** Thank you Mr. Gibbs-Taitt. In responding to  
213 Public Counsel's application, I drew attention to rule 44 of the Utility Regulation  
214 Procedural Rules and draw your attention again to that. That rule clearly contemplates  
215 that oral arguments should begin immediately following the close of evidence. We  
216 haven't even insisted on that. We closed evidence yesterday and we provided an interval  
217 between yesterday afternoon and this morning.

218 **MR. ERROL NILES:** Mr. Chairman, Errol Niles. This has nothing to do with  
219 your decision. It only relates to a statement you made just before you broke to consider  
220 the application by Public Counsel and you made a statement with respect to the.. I think  
221 you said something like this, **COMMENT STRUCK FROM THE RECORD.** Mr.  
222 Chairman, for the record I am offering a suggestion to you, I think that statement could  
223 fairly be interpreted as biased and/or that you have made your decision. I would ask you  
224 to think and whether you would reconsider it and asked that it be expunged from the  
225 record.

226

227 **SIR NEVILLE NICHOLLS:** **COMMENT STRUCK FROM THE RECORD.**  
228 If I overlooked any such case.....

229

230 **MR. ERROL NILES:** I think you did.

231

232 **SIR NEVILLE NICHOLLS:** Then it is for you, it is for the Intervenor in question  
233 to refer to that in their oral or written submission.

234

235 **MR. ERROL NILES:** With respect Mr. Chairman, I thought that in all fairness it  
236 could reasonably be interpreted, that is what I meant and having regard to this hearing I  
237 would really urge you to ask that it be expunged from the record. Thank you.

238

239 **SIR NEVILLE NICHOLLS:** If it is a problem, I have no objection to it. I have  
240 no objection to withdrawing the statement.

241

242 **MR. ERROL NILES:** I would suggest that Sir.

243

244 **SIR NEVILLE NICHOLLS:** **COMMENT STRUCK FROM THE RECORD**

245

246 **MR. ERROL NILES:** You might not be able to recall but that doesn't mean that it  
247 didn't happen.

248

249 **SIR NEVILLE NICHOLLS:** Well I said so. I have no objection to withdrawing  
250 it if it is going to cause offence.

251

252 **MR. DOUGLAS TROTMAN:** Mr. Chairman, Douglas Trotman. I am somewhat  
253 saddened by the decision of the Commission Sir. Twenty-six years have passed where  
254 the existing rates have held and we have had the application, we have had twelve days  
255 and where all of the Intervenors are essentially making a request for an adjournment to  
256 review transcripts and to essentially be in possession of transcripts so that they can be  
257 comfortable with their presentation, be it oral or written, and that the Commission seeks  
258 to rely on section 44 Sir and the Commission's interpretation of that section, Sir the use  
259 of the word may speaks to discretion so that the concept of having the oral hearing  
260 immediately following Sir does not even arise. Simple statutory interpretation Sir, "The  
261 Commission may make provisions for oral argument to be made by the parties  
262 immediately following the close of evidence". To rely on that provision, to rely on that  
263 section Sir as compulsory that the oral hearings must be held immediately after the  
264 closing of evidence Sir is certainly erroneous Sir. I would urge the Commission, it is  
265 discretionary. If the Commission is saying that it chooses to exercise this discretion  
266 against the request of Public Counsel and the other Intervenors, then so be it, but I must  
267 remind the Commission that section 46, the Commission is a creature of statute and as it  
268 stands the Commission is in breach of section 46. If the Intervenors, Mr. Chairman Sir  
269 are relying on those transcripts, whether the Commission believes that they need to rely  
270 on them or not Sir, it is improper, I would suggest, humbly suggest to you Sir to take that  
271 evidence away from them Sir. And I am once again urging Sir, a breach of section 46,  
272 you have admitted that there is a breach. You have ruled Sir in relation to the matter by  
273 quoting section 44 but I am saying Sir that does not take away the breach. So I would  
274 humbly ask again and I would suggest that Counsel on the other, Lead Counsel, Sir  
275 Henry, and I would say without being disrespectful, we were supposed to be in court at 2  
276 p.m. today. We have an adjournment so that adjournments Mr. Chairman are nothing  
277 new and indeed when the interest of Barbados will be served I find it very disappointing  
278 where a flagrant breach of section 46 is evident that the Commission would choose to  
279 exercise this discretion, contrary to let's say the benefit of the Intervenors to so use that

280 evidence to present their case for the parties affected by the \$28.7M increase Sir. Sir I  
281 humbly ask that the Commission reconsider its ruling. Thank you.

282

283 **MR. ELI EDWARDS:** Mr. Chairman, just one more thing. In respect to the  
284 interpretation of the word “shall” and “may” referring the Commission to the  
285 interpretation act, I do not remember the correct section but that speaks to how the word  
286 shall is mandatory, I think it says after 1966, the word “shall” must be construed as  
287 mandatory so I am urging the Commission to look at the interpretation Cap1 in respect of  
288 what is meant by “shall” and “may”.

289

290 **SIR NEVILLE NICHOLLS:** Thank you Public Counsel and thank you Mr.  
291 Trotman. Mr. Trotman your submission seems to ignore completely the fact that the  
292 Commission is giving Intervenors a reasonably long time in which to present written  
293 submissions to the Commission. You are all focusing on oral submissions. If the  
294 Commission were insisting that it is only today that you can make the oral submission  
295 and there will be no opportunity to submit written submissions, there might have been  
296 greater force in your argument but I see no harm that is being done to the case of the  
297 Intervenors by saying in keeping with rule 44 that at the close of evidence make your oral  
298 submissions. There has been, in my view, having regard to the fact that evidence has  
299 been given mainly by affidavit over the last twelve days and a large body of information  
300 in the form of interrogatories have been provided. It seems to me that in providing this  
301 reasonably long period of the compilation or the preparation of written submissions that  
302 the Commission has in fact bent over backwards to assist Intervenors in putting before  
303 the Commission the essence of their cases and I will repeat that in my opinion, and I  
304 think it is the opinion of all the Commissioners, the written submission is likely to have  
305 more weight because it is something that will be before the Panel of Commissioners once  
306 it is submitted to them. As I mentioned earlier, there is always the risk that you make an  
307 oral submission and it is not followed up by a written documentation that something may  
308 be forgotten however good the intention is to remember what was said. So that is the  
309 Commission’s final position on this.

310

311 **MR. CHRIS HALSALL:** Mr. Chairman, if I may very briefly, just very briefly Sir.

312

313 **SIR NEVILLE NICHOLLS:** BANGO has already submitted on this point and I  
314 assume it is on the same thing.

315

316 **MR. CHRIS HALSALL:** It is actually a different subject Sir. I would just like to ask  
317 the Commission if the written submissions will be available to the public on the FTC's  
318 website.

319

320 **SIR NEVILLE NICHOLLS:** It can be made available.

321

322 **MR. CHRIS HALSALL:** We would at the very least request that please Sir.

323

324 **SIR NEVILLE NICHOLLS:** Sir Henry.

325

326 **SIR HENRY FORDE:** Mr. Chairman and Commissioners. Today is the 13<sup>th</sup> day  
327 during which this electricity Panel of the Fair Trading Commission has been presiding  
328 over an extensive hearing of a detailed application by the Barbados Light & Power  
329 Company for a review of the existing electricity rates. The Commission has heard the  
330 evidence of six witnesses including two experts, called on behalf of the Applicant. These  
331 witnesses were subjected to an extensive and incisive questioning by Intervenors and  
332 Commissioners. The Commission has also accepted into evidence, six affidavits, eleven  
333 memoranda, eleven sets of responses to interrogatories, three expert reports, namely the  
334 cost of capital and marginal cost reports prepared by Mr. Robert Camfield and the cost of  
335 service report prepared by Mr. Michael O'Sheasy, both of Christensen Associates Energy  
336 Consulting LLC. In addition, it is also admitted into evidence over fifty documents  
337 including other relevant legal, accounting and regulatory cases, precedence and studies.  
338 As the Commission is aware, this is an application pursuant to section 16 of the Utilities  
339 Regulation Act in which the Applicant is requesting that the existing tariffs fixed by the  
340 PUB in 1983 be replaced by the proposed tariffs detailed in schedules K1 to K8. The  
341 Applicant has sought to establish the justification for the proposed tariffs by leading

342 evidence on the test year, rate base, capital structure, cost of capital, rate of return on rate  
343 base, revenue requirement and the cost of service, through its witnesses. The Applicant's  
344 estimated earnings during the test year of 2008 indicates a deficiency of \$28,221,603  
345 below the amount required to yield a rate of return of 10.48% based on the current  
346 historic cost rate base of \$544,198,726. The Applicant submits that it has presented a  
347 detailed, accurate and reasonable case to satisfy the Commission that its request for a  
348 change in tariffs is justified. The comprehensive nature of the evidence is proof of the  
349 fact that this application has not been made in a frivolous manner. Before filing, the  
350 Applicant thoroughly assessed the additional resources it required to continue to provide  
351 an efficient and reliable service in an environmentally sound way and at least cost. It  
352 carefully examined the reasons why it needed to make the application. These reasons  
353 have been exhaustively canvassed in the application and in the evidence and Mr. Peter  
354 Williams, the Managing Director of the Applicant stated in his evidence: "Preparations  
355 started back in 2006 and substantial work was undertaken including a load research study  
356 which required a period of time to adequately capture usage information, a cost of capital  
357 study, a cost of service study, market research in order to understand customers' usage  
358 patterns, design of proposed rates and consultations with members of the public in order  
359 to sensitize them to the need for the application and to obtain their considerate opinions.  
360 In addition, the Applicant had to prepare their application documents and the information  
361 required to comply with the Utilities Regulation Procedural Rules. Throughout this  
362 process the impact of a rate increase on its customers has been of paramount importance  
363 to the Applicant. The Applicant accepts that under section 14 of the Act, the burden of  
364 proof rests on it to show that the proposed rates are fair and reasonable and in accordance  
365 with the established regulatory principles and that it must do so on a balance of  
366 probabilities. As Lord Denning said in the English case of Miller against the Minister of  
367 Pensions "If evidence is such that the Tribunal can say we think it more probable than not, the  
368 burden is discharged. The Applicant submits that it has amply discharged the burden of proof  
369 and shown that the proposed rates are fair and reasonable.  
370 In his opening statement Public Counsel conceded that the Applicant's written evidence at that  
371 stage had already established a prima facie case. That abundance of evidence has been added to.  
372 The Applicant's witnesses have been thoroughly cross-examined and tested and it is the

373 Applicant's submission that their evidence remains un-contradicted. The Applicant has  
374 strengthened by the clear and forthright way in which its witnesses have testified.

375

376 The Role of the Commission: The comprehensive hearing mentioned earlier demonstrates that  
377 the Commission is fully aware of its role and its duties. In the opening statement we referenced  
378 the legislation and stated that a regulator must always be conscious of the well-being of both the  
379 consumer and the service provider to ensure that the consumer receives the service that is safe  
380 adequate and efficient and that the service provider is afforded an adequate income or return on  
381 which to sustain its business.

