

**BARBADOS**

**NO.: FTC-02/09 BL&P – RADJ**

**FAIR TRADING COMMISSION**

**IN THE MATTER** of the Utilities Regulation Act, CAP. 282;

**AND IN THE MATTER** of the Utilities Regulation (Procedural) Rules, 2003;

**AND IN THE MATTER** of the Application by the Barbados Light & Power Company Limited (the Applicant) to the Fair Trading Commission for a Review of Electricity Rates pursuant to Section 16 of the Utilities Regulation Act, CAP. 282;

**AND IN THE MATTER** of The Fair

Trading Commission Act, CAP. 326B

**AND IN THE MATTER** of The Administrative Justice Act, CAP. 109B.

**AND IN THE MATTER** of The Evidence Act, CAP. 121

**AND FURTHER IN THE MATTER** of an Application for a Review by the Barbados Consumers Research Organisation, Inc., (BarCRO) of the **DECISION AND ORDER** of the Fair Trading Commission dated 25 January, 2010.

**Barbados Consumers Research Organisation, Inc.**

**APPLICANT**

**AND**

**The Barbados Light & Power Co. Limited**

**RESPONDENT**

**Office of Public Counsel**

**INTERVENORS**

**Barbados Association of Retired Persons (BARP)**

**Barbados Small Business Association (BSBA)**

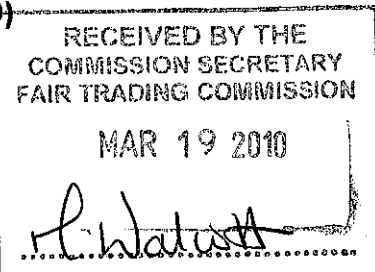
**CANBAR Technical Services Ltd.**

**Barbados Association of Non-Governmental Organisations (BANGO)**

**Mr. Douglas B. Trotman, Attorney-at-Law**

**Dr. Roland Clarke**

**Mr. Errol E. Niles, Attorney-at-Law**



**NOTICE OF MOTION FOR A REVIEW OF DECISION AND ORDER**

**TAKE NOTICE** that the Fair Trading Commission will be moved at some time, as Mr. H. Malcolm A. Gibbs-Taitt, representative, can be heard on behalf of the Barbados Consumers Research Organisation, Inc. (BarCRO), Intervenor, hereinafter referred to as ("the Applicant") HEREBY, in accordance with Section 36 of the Fair Trading Commission Act, CAP. 326B and Rule 53 of the Utilities Regulation (Procedural) Rules, 2003, apply for an order to review the DECISION AND ORDER dated 25 day of January, 2010, being dissatisfied with the said DECISION AND ORDER on the grounds more particularly stated in this Notice of Motion.

**2. FURTHER, TAKE NOTICE** that certain decisions may be varied to take recognition of the circumstances of the consumers of this country who are negatively impacted by a severe recession affecting the world and including Barbados' consumers, who are the eventual payers of the obligations laid out in the said DECISION AND ORDER. These consumers are required to pay higher rates for electricity, which is disadvantageous to some of them. The Respondent was prepared to accept a lower rate of return as the said DECISION AND ORDER is proof of this fact.

**3. AND FURTHER, TAKE NOTICE** that the said DECISION AND ORDER notes at Section 6 the Commission's authority to set rates in accordance with Section 4(3) of the FTCA and Section 3(1) of the URA; this obligation does not stop there. The Commission goes on to acknowledge at Sections 13 and 14 that there is a need to balance the interests of the consumers and the interests of the utility company as set out at Sections 3(2) and 3(3) of the URA.

#### **GROUND'S FOR REVIEW**

**4.** The Commission made an **ERROR OF FACT AND LAW** in not taking the circumstances of consumers into account, especially as this relates to the change in circumstances, given the economic conditions that prevail worldwide and, therefore, does not yet exclude the consumers of Barbados, at this time. The timing of the rate increase while it may be reasonable for the supplier is unreasonable for consumers. There needs to be balance as the law directs.

**5.** The Commission acknowledged at Section 19 of its DECISION AND ORDER that Public Counsel assisted two (2) Intervenor, yet made an **ERROR OF FACT AND LAW** when at Section 20, it failed to acknowledge that Public Counsel was/is an Intervenor, since he is a creature of Law. The Utilities Regulation Act states at Sections 9 (1) "A Public Counsel shall

- (a) advise consumers on matters relating to this Act; and
- (b) assist consumers in preparing for reviews and hearings, and presenting arguments before the Commission in relation to
  - (i) the setting of rates;

- (ii) the determination of principles;
- (iii) the setting of standards of service; and
- (iv) complaints regarding billing and the standards of service supplied by service providers.”

6. The Commission made an **ERROR OF FACT AND LAW** when, at an Issues Conference in Procedural Order No. 2, it directed itself and ordered to remove “Standards of service” from the Regulatory Rate Hearing. According to URA, at Section 10,

- “(1) Every rate made by the Commission shall be
- (ii) the standards of service being offered by the service provider and by competing service providers;

Section 17. (1) An application by a service provider to the Commission for a change in respect of the

- (a) rates for the supply of a utility service;
- (b) principles for determining rates for a supply of a utility service and
- (c) standards of service

shall contain a statement setting out the

- (i) existing rates, principles or standards of service;
- (ii) proposed new rates, principles or standards of service;
- (iii) justification for the review of the rates, principles or standards of service; and
- (iv) date from which the service provider proposes that the new rates, principles or standards of service as the case may be, should take effect.”

7. Further, the Commission made an **ERROR OF FACT AND LAW** when it ignored its own rules. Rule 63 (1) clearly states: **“Where a service provider makes an application for a rate review, proposed service standards must be presented as part of that request.”** (Our emphasis) Rules 63 (2) (a) to (e) (4) and (5) also speak to this matter.

8. The Commission made an **ERROR OF FACT** since in agreeing to shift the 2.64 cents per kWh of fuel cost from the base energy rate to