382

383 In its 1983 decision, the Public Utility Board ruled that the responsibility of the Public Utility  
384 Board to determine rates which are fair and reasonable is a heavy one. Equally heavy is the  
385 responsibility of the utility company to ensure that its presentation meets the exacting standards  
386 which are prescribed by the act as well as the principles of public utility regulations in the United  
387 States which have been adopted within this jurisdiction. The Applicant's case has adhered to the  
388 principles and standards set out in the legislation and observed by the PUB and FTC in their  
389 rulings and practice. Where the act and rules may have been silent, the Applicant has relied on  
390 the best applicable principles of utility regulation that are practiced and followed in the United  
391 States and the Caribbean.

392

393 The Witnesses: As stated earlier, six witnesses gave evidence in these proceedings and all on  
394 behalf of the Applicant, four witnesses of fact, namely Mr. Williams – The Managing Director,  
395 Mr. Hutson Best – The Chief Financial Officer, Mr. Mark – The Chief Operating Officer and Mr.  
396 Stephen Worme – The Chief Marketing Officer. The Applicant asked that the Commission find  
397 them to be credible and accept their evidence. It is submitted that these witnesses not only  
398 displayed an in-depth knowledge and understanding of the workings of the company, but they  
399 were also forthright and sincere in their responses and gave full answers. The Applicant also  
400 called two expert witnesses, Mr. Robert Camfield, who gave evidence on the cost of capital and  
401 the rate of return recommendation and marginal cost and Mr. Michael O'Sheasy, who gave  
402 evidence on the cost of service and rate design. Mr. Camfield and Mr. O'Sheasy displayed in-  
403 depth knowledge in their areas of expertise and were forthright and helpful to the Commissioners  
404 and Intervenors in their responses. At least one Intervenor admitted that Mr. O'Sheasy had  
405 earned his money. The Applicant asked the Commission not only to bind these experts to be  
406 credible but also independent, impartial and objective. While it is open to a Tribunal to reject

407 expert evidence, it is trihedral that the Tribunal cannot act on its own intuition on rejecting such  
408 evidence but must have a factual basis for the rejection. We submit that there is no such basis in  
409 this case. The Intervenors did not call any witnesses of fact or expert witnesses to contradict the  
410 evidence of the Applicant. Statement, comments and speeches do not amount to evidence. There  
411 are mere speculation and no matter how well intended, they cannot be used as a basis for making  
412 findings of fact. The affidavits filed by the Intervenors largely addressed the issue of the timing  
413 of the application and the Applicant admits that these affidavits are not sufficient to challenge the  
414 salient issues of this case. The Applicant therefore submits that in the absence of contradictory  
415 evidence, the balance of probabilities rests in its favour and it has proven its case for the  
416 requested rate increase.

417

418 **The Issues:** Several issues were raised in the proceedings. There are however, matters  
419 pertinent to the proof of the Applicant's case which are not in dispute. Among them are the  
420 following. First is the test year. Mr. Peter Williams gave evidence that the test year was  
421 approved by the Commission after consultation in November 2008. The Applicant has also  
422 shown that the selection of the test year was not influenced by fuel prices in 2008. Mr. Best  
423 demonstrated how the fuel revenue was a pass through and how the Applicant has normalized  
424 expenses in instances where they were unusual expenses. Secondly depreciation, Mr. Best  
425 explained that the depreciation rates, capital balances and remaining lives being used in the  
426 application are in accordance with the terms of order #1 of 2009 made by the Commission.  
427 Valuation of the plant on a historic basis, this was also approved by the Commission in order #1  
428 of 2009. It is also not in dispute that (1) The Applicant has a franchise to provide and provides  
429 electric energy to over 118,000 customers in Barbados and uses its assets, plant and equipment  
430 for this purpose and has attained universal service. Secondly (2) Between 1983 and now the  
431 Applicant's customer base has increased by approximately 63% and electricity sales during the  
432 same period has increased by just under 200%. (3) The Applicant has consistently maintained  
433 high standards of service as seen from the last standards of service report of the Commission. (4)  
434 Since 1983 the Applicant has increased its productivity, efficiency and reliability levels all of  
435 which have benefited customers and enabled the Applicant to remain without an increase in  
436 electricity rate. And (5) The Applicant must continue to plan ahead in order to meet the demands  
437 for electricity customers.

438 We now turn to the issues which were determined by the Commission to be those relevant to the  
439 Applicant. We will also offer some general comments on some other matters raised in the  
440 proceedings.

441

442 **Rate Base – Issue #1:** In his memorandum on rate base, Mr. Best defines the rate base as the  
443 value of utility plant financed by the Applicant and investors that is prudently incurred and is  
444 used and useful in public service and is valued on the original or historic cost basis. This is a  
445 well-known and accepted definition of rate base. Mr. Best gave evidence that the Applicant has  
446 included in rate base only the plant which is currently providing or is capable of providing  
447 electricity service to its customers and which is has determined to be used and useful. The  
448 concept used and useful has been defined by the learned authors Hane and Al Aleph to mean only  
449 plant currently provided or capable of providing utility service to the consuming public as  
450 allowed in the rate base. It is submitted that the Applicant has shown that its rate base is being  
451 determined in accordance with a sound, regulatory principles and practice and that the Applicant  
452 has included in the rate base only the plant which is currently provided or capable of providing  
453 electricity service to its customers. Assets not used and useful have been excluded. The  
454 Applicant’s utility plant is stated at historic cost and it has proposed a rate 544,198,726 computed  
455 on the 2008 test year.

456

457 Construction Work in Progress: The Applicant has requested that construction work in progress  
458 (CWIP) in the amount of \$4,192,837 out of a total cost of \$76,922,241 be included in the rate  
459 base.

460

461 **Rate Base:** The Applicant only included in its application for rate base those items which it  
462 could say in May 2009 with some certainty would be in service before the end of 2009. This  
463 would be the time that the Applicant anticipated that new rates would come into effect. Mr. Mark  
464 King confirmed the items included in CWIP for the purpose of rate base are already in service or  
465 will be brought into the service before the end of 2009. We are coming to the end of 2009 and it  
466 would be a reasonable finding for the Commission to rule that the amount of CWIP requested to  
467 be included in rate base as those assets have shown to be reasonable and will be used and useful  
468 when the rates come into effect.. Further, the inclusion of CWIP into rate base would satisfy  
469 conditions laid down by the Federal Energy Regulatory Commission, (FERC), I the case of  
470 Boston Edison Company. According the Commission, Commission and staff and Intervenor  
471 must be able to review the prudence of construction and the related costs that they may be  
472 included in rate base. One element of this prudent standard is the alternative plans along with the  
473 technical and economic assumptions. Pursuant to the conditions under 18 CFR section 35/25, “A  
474 company must discontinue capitalization of any corresponding allowance for funds used during

475 construction FUDC, relating to those corresponding amounts in CWIP and a company must also  
476 propose accounting treatments that ensure that there is no duplicate recovery of CWIP  
477 corresponding FUDC capitalized as a result of the different accounting or rate making treatments  
478 by state or local authorities through the use of CWIP". Mr. Best in his response to question 1 of  
479 the FTC interrogatory series #4 testified that the Applicant did not continue to accrue interest  
480 during construction on the amounts of CWIP included in the rate base. He also confirmed the  
481 methodology used to value CWIP at its historic cost and stated that it included the cost incurred at  
482 the end of December 2008, primarily for labour, materials any contract charges, direct costs. In  
483 his response Mr. Best to question 14 of the FTC's interrogatory series #1, Mr. Best answered that  
484 the Applicant has not claimed depreciated expenses on CWIP. This is in accordance with the  
485 ruling in the Delta Natural Gas Company where it was held that depreciation expense on CWIP  
486 should not be included for rate making purposes.

487

488 We turn to the issue of prudence and reasonableness and cost efficiencies. Besides considering  
489 managerial performance in fixing the rate of return and ultimately in the establishment of rates,  
490 Commissions have also taken efficiency into account in fixing the rate base. This is often done  
491 by a kind of negative process by determining that imprudent investments cannot be allowed for  
492 rate making purposes. It has been held by the Idaho Commission that for expenditure to be  
493 admitted to the earning base it must have been reasonable and prudent at the time and must have  
494 resulted in real addition to the service plan. The concept of a prudent investment has been  
495 defined to mean, only plant prudently purchased or constructed is allowed in the rate base or to  
496 put it another way any amounts determined to be acquired on constructed with either (a)  
497 fraudulent intentions or (b) in a manner that is obviously wasteful are excluded from the rate  
498 base. Certain categories of assets are commonly excluded from the rate base for failure to satisfy  
499 these criteria, such as land held for speculative investment purposes. The Applicant has excluded  
500 from rate base, land which is no longer used in the course of business and land to be used for  
501 future development. The Applicant's evidence clearly establishes that the investments it made  
502 since 1983 have been reasonable and prudent and have resulted in real addition to its service  
503 plant. The evidence led proves that the Applicant's operating performance has been driven by  
504 prudent management. There are several measures in place to assess performance. The Applicant  
505 has a stable, long-serving highly trained and productive staff who has enabled the Applicant  
506 consistently to provide a reliable, safe and efficient service. There is independent evidence that  
507 the Applicant has performed well in comparison with its peer utilities in the Caribbean. The  
508 KEMA report referred to in the evidence of Mr. Williams, shows that the Applicant has low

509 electricity losses, measured as a percentage of net generation, its system efficiency in terms of  
510 losses has reduced overtime from between 9 and 11% in 1983 to today's level of around 6%.  
511 This means that it is highly efficient in the delivery of electricity supplies to customers and is  
512 much better than several of its peers in the provision of service at the least cost. Notwithstanding  
513 that there have been some outages; the Applicant's system reliability is among the highest in the  
514 region. It also continues to have high levels of productivity as measured by number of customers  
515 per employee. The Applicant has also shown that its generating capacity reserve margin is below  
516 the average for its peer group of Caribbean electric utilities. The Applicant therefore uses less  
517 capacity to serve a peak load that its peers would require of the same peak demand. In addition, it  
518 is shown that the low reserve margin is possible because of the comprehensive maintenance  
519 program on its generating plant that ensures that it achieves high levels of plant availability. The  
520 evidence also shows that the Applicant's performance has improved significantly, in terms of the  
521 productivity and efficiency since the last rate hearing in 1983. This has been driven by growth in  
522 sales as well as by the Applicant's emphasis on continuous seeking to improve its service and its  
523 efficiency. Sales have risen from around 750,000 kilowatt hours per employee per annum in  
524 1983 to more than 1,900,000 kilowatt hours per employee per annum. The number of customers  
525 served per employee has risen from around 175 customers per employee to 240 customers per  
526 employee.

527

528 In the 2006 CARELEC study, Barbados' electricity rates were found to be among the lowest in  
529 the Caribbean with the exceptions being Trinidad and the French territories. In the KEMA report,  
530 the major findings on the performance of the Applicant are that it is performing as one of the best  
531 utilities among its Caribbean peers. In contrast, the Applicant's financial performance is behind  
532 that of other Caribbean utilities as shown by a relatively low operating profit margin and a low  
533 return on assets. One of the ways in which the Applicant has demonstrated its prudence and  
534 reasonableness is through the type of plant it puts in place. According to Mr. William, the  
535 Applicant has planned and put in plant that has demonstrated high levels of availability and  
536 reliability and is capable of burning the cheapest heavy oil. He further stated that on transmission  
537 and distribution system, in purchasing any equipment or sub-station transformers or distribution  
538 life transformers. We do not purchase on the lowest price first but we purchase on the overall life  
539 cycle so our transformers cost us more money to install but are very efficient and therefore reduce  
540 the level of losses on our system. Mr. Williams also testified that to achieve fuel efficiency, the  
541 Applicant has invested significantly in plant that can operate on heavy fuel oil, particularly the  
542 low speed diesels. The Applicant has also put in place waste heat recovery systems which allow

543 it to capture the heat from the exhaust of those engines, produce steam and use that steam to drive  
544 small steam turbines that produce electricity at no additional cost. The savings generated by the  
545 last two low speeds that were installed and commissioned in 2005 have been significant and if  
546 they were not commissioned when the fuel prices started to climb and climb steeply, the  
547 additional cost of fuel to the consumer would have been in the order of \$5M to \$7M a month and  
548 \$60M to \$80M in 2008. Mr. Williams has also demonstrated that as part of its future drive, the  
549 Applicant intends to install plant that is efficient and which is the lowest economic cost to the  
550 country and to this regard is working towards replacing plant scheduled for retirement with  
551 medium speed diesels which will be able to operate on a heavy oil and be also suitable for natural  
552 gas operations if and when it becomes available. The Applicant is also seeking to develop a  
553 wider energy folio which includes renewable energy.

554

555 In the interest of time, Mr. Chairman, I am asking that my submissions at paragraph 30 be  
556 included in record and also paragraph 31, except to draw to the fact that the Applicant has made  
557 adjustments to known and measurable changes to the rate base as scheduled in schedule C1 and  
558 C2 and we are asking the Commission to find and accept the rate base calculated at  
559 \$544,198,726.

560

561 Issue #2 is Capital Structure. The question for the Commission's consideration is; what is the  
562 appropriate and acceptable level of debt equity leverage given the inherent business and operating  
563 risks of the Applicant. The current capital structure of the Applicant is approximately 20% debt  
564 and 80% equity, however, the Applicant has used a capital structure of 35% debt and 65% equity  
565 in the calculation of the WAC which it considers to be more appropriate for regulatory purposes.  
566 Common equity is the most expensive component in the capital structure and as such a high  
567 proportion of equity results in a higher overall cost of capital. In the circumstances, the Applicant  
568 is desirous of moving towards a new capital structure, which it considers would better the  
569 debt/equity ratio for the period during which the proposed rate tariffs will be in existence. The  
570 Applicant believes that its policy decision on the proposed structure is the correct managerial and  
571 corporate decision and that the structure is more reasonable for rate making purposes. As stated  
572 by Mr. Williams, the KEMA report study indicated that the average debt/equity ratio for  
573 Caribbean utilities in 2006 was 30% debt and 64% equity which is very close to that being  
574 proposed for the Applicant. Further, the evidence shows that the NERA audit conducted in 2006  
575 found that the debt level for many Caribbean utilities in 2002 was about 34% to 36% on average

576 and that the average equity capital to total capitalisation ratio of Caribbean utilities as reported in  
577 2004 was 64.2% and high end of the range was 75% equity capital.

578

579 It is significant that one Intervenor through its spokesman described itself as being between a  
580 rock and a hard place in that he recognized that the proposed capital structure is to the benefit of  
581 customers since it reduces the weighted average cost of capital. It should also be stated that in its  
582 regulatory audit NERA has recommended that the Commission scrutinize the reasonableness of  
583 its capital structure and make it more reasonable for rate making purposes. Mr. Mascoll  
584 questioned Mr. Williams on the investment strategy for reaching the 35% debt, 65% equity ratio.  
585 Mr. Williams responded by pointed that the Applicant actively engages in investment forecasts by  
586 looking at five-year forecasts and annual budgets. When asked by Mr. Mascoll about raising  
587 foreign capital on the existing rates, Mr. Williams indicated that it would be inadequate to support  
588 significant investments going forward. This is substantiated by schedules L1 and L2 which show  
589 that with the existing rates, the Applicant will continue to incur losses and so would not be in a  
590 position to assure lenders of its ability to repay amounts borrowed. Mr. Mascoll finally conceded  
591 on the proposed capital structure when, during his cross-examination of Mr. Best, and I quote,  
592 Mr. Best said: “While the company felt that in putting forward a reasonable case, 65/35 favours  
593 the customer and is even recommended and is theoretical that the Commission should have  
594 considered theoretical debt/equity structure. We have done that and it is to the benefit of the  
595 customer”. Mr. Mascoll replied: “I agree because if it is that debt is less expensive, which it is,  
596 than equity, and you reduce the portion of equity in the 100%, then logically it is in the  
597 customers’ interest that you move towards a 35/65%”. Or if you turn to page 578 which is table  
598 T, I think this is the cost of capital. Mr. Mascoll also questioned the hypothetical nature of the  
599 capital structure. There is reliable case law precedent for adopting such a policy and in the South  
600 West Gas case it was held that it was reasonable to determine the capital cost based on a  
601 hypothetical capital structure. Also in the Baltimore Gas & Electric company, the Commission  
602 stated that the Commission generally prefers using a company’s actual capital structure or that  
603 structure projected to exist during the rate effective period unless there is clear evidence on the  
604 record that such a structure will be unnecessarily burdensome to rate payers. In the event, as in  
605 the current matter that the structure is detrimental with no corresponding benefit to rate payers,  
606 then the authorities, the Commission could utilize a hypothetical capital structure for setting rates,  
607 a settled law in Maryland and is in accordance with precedence throughout the country.

608 The proposed capital structure was provided by the Applicant to Mr. Camfield to calculate the  
609 weighted average cost of capital and the results are shown in table T of the cost of capital report.

610

611 I turn to issue #3 – Rate of Return: The rate of return is the weighted combination of various  
612 components of capital including cost of debt and cost of equity. Fundamentals of the rate making  
613 process is the principle that a reasonable return must be allowed upon the value of property  
614 dedicated to the public use. The Applicant has shown that for the test year the actual rate of  
615 return on rate base was 6.07. The proposed rate of return of 10.48, which represents the weighted  
616 average cost of capital, is based on the study of the cost of capital and rate of return  
617 recommendation which was undertaken by a team led by Mr. Camfield. I ask that the written  
618 paragraph 39 be read into the record. It sets out the principles and standards that accord with the  
619 criterion of fairness. Returns that adhere to these principles and standards accorded the fairness  
620 criterion that balances consumer and investor needs, provides the need for the Applicant to fulfill  
621 its duties to the public. Good utility regulation recognize that inadequate authorized return levels  
622 violate these criteria and essentially constitute the confiscation of the capital committed by  
623 investors and can negatively impact consumers. It is submitted that the rate of return that is being  
624 sought by the Applicant is not only fair and reasonable but the methodology, assumptions and  
625 recommendations of the study are applicable and appropriate. Mr. Camfield employed well  
626 established technical methods that provide a well founded basis for the recommended rate of  
627 return on equity namely the capital asset pricing model, discounted cash flow, risk premium  
628 analysis and a realized market return. In this approach is similar to that used by NERA. Again I  
629 ask that paragraph 42 be read into the record. Some Intervenors sought to challenge Mr.  
630 Camfield on the absence of Caribbean companies in his samples but Mr. Camfield explained that  
631 the study could not draw upon at a technical level, the capital market of utilities and companies in  
632 the Caribbean for purposes of capital valuation for several reasons.

633

634 Firstly, the Caribbean exchange trading capital markets which effectively consists of the  
635 exchanges of Barbados, Jamaica and Trinidad and Tobago had comparatively low levels of  
636 liquidity, with shallow trading activity from which to estimate prospective market returns and risk  
637 premium. Secondly, the exchange listings contain few market traded infrastructure entities from  
638 which to assemble a comparable risk utility sample which is necessary in order to ensure that the  
639 study results conform to the fair rate of return principles defined above and thirdly, the common  
640 stock trading experience of Caribbean exchanges is unusually thin which would impose special  
641 analytical procedures on the study. We submitted that even though the methodology used was  
642 questioned there is overwhelming evidence that the methodology employed is well recognized in  
643 regulatory practice and accepted by regulatory authorities.

644

645 Some Intervenors question the inclusion of the nontraditional elements of customer deposits,  
646 deferred investments tax credits and deferred manufacturers' allowance in table T for the  
647 calculation of the rate of return. The difficulty confronting them however, and which some  
648 Intervenors realized is that if these components are removed from the calculations as shown in  
649 table 2, this would result in a higher weighted cost of capital. Mr. Camfield explained that there  
650 are good reasons for the inclusion of these components, mainly that it was the intent of the tax  
651 policy that these should be an incentive to the Applicant and that this benefits the consumer in  
652 that it decreases cash flow. I ask that the written paragraphs 45 and 46 be read into the record as  
653 part of the oral submission.

654

655 The Commission is asked to find that on the evidence as a whole, the Applicant has proved that  
656 the existing rate of return represents a significant shortfall and its well below an acceptable rate of  
657 return. The Applicant's evidence has clearly demonstrated that its request for a 10.48 rate of  
658 return on rate base is fair and reasonable based on the following:

659

660 The use of a regulatory capital structure to determine the appropriate rate of return was one the  
661 recommendations made by NERA out of its regulatory audit of the Applicant in 2006. This is  
662 because the Applicant's equity level is relatively high for an electric utility at around 80% for the  
663 test year. The Applicant therefore proposed a regulatory capital structure of 65% equity, 35%  
664 debt. This proposal lowers the overall rate of return being requested by the Applicant and is  
665 therefore of benefit to electricity consumers. The proposed regulatory capital structure is similar  
666 to the average for CARELEC electric utilities. Secondly, the cost of debt is based on the average  
667 balances of outstanding loans for 2007. The Applicant in response to question #1 to interrogatory  
668 series 3 from the Commission has shown that had it used the average load balances for the test  
669 year 2008. This would have increased its cost of debt from 5.25 to 5.46. The Applicant has  
670 secured its loans on favourable terms and attractive interest rates assure proof of prudence, cost  
671 efficiency and effective management. The cost of debt has not been challenged. The Applicant's  
672 request for the cost of equity is based on well established cost of capital technique methodologies  
673 and principles as provided by Mr. Camfield in his recommendation applied to the returns for  
674 2007. I ask that the balance of that paragraph be read into the record.

675

676 The return on equity requested is similar to local market returns which for 2007 was 13.5. Its  
677 requests are lower than returns achieved and approved for several regional utilities within the past

678 few years. The inclusion of customer security deposits is reasonable as this is a source of capital  
679 for the Applicant. The Applicant has used 6.46 as the return for its element of capital and in  
680 response to question #1, interrogatory series 3 from the Commission, the Applicant indicated that  
681 this should have been 8% and in testimony from Mr. Best and Mr. Camfield, explained that the  
682 6.46 arose from the use of interest paid to the consumer after withholding tax was paid by the  
683 Applicant to the government. Inclusion of the nontraditional elements such as deferred  
684 investment tax credit and manufacturers' allowance has the effect of reducing the rate of return  
685 from 10.61 to 10.41. I ask that paragraph 48 be read into record as part of the oral submission in  
686 the interest of time.

687

688 I move to the revenue requirements. The issue raised under this head of agreed issues is whether  
689 the proposed rates have the capacity to achieve the stated objective of the Applicant and to  
690 provide the revenue requirement. Mr. Best has given evidence to show that the revenue  
691 requirement has been developed with the intent to provide an opportunity for the Applicant to  
692 recover its prudently incurred costs for providing the utility services and to earn an appropriate  
693 return on the invested capital including a fair return on equity. Mr. Best's evidence shows that the  
694 Applicant requires an additional \$28,221,603 in annual revenue to be collected from customers  
695 through rates in order to achieve the required proposed rate of return on the rate base for the test  
696 year. It is submitted that if the Commission accepts the rate base as being proven, the rate of  
697 return as being a fair and reasonable return that is required and operating income and expenses as  
698 being prudently incurred, then it follows that the revenue requirement should be accepted. I ask  
699 that sections 52 to 54 dealing with the issue of poles be read into the record and I think we have  
700 answered that in writing pretty conclusively and submit that the no additional issues really are  
701 non-issues in this case.

702

703 I turn to rate design, the self insurance fund and I also ask that paragraph 55 be read into the  
704 record as part of our oral submission and we will reply to any written submissions made by the  
705 other side on this issue.

706

707 Rate Design: The Applicant proposes to revise and seek an increase in electricity rates for all  
708 existing tariffs namely, domestic, general service employed, secondary voltage power, large  
709 power and street lighting. The design of the Applicant's proposed tariffs were guided by an  
710 embedded cost study which was carried out by Mr. O'Sheasy. The applicant submits that its rate  
711 design has been driven by clearly articulated and feasible objectives. In the memorandum on

712 proposed rates and during his oral evidence, Mr. Worme demonstrated that the Applicant has  
713 sought in its design of rates to balance all customer needs and interests. Specifically the  
714 Applicant has sought to minimize the impact of any rate increase on the small domestic service  
715 and general service customers, without unduly overburdening large customers. The Applicant  
716 has also shown that present electricity rates are among the lowest in the Caribbean. With the  
717 prices as proposed by the Applicant, electricity prices for Barbados will still remain among the  
718 lowest in the Caribbean. Mr. Worme has given evidence that the Applicant wishes to encourage  
719 energy conservation among its customers and proposes to maintain an inclining block rate  
720 structure for both customer and base energy charges in the domestic service. I ask that the written  
721 record from where I just stopped down to paragraph 58, be read into the record. The design of  
722 the rates is based on embedded cost of service but Mr. Camfield's marginal cost study was  
723 utilized at certain pricing points. The Applicant has illustrated that the proposed rate of return  
724 and revenue allocations for the different tariffs was as the result of a balancing exercise after  
725 taking the interest of all customers into consideration. In doing so the Applicant took steps as  
726 recommended by NERA to rebalance the rates for domestic service customers so as to lessen the  
727 cross subsidization by the SVP and LP customers and to have the DS tariff move more towards  
728 its true cost of service. It should be noted however that the full subsidy for the DS and GS  
729 customers have not been removed. Mr. O'Sheasy also commented on the Applicant's rate design.  
730 He was of the opinion that the rate design was consistent with the main elements of a rate design  
731 which include encouraging efficiency, improving parity ratios, better aligning rates with cost and  
732 taking into consideration the interest of low income earners.

733

734 The matter of demand metering and ratchet demand was raised. Mr. O'Sheasy pointed that  
735 ratchet demand is usually done on a twelve month basis and was not uncommon. In addition, it  
736 had been around in the industry for a long time. According to him, use of a ratchet in order to  
737 provide billing demand does not collect any more or any less in aggregate. He pointed there are  
738 two reasons for the ratchet demand, the first is to levelise the bills so that the customer had the  
739 same level of demand and the second is to strongly encourage the customer to improve load  
740 factor. In the circumstances, the Applicant asked that the Commission accepts the continuation  
741 of the ratchet demand

742

743 Mr. King gave evidence of the average age of meters and the maintenance program employed by  
744 the Applicant. No evidence has been provided to refute the evidence of the Applicant. The  
745 Applicant's response to question 6 of FTC interrogatory series #4 provides for the justification for

746 the use of the cost instead of marginal cost to establish tariff revenue requirements. I ask that the  
747 balance of that paragraph as well as paragraph 64 to 69 be read into the record as part of my oral  
748 submission, given the time factors involved.

749

750 Mr. O'Sheasy led the team that performed the embedded cost of service report. He gave  
751 evidence of the oral objective of the cost of service study which is to reflect cost causation. He  
752 explained that the major steps that he took in preparation were financial data compilation,  
753 functionalisation of data which involved separating the investment and expenses in his specific  
754 functions based on the operations involved in providing electric service. Levelisation which  
755 separates cost in the service levels associated with providing electricity, classification of cost in  
756 the demand energy and customer component and direct assignment and finally allocations. The  
757 key assumption and allocations are located in schedule attachments to Mr. O'Sheasy's report.  
758 Mr. O'Sheasy was questioned about the allocation of various costs including joint costs and he  
759 explained how he allocated various costs.

760

761 Throughout the course of the proceedings, Mr. Mascoll made mention of the value of service  
762 principle and in fact submitted that this should have been the guiding factor in the designing of  
763 rates instead of cost of service. When questioned about it Mr. O'Sheasy said that he presumed  
764 that principle has to do with the value of service to customers and was of the view that pricing  
765 electricity based on value was doomed for failure. In the circumstances the Applicant submits  
766 that the Commission finds that this principle is not relevant. The Commission has no evidence  
767 which confirms that reliance on this principle will lead to rates which are fair and reasonable.  
768 Further, a 1934 decision of Wisconsin Public Service Commission which sought to reduce rates,  
769 not on the grounds that they were yielding a rate of return that would be judged excessive but on  
770 the grounds that a decrease in rates is called for in response to reduction in general price levels  
771 and consumer income was overruled by the Wisconsin Supreme Court. The court held that even  
772 severe business depression did not deprive the utility company of a constitutional right to the  
773 enjoyment of an opportunity to earn a fair rate of return. The Applicant submits that the  
774 Commission finds that the methodology employed by Mr. O'Sheasy was proper, consistent with  
775 regulatory practices and that his findings in his reports be found and applied as the true cost of  
776 service.

777 Financial Forecasting: I ask that that part of the submissions be read into the record.

778

779 Other Issues: What if the rates were not granted? Mr. Williams gave evidence about what  
780 would happen if the rates were not granted. He pointed out that the applicant would probably not  
781 be able to borrow the money to invest in new generating plant which would bring significant  
782 benefit to consumers. In addition, the Applicant would not be able to improve its fuel efficiency  
783 through the installation of new plant. Further, the older plant would have to continue in service  
784 and the cost of maintenance would increase and there could be degradation in reliability. The  
785 steam plant which equates to about 20% of the Applicant's generating capacity is scheduled for  
786 retirement in 2012. It was commissioned in 1976 and according to Mr. Williams; the reliability  
787 of such a plant will deteriorate unless significant sums of money are spent in maintenance. It is  
788 said that when an outage occurs the cost to the economy is a multiple of the cost of electricity that  
789 would otherwise have been served. Although these are economically challenging times it is  
790 submitted that the Applicant has shown that it is extremely important that the Applicant be put in  
791 a position where it can invest in the plant that is required to ensure that Barbados is on strong  
792 footing as the economy requires. I also ask that paragraphs on rate of hearing costs and  
793 regulatory lag and other under 3 and 4(a) in paragraphs 79 to 81 be read into the record having  
794 regard to the time factor and I am coming to my closing in the circumstances.

795

796 Mr. Chairman and other Commissioners, as you consider this application we ask that you also  
797 consider the profile of the Applicant. This is the profile of the Barbados Light & Power  
798 Company Limited. It is (1) a company that has given efficient service in return for a rate that has  
799 remained unchanged since 1983, a clear fact. A company whose rates are among the lowest in  
800 the Caribbean. A company with a plant which has demonstrated high levels of reliability. A  
801 company with a plant capable of burning the cheapest fuel, heavy fuel oil. A company that is  
802 managed in an effective manner by productive staff. Not a company that behaves in any  
803 despicable manner. A company that has come to this Commission in a conservative manner,  
804 even ignoring the results of econometric models and going with a trend analysis that has not been  
805 contradicted. A company that pays its taxes. A company that has on average taken 72% of its  
806 profits and reinvested in the business to the benefit of its customers. These are the characteristics  
807 of a company which keeps its customers and the public interest very much in mind. It is in their  
808 interest that the Applicant be given the financial vitality and opportunity to continue to be the best  
809 provider. The profile is that of a reliant and responsible corporate citizen. Timing affects each  
810 one of us but this is a time to make the right decision to enable us to preserve what we have and  
811 build to achieve what we deserve. Therefore we submit that the Applicant is not only deserving

812 of the increase it seeks but as its Managing Director stated earlier in these proceedings, it is better  
813 for us to save a penny now than a pound later.

814

815 Mr. Chairman and Commissioners, in the circumstances the Applicant seeks the following orders:

816

817 • The rate base as computed by the Applicant and calculated to be \$544,198,726 be  
818 approved.

819 • The proposed capital structure of debt of 35% and equity of 65% used by the  
820 Applicant in the determination of its rate of return be approved.

821 • The rate of return on rate base of 10.48% be approved.

822 • The revenue requirement of \$502,238,415 be approved.

823 • The existing tariffs be replaced by the proposed tariffs, the details of which are set  
824 out at schedules K1 to K8.

825 • The proposed tariffs come into effect come into effect from October 1, 2009 and any  
826 further orders of relief as may be warranted.

827

828 Mr. Chairman and Commissioners, the Applicant wishes to place on record its thanks to various  
829 persons who have played a role over the course of this hearing. We would like to thank the  
830 Commissioners for your patience and impartial manner in which you have been conducting these  
831 proceedings. To the Intervenors who came with varied interests and made their presence felt, we  
832 say thanks. We would also like to thank the members of staff for the high level of dedication and  
833 the commitment that it had displayed during this application process and over the past three years.  
834 The Applicant believes that it enjoys the reputation of being a well-managed and efficient utility.  
835 Because of the excellent staff that it has it will continue to be so and finally we would like to  
836 thank the people that we are here to serve, our customers for their comments and  
837 recommendations that they have provided as part of the application process. The Applicant  
838 values its customers and will continue to seek to serve them at the consistently high standards of  
839 service to which they have become accustomed. This is one of the main reasons why this  
840 application has been brought.

841

842 **SIR NEVILLE NICHOLLS:** Thank you very much Sir Henry. I propose that we take a ten to  
843 fifteen minute break now and resume.

844

845 **(BREAK 12:10 P.M. TO 12:25 P.M.)**

846

847 **SIR NEVILLE NICHOLLS:** Good afternoon all, this hearing is resumed.  
848 Public Counsel could you indicated your intentions?

849

850 **MR ELI EDWARDS:** Thank you Mr. Chairman, my intention really is that  
851 following the opening remarks, I am going to ask Mr. Mascoll to speak for half of the  
852 allotted time then Intervenor Mr. Campbell will speak. The written submission will be  
853 made after the oral submission.

854

855 **SIR NEVILLE NICHOLLS:** Thank you Public Counsel, Mr. Mascoll.

856

857 **SIR NEVILLE NICHOLLS:** Can I ask if you want the twenty five minutes  
858 divided in half, mathematically 12.5.

859

860 **MR. MALCOLM GIBBS-TAITT:** Mr. Chairman just on a very small matter I  
861 noticed Sir Henry took up seven minutes short of an hour, which is more than the allotted  
862 time, I am wondering if you would be kind enough to extend the courtesy to the others  
863 over here.

864

865 **SIR NEVILLE NICHOLLS:** I wasn't aware of that, we are probably  
866 looking at different times, and I always indicated that the Commission will exercise  
867 certain discretion of flexibility in these matters. Just as long you don't over stretch it.

868

869 **MR. CLYDE MASCOLL:** Mr. Chairman, since between 1983 and 2008, the  
870 Applicant earned net income of \$7557.8M of which \$402.3M would have been re-  
871 invested. At the end of the period last year, the test year the company capital structure  
872 was at the magnitude of 78% equity and 22% debt. The need for a rate increase at this  
873 time is apparently triggered by a proposal to expand the company's operating plant by the  
874 way of borrowing from foreign sources with government guarantees on the loans. The  
875 hope is to deliver a more energy efficient service for which the customers will have to  
876 pay in relation to the respective cost of service. In this regard the goal of the company is

877 to design price of electricity to customers is closer to the cost of supplying the service,  
878 thereby providing correct price signals to all customers, and that was a quote. According  
879 to the Applicant the correct price signals refer to prices that seek to recover imbedded  
880 revenue requirements and reflect to the extent possible marginal cost. We have been told  
881 repeatedly that the rate base is a value of the utility plant finance by the company and  
882 investors, that is prudently incurred and use and useful in public service and is valued on  
883 the original historic cost basis. On the other hand, and this needs to be noted, the rate of  
884 return is considered as measure of the company's profitability and can be estimated by  
885 determining the company's cost of capital. Given that evidence presented at this hearing.  
886 It is being propose from this side, that the rate of return should be reduced to reflect a  
887 lower risk premium and a lower cost for the defer credits and allowances. (2) That the  
888 rate base is to be reduce by the exclusion of the street lights cost of service since the  
889 company is proposing not to received any target returns from this category (3) savings  
890 resulting from proposes in 1 and 2 should be divided among the domestic general service  
891 and SVP classes as suggested below. Mr. Chairman, from the inception we queried the  
892 weighted average cost of capital not for its methodology, but for the inclusion of two  
893 components, the investment tax credit and the deferred manufacturer allowance, and we  
894 recognized they were being included to reduced the rate of return. We are concern with  
895 series 1; question 25 that the consultant said that he is costing these two components at  
896 10.61% because it is the intent of Barbados tax law that is at question #25, which is a  
897 response to an interrogatory. There is no way in the Barbados tax law talks about a  
898 weighted average cost of capital, there is no way in the Barbados tax law that seeks the  
899 fact to cost deferred investment tax credit or a deferred manufacturers allowance. But we  
900 are suggesting here if a costing is to be done, since these two components provide benefit  
901 not cost, benefit to the company that is should be at the cost of debt which 5.25%. This  
902 would help to lower the overall weighted average cost of capital at table T in the study.  
903 Early in this hearing it identify the foreign loans of the Barbados Light and Power are  
904 indeed guaranteed by the government of Barbados and therefore, the measures used to  
905 define risk in the study which identified a low end risk value of 2.05 and an upper bound  
906 of 2.71% should not be average and include the average as the risk premium in the  
907 weighted cost of capital. In fact we recognize that risk will play a part in the

908 determination of cost of capital and particularly in this environment. But given that the  
909 government is guaranteeing the foreign loans of the company we feel that the lower  
910 bound should have been used, that is 2.05% as oppose to the average of the two. In light  
911 of that therefore, we do believe that a result of a revaluing or costing of those two  
912 components of deferred taxes and allowances as well as a change in the risk premium  
913 applied after the study revealed an 11.16% average cost of capital that again they should  
914 be a smaller risk premium attached to the weighted average cost of capital. Mr. Chairman  
915 in light of that, we are of the view that in addition to slight adjustment to the rate base, we  
916 are of the view that the street lights given that they are not offering the company any rate  
917 of return, that \$7M should be deducted from the rate base. If these proposals are  
918 considered, then we will see a reduction in the target returns of the company of the order  
919 of \$3.7M. And we believe that base on the relative contributions which the domestic  
920 class, the general class and SVP class will be making to the overall rate of return, that  
921 reduction should be shared in proportion of 70 / 15/15 with 70% of the reduction going to  
922 the domestic class. In short Mr. Chairman we are hoping for a reduction in the rate of  
923 return that is being propose in the study of 7.8% and is recalled that it is up from 2.5%.  
924 And I am not tempted to state any figure in public, but I will make in my written  
925 submission which I have already done the information available. Because we are  
926 proposing such a reduction, it means that the reduction will have to be allocated to the  
927 respective classes and this will then have implications for the rate design. But our  
928 proposal is that the lower tier of the rate should be expanded from 0 -100 to 0- 150 and  
929 given the nature of the inclining structure our customers in the domestic class category  
930 and those in general service will benefit accordingly. We experience considerable  
931 concern about the inclining rate structure, because it is counter intuitive, but it has been in  
932 existence especially in the domestic class since 1983 and given the body language and the  
933 tone I can very well detect that it will be exceedingly difficult to convince who ever I  
934 need to convince of the need to reverse that rate structure that has been in place now for  
935 26 years in the domestic class. This is about giving and taking. Mr. Chairman I need to  
936 address the rate of return base on the issues I raise, the rate base issues I raise, but there is  
937 a very fundamental error that has been made at schedule 1 page 768, was up until 4 this  
938 morning contemplating how to address this matter simply as possible. And the first thing

939 I did after I woke was to run across the intellect of my wife. There's a major error, ROJ is  
940 a major error and this is how I propose to demonstrate it, because if it is not done now it  
941 can embarrass both the company and the Commission. The way the realize return is  
942 determine is by applying the realize rate of return to the rate base. I want for the benefit  
943 of simplicity to treat 544 as a population and to suggest that 33 persons out of that  
944 population average the age of 6. Those 33 persons are made up in this way, 4 in domestic,  
945 approximately 1 in general service, 14 SVPs and 14 in LP. If 33 people drawn from a  
946 population average the age of 6 and 14 persons average the age of 6.1 years and 14 other  
947 persons average the age of 12.4 years it is impossible for the average age in that 33 to be  
948 6 years old. 28 persons exceed 6.1 of which 12 would be 12.4 years and 14 will be 6.1  
949 years and 14 will be 12.4 years. It is simple arithmetic. When applied therefore to the rate  
950 of return, realize in the test year, it is impossible for the SVP and the LP to be responsible  
951 for 84% of the realize returns of the company at an interest rate of 6.1% and 12.4% and  
952 that the overall average rate of return is 6.0%. I am therefore, inviting the company and  
953 the Commission to seek advice on this matter, because that bit of information in schedule  
954 1 is absolutely incorrect. In similar vain row K, if the government base on the street lights  
955 constitutes 7.1M of the base and desire is for that category not to contribute to the rate of  
956 return or to the revenue requirement or the operating income or what ever you want to  
957 call it. It means therefore, that each other category would have to step up in order to pull  
958 weight and therefore the effective rate of return is not 10.48 it is 11.14%, don't take  
959 Mascoll's word for it. There are several statisticians in Barbados, there are several at the  
960 statistical service, your deputy at the FTC spent several years at the statistical department,  
961 you can to the University, and you can go to the Central Bank to verify what I am saying.

962

963 **SIR NEVILLE NICHOLLS:** Mr. Mascoll by quick reckoning, you have  
964 exceeded your time.

965

966 **MR. CLYDE MASCOLL:** I am going to end Mr. Chairman, I am very familiar  
967 with time, that's why I took my watch off and I am grateful for the discretion you have  
968 shown, it is unfortunate that having cross examine for the length of time that I did I  
969 would only have 12.5 minutes, that is the nature of life. I would sum by saying that in this

970 hearing the company cannot be faulted for the effort that it has made to provide  
971 information. But there is a reality that it is going to be all about fairness, reasonableness  
972 with respect to the incidents on the customers in this hearing and therefore I rest my case.

973

974 **SIR NEVILLE NICHOLLS:** Thank you very much Mr. Mascoll. Mr. Campbell.

975

976 **MR. JOHN CAMPBELL:** Thank you Mr. Chairman. Sometimes I think there  
977 is a disadvantage playing the 20/20 game when it is suppose to be a test match, because I  
978 might swipe and connect and might win. The Barbados Association of Retired Persons  
979 continues to object to the application for the review of electricity rates on the grounds set  
980 out below. And these grounds include the computation of the rated average cost of capital  
981 its present and its future earnings as provided by the company, an analysis of the NERA  
982 report and certain areas of its rate design. If I may use my summary skills in trying to  
983 understand what this case is all about, I would uplift a quotation from the application.  
984 “The Barbados Light and Power is seeking an increase in revenue base of 10.48% over  
985 the existing rate of return of 6.07%”, which would improve its net income to enable the  
986 company into alia 2, and I quote “to attract capital and satisfy its lenders its ability to  
987 repay loans and maintain the confidence of investors by providing them with a fair and  
988 reasonable return”. This is my analysis of the application, most significantly the  
989 Applicant wishes to raise capital needed on the European money market, which is as my  
990 colleague said by the government of Barbados. The company continues to contend, that it  
991 is extremely difficult to secure the loan or loans necessary to carry out it capital  
992 expansion programs, one cannot challenge that Sir. The first point of departure for me is  
993 that , since it has retain earnings, regardless of how you look at it, which amount to over  
994 \$257M at the end of 2008 and I dare add this is enough to maintain most organizations. I  
995 am not going to say all, but most. My CV complains working at a multinational company  
996 which is larger than the Barbados Light and Power, so I come with some experience in  
997 this matter. I also would like to say that base on evidence, that it should be noted and it is  
998 interested if you take the evidence, that when asked whether the company’s assets are  
999 being confiscated it was a clear no. In rate fixing procedures, I think the only basis for  
1000 appeal by a utility company is on a Fair Trading Commission confiscating the utility’s

1001 assets, and we have in evidence that was not so. But having said that, I want to be fair it  
1002 has to be appreciated that the Barbados Light and Power is a capital extensive  
1003 organization. Therefore, its planning horizon is longer than most, I want to be fair. Hence  
1004 there is some justification for its application at this time. I will stop there for a moment on  
1005 that issue to go into the next issue, which is the weighted cost of capital. The company's  
1006 expert witness support a paper entitled "Study of the cost of capital and rate of return  
1007 recommendation" and adopted the NERA recommendation, that to approach this case and  
1008 submit a market base and equity estimated using an approach which averages the  
1009 calculated cost of equity capital for a sample of US companies computing using both the  
1010 CAPM and the BCF and others, and adjust that information for country risk premium in  
1011 Barbados. The evidence presented by the expert witness, this is where the issue of  
1012 transcript is important Sir, because I am forced to give my record of what I think  
1013 transpired after this witness gave his evidence. Here is my take on what happened. The  
1014 evidence presented by the expert witness was perceived to lack an appreciation of local  
1015 and regional conditions and therefore it was not convincing, which ended with the expert  
1016 promising to submit subsequently and in writing to the FTC a paper to assist them to  
1017 decide on a fair rate of return. An assignment which the expert have been condition to do  
1018 in the first place, the transcript would confirm that happened or not in that sense we  
1019 see ourselves to be like in the hallway, because we don't have access to the transcript to  
1020 let me say what I think is the truth and the real truth. In as much as, in my view that the  
1021 expert didn't convince me that the rate of return that he recommended, was fair and  
1022 reasonable. I put in the hands of the Commission to decide what is fair and reasonable.  
1023 Remember Sir, It should be noted that the BL&P is monopoly, it has a monopoly  
1024 franchise and with that it would have to accept an obligation to serve all customers. But  
1025 in return for that it must commit capital to the business of the utilities because they are  
1026 entitled to a reasonable return on capital that is a fact. I want to put my case as fairly as I  
1027 can. This brings me around to the question of the utilities financial strength. The  
1028 company has currently retained earnings of \$257, 693M and when you look at its 5 year  
1029 forecast given in evidence, I don't need an expert to say that, that is what your evidence  
1030 said. It is expected to increase to \$365,290M at the end of the year 2013, if the application  
1031 for review is granted in full. That is really what this application is saying, it almost seems

1032 as though the BL&P is in the business of mentoring it retain earnings, but to me that is not  
1033 the base of the utility company, it has to assure us that it will give us a proper service and  
1034 we will assure it that it will have a sound financial basis. I want to submit Sir, there seems  
1035 to me to be an expectation of the company that its conservative management of its  
1036 finances will continue, maintaining significant rate return earnings to carry out its  
1037 mandate. No where in the review of rates that it say a company may have a more  
1038 significant retain earnings. As is sighted to Mr. Camfield, there is a range of  
1039 reasonableness in which earning may properly fluctuate and still be deemed just and  
1040 reasonable and not be excessive and extortion able. It is longer by one level investor's  
1041 interest against and the need for averting any threat to the security of the capital embarks  
1042 by the enterprise. At the other level this is bounded by a consumer interest against  
1043 excessive and unreasonable charges for service. What in my view that has happen is that  
1044 the BL&P has to deal with if it has a cash flow problem as a result; you tell me which  
1045 company with this level of earning should have cash flow problem? Don't interpret that  
1046 to mean that I am opposed to giving the BL&P some level of increase. I think you should  
1047 have a level of increase as it said for a given purpose. And the purpose is to improve its  
1048 net income, so that when it goes to a commercial bank or who ever, in this case they are  
1049 going to a European bank, it can demonstrate in the foreseeable future that the company  
1050 will have enough net income to sustain its operations, simple as that. Let me try  
1051 something else Sir, The analysis of the NERA report.

1052

1053 **SIR NEVILLE NICHOLLS:** Bearing in mind you have about two minutes more.

1054

1055 **MR. JOHN CAMPBELL:** Let me rush through that, it might be to my  
1056 advantage. One of the approaches in the NERA report was that you look at a dimension  
1057 of rate of return implied in the 1983 case of weighted average cost of capital of 7.72%.  
1058 That is what the expert you employed recommended. Against that background Sir, I say  
1059 there is something about the company that I am not in the position to get behind, but  
1060 taking the advise that you got, taking the simple analysis that I have provided as retain  
1061 earnings there needs to be some kind of situation if you were to give the company the rate  
1062 of return it requested there would have to be some claw back in 5 years time. I know it is

1063 unusual because a company with this level of retain earnings can get into a situation  
1064 where they have cash flow problems. So whatever the internal mechanisms are the  
1065 company needs five years to sort those out, if you give it a 10.48% they ought to be a  
1066 claw back after a five year period. The last point if I may make, some people might think  
1067 I was crazy when I didn't asked Mr. Worme any questions. As a practicing financial  
1068 controller in a large company, I know there are certain things that people can never  
1069 understand nor trap people on, and I wouldn't try. All I would repeat is what I said when  
1070 Mr. Worme was on the table is Mr. Worme look again, look deeper, look wider and seek  
1071 to relieve us of some of the pressure on the old people of Barbados. Thank you Mr.  
1072 Chairman.

1073

1074 **SIR NEVILLE NICHOLLS:** Thank you Mr. Campbell, next on the list of  
1075 Intervenors is BACRO, Mr. Gibbs-Taitt.

1076

1077 **MR. MALCOLM GIBBS-TAITT:** Thank you Mr. Chairman, as a  
1078 representative of the Barbados Association of Consumers Research Organization Inc. My  
1079 oral submission is base on the evidence before us that the Applicant has not satisfied the  
1080 requirement of section 14 of the Utilities Regulation Act to be granted the rate increase  
1081 sort. In accordance with your very untimely ruling, of the 22<sup>nd</sup> ultimo and further on even  
1082 date the written address will follow accordingly. In the address I want to immediately  
1083 congratulate the BL&P for presenting to this hearing an application that is well  
1084 manicured and for those who performed their tasks to have acted well, thou not faultless.  
1085 Mr. Chairman you stated on the first day, that and I quote "All of the Intervenors present  
1086 would be given an opportunity to cross examine each of the witnesses" and you have  
1087 achieved this. The procedural order #2 give us nine issues, the rate base, incidentally I  
1088 think the cost of service and street lighting elements there to should be excluded. Capital  
1089 structure, rate of return, revenue requirement, rate design, fuel clause adjustment,  
1090 operations and maintenance expenses, cost of study, cost of service study and financial  
1091 forecasting, those were the nine issues. The utilities regulation act at section #10, states  
1092 that any rates made by the regulator, should be "fair and reasonable" and the FTC should  
1093 be mindful of the legal position. It must be in the interest of tax payers and the consumers

1094 of BL&P, which a fair and reasonable profit be made each year. We should expect no less  
1095 and certainly no more. It is not sufficient to be an educated people I f we continue to be  
1096 not street smart. With this in mind, it is difficult to understand why the shareholders of  
1097 the BL&P, who have been fortunate to have received over \$5M during the test year 2008  
1098 alone, not to have been asked to shoulder the burden of financing capital equipment. The  
1099 wider public that would like to be in their fortunate position, to occupy that same facility  
1100 should be allowed to enter it, and they are not. It would for a start extend a wider share  
1101 holder democracy. When we learnt from your expert witness Robert J Camfield, which  
1102 the consumers of the company never figured in the mind of the Applicant, we on this side  
1103 took it to be a very honest statement. And though Mr. O'Sheasy tried his best to do some  
1104 damage limitation, I think he was unsuccessful, it was difficult to eradicate the clear  
1105 message that was sent by Mr. Camfield. Mr. Chairman, there were two things which  
1106 followed a contrasting bill which I gave Mr. Worme to look at, and at the end of it he  
1107 suggested, that if consumers are able to conserve energy , that was the main thing he  
1108 spoke about, it would be helpful. Mr. Chairman, I have two such studies that I will submit  
1109 with my written documents. One is called Energy Consumption and Economic Growth in  
1110 Latin America and the Caribbean, which is a co-integration approach; authors are Troy  
1111 Lloyd, Lecturer at the UWI and Testor Guy who works with the Central Bank of  
1112 Barbados. The other is called Price Reform and Household Demand for Electricity and  
1113 the authors are Adrian Carter of the Marketing and Communication Department person  
1114 from the Barbados Light and Power Company Ltd; and Roland Craigwell and Winston  
1115 Moore both of the Department of Economics at the University. This last one I am a little  
1116 surprise the Applicant sort not to bring to our attention. It is well know that the first  
1117 contrasting bill which I put to Mr. Worme showed that consumers would end up paying  
1118 \$8.73 more if the new rate were applying today. I went a little further and look at a  
1119 similar bill this time with 486 KWH only to find that on that bill, on the present situation  
1120 consumers will pay \$261.68, but if the new rates were to apply they would pay \$272.62  
1121 which is an increase of \$10.94. Mr. Worme will be surprise that is the price of a snack  
1122 box in truth, but for those who don't have money to buy a snack box, it just remains a  
1123 dream. There are some other factors Mr. Chairman that I would like to draw, could you  
1124 tell me how much time I have? Consumers better be aware that as the cost of fuel

1125 escalates, if light and power gets its way all of us will face electricity bills, which will  
1126 continue to escalate without any control. When one consider that loans secured by foreign  
1127 lenders are secured by the Barbados government and by extension the people of  
1128 Barbados. There is no conceivable good reason why consumers should be asked to assist  
1129 the financial position, since when the capital assets of the company are finally secured by  
1130 the company. No consumer will benefit by one cent by this acquisition, but the share  
1131 holders, that exclusive club will continue to be the real beneficiaries at the expense of all  
1132 the other consumers. It is my view that the submission dealing with overall  
1133 circumstances, economic, financial and social which apply at any particular time and  
1134 therefore, when one look at the present time in particular this relates to the global melt  
1135 down and it attendance impact on the people of Barbados, we in fact needs to be very  
1136 careful and wonder why this application came at this time at all. Further, Barbados is a  
1137 small island, when we wake tomorrow it size will not have altered, the fact we have an  
1138 extremely low birth rate of just 0.02%, while at the same time having a proportionately  
1139 aged and elderly growing population, which by definition who lives on a fix income and  
1140 suggest that this group will be negatively impact. Mr. Chairman at this point it think I  
1141 will refer to my written submission for further detail, which I would go into in a more  
1142 detail way. I thank you.

1143

1144 **SIR NEVILLE NICHOLLS:** Thank you very much Mr. Gibbs-Taitt. Next  
1145 Intervenor is CANBAR.

1146

1147 **MR. MOGENS TOFT:** Mr. Chairman and Commissioners, in lieu of what  
1148 happened here the last couple of days between yesterday and today, I'll solicit my wife  
1149 and do my main presentation with her help. And I didn't get an answer to what was the  
1150 purpose of the minutes? Could I have that answer?

1151

1152 **SIR NEVILLE NICHOLLS:** I am not sure, are you referring to transcript? It has  
1153 been the practice all along of judicial bodies to provide transcripts, but it is my  
1154 understanding that they are used mainly when participants are seeking a review or appeal.  
1155 But the general practice as I said, as I understand it as I said earlier, once the evidence is

1156 concluded, oral arguments are expected to begin. As I understand it, you don't propose to  
1157 make an oral submission?

1158

1159 **MR. MOGENS TOFT:** No that is correct; I will solicit my wife and do it in  
1160 writing.

1161

1162 **SIR NEVILLE NICHOLLS:** Okay, thank you very much. BANGO you are next,  
1163 who is going to make the presentation?

1164

1165 **MR. CHRIS HALSALL:** Much to my surprise it appears to be me Sir, under  
1166 protest BANGO will not be making an oral presentation; we will however appreciate the  
1167 opportunity to submit written submission and will do so in five days after receiving the  
1168 final transcript.

1169

1170 **SIR NEVILLE NICHOLLS:** Thank you Mr. Halsall. Next on is Mr. Trotman.

1171

1172 **MR. DOUGLAS TROTMAN:** I am not going to use the time allotted to me. I am  
1173 simply going to say the interpretation of law is always interesting, and I will leave all of  
1174 those present to look at the application of Mr. Williams and you will see that in that  
1175 affidavit, an act that have been repealed has been put into evidence. My submission will  
1176 be in writing Sir, and it will deal with points of law in this hearing. There are several  
1177 points of law that have risen and though I look forward to this particular moment, I  
1178 choose now to multiply by 0 which I get 0, so I will make my submission in writing Sir.

1179

1180 **SIR NEVILLE NICHOLLS:** Thank you very much Mr. Trotman. Dr. Roland  
1181 Clarke.

1182

1183 **DR. ROLAND CLARKE:** Thanks you Mr. Chairman, I too have reservations  
1184 of making an oral submission at this time. But I would do my best with what I have  
1185 prepared thus far. The purpose of my oral closing submission is principally to  
1186 recommend 3 things (1) That the principles and standards of regulations should be strictly

1187 followed by the Fair Trading Commission in establishing the weighted cost of capital (2)  
1188 That the Commission reject the notion propose by the Applicant that energy efficiency  
1189 will from an introduction of inclining block rates and (3) That in fact the Applicant can  
1190 achieve it objective of energy efficiency by implementing the recommendation of their  
1191 2002 study entitled “Demand Sight Management Study for the Barbados Light and Power  
1192 Company and The Government of Barbados” . This implementation of the study should  
1193 be done under the regulatory supervision of the Fair Trading Commission and that it  
1194 should include financial incentives to customers to save energy. I would now proceed to  
1195 address the issue of the Principles of Regulations. The Applicant and its legal Counsel as  
1196 well as the expert witness Mr. Robert Camfield, assert that the principles of Public Utility  
1197 Regulations in the United States which should be followed Barbados. However, they  
1198 appeared to confused the issue of adopting principles “of regulations” with that of  
1199 “adopting data” from the United States. According to the Applicant’s Legal Counsel  
1200 Sir Henry Forde as well as Mr. Camfield, the accepted principles have been codified in 2  
1201 decisions by the US courts, namely (a) The Blue Water Works Improvement Company  
1202 against Public Service Commission of Western Virginia and the Federal Power  
1203 Commission and The HOPE Natural Gas Company. In respect to the Blue decision the  
1204 Applicant and his advisors fail to take into account, that this decision is predicated on and  
1205 I quote “on a public utility is entitled to such rates as it will permit it to earn a return  
1206 equal to that which generally being made at the same time and in the same general part of  
1207 the country on investments in other business undertaking which are attended by  
1208 corresponding risk and uncertainties” end of quote. I therefore contend that the above  
1209 present a clear case for the use of either (A) the average returns on The Barbados Stock  
1210 Exchange only and not the average returns on businesses in the United States and or  
1211 Canada. According to the evidence presented by Mr. Camfield, The Barbados Stock  
1212 Exchange curative realize it historical return is 5.82% between the years 199 0-2006 with  
1213 a statistical variation of 20.75%, this is presented in table T of Mr. Camfield affidavit.  
1214 This return on the Barbados Stock Exchange is significantly lower than the 30.5%  
1215 derived for the United States by Mr. Camfield. He subsequently used in the computation  
1216 of the Applicant cost of capital. I refer you to table B and paragraph 20 in Mr. Camfield  
1217 affidavit. (b) That the average returns faced by the Applicant’s equity investors should be

1218 use. Although the Applicant only has one investor the Barbados Light and Power  
1219 Holdings, which in turn is traded on The Barbados Stock Exchange. This parent company  
1220 has investors who originate from a variety of countries and regions within any one  
1221 country. Most of these investors are from Barbados; therefore if the Barbadian investors  
1222 account for say 70% of the investors in holdings, then a 70% or a 0.7 weight should be  
1223 given to the returns of The Barbados Stock Exchange. Like wise if the remaining 30%  
1224 Of investors originated in the United States then a weight of 30% or 0.3 should be  
1225 assigned to the 30.5% return computed by Mr. Camfield. This approach would ensure  
1226 that the Applicant complies with the principles quote unquote code of regulations in the  
1227 US, while appropriately weighting the Barbadian investors and the data concerning the  
1228 returns on The Barbados Stock Exchange. I assert that the principles adopted by the Fair  
1229 Trading Commissions does not required that only US or Canadian data be used to  
1230 compute returns on equity for the purposes of calculating the returns on equity on the  
1231 investors in the parent company of the Applicant . I also assert that the principles of  
1232 regulations required that equity returns on actual investments made by the Applicant s'  
1233 investor be analyzed, rather than the analysis quote unquote investment opportunities in  
1234 other countries that the investor may well undertake. While the Barbadian and other  
1235 investor may invest in US equities, the reality is that for decades the investors have  
1236 invested in the Applicant and there after, parent of the Applicant and have experience of a  
1237 much lower rate of return, than that suggested by Mr. Camfield. Further this relatively  
1238 low rate of return has not hindered the Applicant or its parent company, in raising capital  
1239 from international sources, nor does it appear to adversely affect the financial integrity of  
1240 the Applicant or its parent. I therefore which for the Commission to consider the impact  
1241 of my proposals and in this regard I refer that the Commission to table S in Mr. Camfield  
1242 affidavit. What I have done is simply substitute one single number in, Mr. Camfield table,  
1243 and that is I introduce a 5.82% cost rate to the common equity there by reflecting the  
1244 Barbados conditions. And that 5.82% is in fact a risk adjusted cost of common equity. If  
1245 you substitute that one single number, then the weighted cost of capital on a traditional  
1246 basis is 5.62%. Following Mr. Camfield need at 92 table T also in his affidavit and I  
1247 noted the following that yes, the elements of capital such as long term debt is in fact  
1248 5.25% in terms of its cost, short term debt is obviously zero, there none and the 5.82%

1249 should be substituted, that's the only substitution that I made in Mr. Camfield table T  
1250 5.82% for common equity. I agree with Mr. Camfield that the cost of customer deposits is  
1251 6.46%, however this is where I depart from Mr. Camfield, my very best intuition tells me  
1252 that the government of Barbados does not seek to extract a cost on the tax or investment  
1253 incentives, it gives to companies. Therefore in my opinion the cost of these two line  
1254 items should be zero. The fact that these two line items remain in the Table in about  
1255 themselves dilute the percent contributions of the long term debt, the common equity and  
1256 the customer deposits and thereby reject the same effect of these two line items deferred  
1257 investment tax credit and deferred manufacturer allowance, lowering the cost of capital in  
1258 this case down to 5.25%. That means that we need to compare what Mr. Camfield is  
1259 recommending and therefore what the Applicant has accepted. Mr. Camfield  
1260 recommends a 10.61% market return on equity, the recalculation suggests that should be  
1261 6.2%. Mr. Camfield recommends an overall weighted cost of capital of 10.48%, the re-  
1262 calculation suggests 5.25%. I now turn to the second issue which concerns the notion that  
1263 an inclining block rate will in fact, cause energy efficiency in Barbados, to be incurred by  
1264 customers. The Applicant in its evidence clearly indicated that the price elasticity for  
1265 demand of electricity is 0. What that means in simple terms is that a respective of the  
1266 price of energy on and around the current levels, with that price being affected by the  
1267 price of fuel as well as the base rates that the customer will not consume any more or any  
1268 less, than what it would normally do. Therefore the price elasticity of demand is zero, if  
1269 the Applicant introduces its inclining block rate; the only effect that will serve would be  
1270 to increase the revenue to the company revenue, and indeed I am quite disappointed that  
1271 the Applicant would want to introduce energy efficiency under the rule base of  
1272 introducing an inclining block structure rates, when it knows that the price elasticity is  
1273 zero. And for the electricity I submit to the Fair Trading Commission that in order for the  
1274 Applicant to realize its stated objectives of energy efficiency, it must undertake the  
1275 demand side management program that is contemplated in 1999 and that was  
1276 recommended by their consultants in the year 2000. I also recommend, that the fact that  
1277 the Applicant has given a list of energy efficiency initiatives that it would undertake in its  
1278 evidence that, that list does not constitute a program, that is simply a list and as such the  
1279 Applicant has full responsibility to either decrease or increase the level of activities within

1280 those initiatives. However if those initiatives all of the other Initiatives proposed in the  
1281 demand side management study of the year 2000 are supervised by the Fair Trading  
1282 Commission. Then two things will happen; (1) the Applicant will be held accountable for  
1283 activities in the demand side management (2) The Commission will have a way of  
1284 managing the financial incentives that are recommended are to be paid to customers to  
1285 encourage them to save energy. It is also quite possible that the reason why the Applicant  
1286 has not submitted it demand side management program for consideration of the Fair  
1287 Trading Commission, is to perhaps it is reluctant to give its financial incentives to  
1288 customers. Mr. Chairman, again given the limited time that I had to prepare this oral  
1289 presentation, I do in fact appreciate the fact you have given five days beyond the  
1290 submission of all the transcript to submit my written closing arguments. I thank you, the  
1291 Commission, the Applicant and my fellow Intervenors for the opportunity to contribute to  
1292 the betterment of Barbados. Thank you.

1293

1294 **SIR NEVILLE NICHOLLS:** Thank you Dr. Clarke, if I may say so, you  
1295 don't seem to suffer in making your oral presentation at this time. We look forward to  
1296 your written intervention. Mr. Errol Niles you are next.

1297

1298 **MR. ERROL NILES:** Thank you Mr. Chairman, you may have saved the  
1299 best for last I don't know, but I would like to urge the Commission to adopt my friend Dr.  
1300 Clarke's submission as their own. Mr. Chairman I thank you for this opportunity. At the  
1301 outset, I will just like to follow on from Dr. Clarke in respect to and I put it in a legal  
1302 fashion in that throughout this hearing we heard the phrase "standard regulatory  
1303 practice", being used especially from the consultants and I think Mr. Worme fell prey to  
1304 this. I think this had a little practical utility if I may use a pun there, except to pretend to  
1305 give some ore of authenticity to these views and secondly, that United States decisions  
1306 are not binding on the tribunal and if anything is merely a persuasive authority. In any  
1307 event, as Dr. Clarke suggested, they are reflecting a more competitive market situation  
1308 and I would urge the Commission to take every report, opinion or whatever from the  
1309 United States as I suggested long ago with a pinch of salt. And the other point I start with  
1310 the outset Mr. Chairman, is this and it presents some kind of dicodny with the Applicant

1311 and my learned friend Sir Henry repeated it again. Most of the witnesses said, the  
1312 Barbados Light and Power is more efficient than all other Caribbean entities, which on  
1313 average they suggested have a debt equity ratio 40/60. Now the Applicant's operating  
1314 debt equity and these are general figures 22/78 and yet it is the most efficient in the  
1315 Caribbean. We are asking the tribunal to move that from 22/78 which is sub-optimal as  
1316 they all agree to 35/65 debt ratio. I suppose in an effort to get more efficient, perhaps but  
1317 they are operating at a sub-optimal capital structure and doing quite well it seems. In  
1318 respect to the point I tried to, I am not sure if you actually ordered that your remarks be  
1319 expunge from the record, but Mr. Chairman in my opening statement you may recall that  
1320 I deliberately focus on this question of debt equity from the on set. I recognized that this  
1321 was at the heart of the application, because it is not politically correct. I think they say  
1322 nowadays to talk about raising rates especially in this climate it is brutal almost, but it is  
1323 more palatable to say you want to shift the weighted average cost of capital as cover to  
1324 minimize the impact of these rates if you can. I will submit the only way the Applicant  
1325 justify a rate increase is to convince the tribunal if it succeeds, that somehow this debt  
1326 equity ratio is standard regulatory practice and I urge you not to buy into that and the  
1327 mere fact it is done in the Unites States is no basis that is should be done here necessarily.  
1328 The other point is this, the tribunal may recall that I suggested to Mr. Camfield an expert  
1329 witness and this is the most important aspect of it, because if you don't get that there is  
1330 no cost increase to be allocated as Mr. O'Sheasy and then Mr. Worme won't have  
1331 anything to do with rate design. When I asked Mr. Camfield, the record will show Mr.  
1332 Chairman, that if two people were given the same parameters and the same information  
1333 on this company, the Applicant , they would come up with two different results based on  
1334 any weighted average cost of capital which he used, and Mr. Camfield agreed. That is the  
1335 point when I said it was another hypothesis, because the tribunal should not get confused  
1336 about the opinion evidence, and not an affidavit of fact. Having said that then the  
1337 weighted average and I am going to submit with your lead Mr. Chairman, the different  
1338 calculations in terms of weighted average cost of capital because unless you can get about  
1339 3 or 4 calculations through using different discounted method and net present value etc.  
1340 however you use it, unless you can get to the results being the same from two different  
1341 calculations, the one used will depend more on the motivation of the objective you are

1342 trying to achieved really done the actual moral or formula itself. Mr. Camfield used one,  
1343 but there are others, which will produce much different results. That is in fact when you  
1344 said you didn't perhaps hear anything that would defer differently from the affidavit of  
1345 Mr. Camfield, because he submitted an affidavit with respect of the weighted average  
1346 cost of capital, but yet agreed that if indeed somebody else was using the same  
1347 information would get a different result. So that is only a hypothesis and Dr. Clarke  
1348 offered as an Intervenor an alternate hypothesis for the benefit of the tribunal. The point I  
1349 was trying to make all the time in respect to this weight average cost of capital was again  
1350 reflected in my cross examination of Mr. Worme, and I asked him and he admitted the  
1351 rate design was based on the cost of service study and the weighted average cost of  
1352 capital so we are coming back to the weighted cost of capital, Mr. Chairman and that is  
1353 the critical component of this hearing, because it is only basis upon which they can justify  
1354 a rate increase at this time. The congenial Mr. King and Mr. Best as well, one I asked if  
1355 about reduced cost ,he said no he cannot, no matter what they do or try, Mr. King felt the  
1356 level of efficiency was at its optimum. I would only like to remind them of the Peter  
1357 Principle I believe most people know what that is. Mr. Chairman my hypothesis in  
1358 addition to Dr. Clarke and having said that there are 3 possible ways you can calculate  
1359 the weighted average cost, is depend on the formula used. I would merely state and I am  
1360 going to following up with the copies, the capital funding of the company and I am  
1361 supporting Dr Clarke in this made up of two components; debt and equity and this mean  
1362 in the classic and traditional sense of the words. Lenders and equity holders can expect a  
1363 certain rate of return on the capital of funds provided. The cost of that capital is the  
1364 expected return, so the weighted average cost gives a return both can expect. E.g. if they  
1365 expect 10% on the debt and 20% on equity you need a 15% average return on average,  
1366 15% satisfies both holders. I am trying to simplify Mr. Chairman 15% then would be the  
1367 weighted average cost of the capital, and that is as simple as I can get it. The peculiar  
1368 feature there and of the hearing is that, no evidence was led to say what rate of return one  
1369 shareholder was requesting. But that shareholder has already invested money, so the only  
1370 solution I would submit is if it is not getting its share return would be to sell his shares on  
1371 the market. As far as I know, the last reading I saw there was no rush to sell any shares in  
1372 the holding company of the shareholder. So we could infer from that, that it is satisfied

1373 with its rate of return. The only issues then, would be shifting the debt consideration,  
1374 when I ask Mr. Peter Williams from the beginning who is driving this movement towards  
1375 the 35/65 % he said they need to raise revenue in order to track lenders etc. The shift is to  
1376 increase the revenue requirements to ostensibly in a hypothetical basis appeal to lenders.  
1377 Therefore it is not politically correct now to talk about raising rates in this climate so you  
1378 justify it by shifting the weighted average cost of capital. Well it is useful for a company  
1379 to see it, but the person who drives that concern is the investor or investors. As I  
1380 submitted the shareholders, there is no evidence from anybody that the equity  
1381 shareholders were driving it. I know my time is coming up, but would like to look at  
1382 another hypothesis we are looking at the rate of return as presently existing. I would  
1383 suggest Mr. Chairman and the Panel that the general goal of regulation is to provide and  
1384 opportunity for and efficiently manage utility to recover its full cost, including a fair  
1385 return, a fair return on its capital. During the evidence we heard, that in as far as cost is  
1386 concern most of the fixed cost which was a substantial portion, was actually flowed  
1387 through in terms of the shifting of the customer charge and the fuel charge that was  
1388 basically recovered by way of the customers. So we are talking about the fuel, cost,  
1389 interest and other things that the company will be a little concern. But if you talk about  
1390 the fair rate of return, a fair in my understanding is that percentage figure, when applied  
1391 to the rate base will yield in dollars the net operating income which the utility should  
1392 have the opportunity to earn. With my exception you would agree the resulting dollar  
1393 figure should be equal to the utility cost of capital, in other words the net operating  
1394 income should equal the utilities cost of capital. If the tribunal in its deliberations could  
1395 look at that point to arrive at a figure to see whether indeed this application is justified  
1396 and that is done by simply multiplying the rate of return by the rate base. If we use the  
1397 actual rate of return and have done some rough calculations, if we take the debt equity  
1398 ratio at the moment as it is of 22/78 and you calculated using the 35/ 65 ratio , there will  
1399 be a difference at least of about \$6 -7M which would be soaked up by the consumers of  
1400 the Applicant . And I would urge Mr. Chairman that the tribunal looks carefully at this  
1401 weighted average cost of capital as suggested by Dr. Clarke. In a rough calculation, I am  
1402 going to provide a calculation using a fair rate of return on capital to show that even if, it  
1403 remains the same the company under present rate base will still earn about \$16M, as

1404 oppose to \$22M if you use the 35/65 ratio. So the \$6M additional dollars are necessarily  
1405 inflicted to consumers using their projections. They have already indicated both by  
1406 Counsel and all the witnesses that the Applicant is doing much better than all the other  
1407 Caribbean jurisdictions with their sub-optimal capital structure. But they are not asking  
1408 their equity shareholders to contribute any further, but they want it increase the debt  
1409 component at the cost of to the taxpayers, when the long term beneficiary would be for  
1410 the equity shareholders. Mr. Chairman in my opening submission I suggested that the  
1411 tribunal was a creature of society, your trustee are made up of the society and your job is  
1412 to protect the consumers, not withstanding my friends presence here as a threat to  
1413 consumers and I am urging you to reject the weighted average cost of capital 10.48% and  
1414 reduce it more in line with the capital requirements of the company. I would submit my  
1415 written proposal in a jump to this short presentation. There was a Trinidadian Prime  
1416 Minister who once said “not one cent for them”, but it may be the case when you have  
1417 chance to review the submissions. Thank you Sir.

1418

1419 **SIR NEVILLE NICHOLLS:** Thank you Mr. Niles, This concludes the  
1420 submissions by those Intervenors who exercised the option to make the presentation at  
1421 this time, I will like to take this opportunity now that we have concluded with this part of  
1422 the proceedings.

1423

1424 **MR. MALCOLM GIBBS-TAITT:** Mr. Chairman, forgive me for interrupting  
1425 you. Before you conclude there is just one thing I wasn't too sure you had made clear  
1426 earlier. You have allowed the written part of the addresses, I note someone had requested  
1427 that something be put on the website of the FTC, I wasn't sure what it was. I am  
1428 therefore asking if you would allow both the oral and written submission of each  
1429 Intervenor to be so listed on the FTC's website and also to let the Applicant have copies.  
1430 I am also asking that each Intervenor be circulated as well. Thank you.

1431

1432 **SIR NEVILLE NICHOLLS:** Each Intervenor will be circulated with what?

1433

1434 **MR. MALCOLM GIBBS-TAITT:** With the written part of the addresses.

1435 **SIR NEVILLE NICHOLLS:** Okay, that is understood. I am not too sure about the  
1436 technicality that would be involve in making the oral presentations putting them on the  
1437 website.

1438

1439 **MR. MALCOLM GIBBS-TAITT:** The same thing as the transcript Sir.

1440

1441 **SIR NEVILLE NICHOLLS:** I will have to seek advice on that. I understand that  
1442 the transcripts are being put on the website and today's would be put on the website, so  
1443 you will be well publicised.

1444

1445 **MR. MALCOLM GIBBS-TAITT:** Very good of you Sir.

1446

1447 **MR. CLYDE MASCOLL:** I was asking myself since I was in the other place,  
1448 whether the transcript is suppose to reflect "am, ah, everything" because I have noted  
1449 from trying to edit that it is not the gist of what you are saying that is being caught, and it  
1450 is to some extent for me, demanding to recall, plus you are never too sure if you are  
1451 pronouncing a word in the English oxford the way it might be captured by the  
1452 Stenographer. What is the position of the hearing? Do you do every "am and ah".

1453

1454 **SIR NEVILLE NICHOLLS:** I believe the staff looked at the transcripts  
1455 and tried to edit some of these things, that are obvious, but they are verbatim, but  
1456 sometimes I believe they are obvious errors. I have noticed some "ams and ahs" myself.

1457

1458 **MR. CLYDE MASCOLL** What I am asking is that if it doesn't change the  
1459 context, it should be fairly reasonable to accept some edits.

1460

1461 **SIR NEVILLE NICHOLLS:** It is who will be responsible for doing it. Let  
1462 me remind Intervenors that I pointed out at the beginning that those who wish to claim  
1463 cost, should do so in accordance with the Fair Trading Commission cost assessment  
1464 guidelines 2007, and if they wish to make an application for cost to do so within seven  
1465 days following the conclusion of the hearing. I would like to take the opportunity to

1466 thank all participants for their participation in this hearing. Let me say for those  
1467 Intervenors who exercised or took advantage of the options to closing oral statements that  
1468 it did not appear that any of them suffered from having to do so at this stage. I would like  
1469 to thank them for their contribution, which I'm sure will not only be of interest to the  
1470 Commission, but will make a significant and useful contribution to the Commission in its  
1471 deliberation of this matter. I would like to thank the Applicant and its representatives and  
1472 its Counsel also for their assistance to the Commission during this hearing. At times it  
1473 may have been a tiring exercise, we have survived, but in the end I suspect it was all in  
1474 the interest of helping the Commission to arrive at a fair and just rate in this matter. Let  
1475 me thank all of you for your assistance. This hearing is adjourned. When we do reach the  
1476 stage of arriving at our decision, we will announce when we will reconvene the hearing to  
1477 give our decision.

1478

1479 **MR. ERROL NILES:** Mr. Chairman I would take it that when you give your  
1480 decision that is the end of the hearing, isn't it?

1481

1482 **SIR NEVILLE NICHOLLS:** I'll leave the interpretation to you.

1483

1484

1485 **HEARINGADJOURNED AT 1:55 P.M.**

1486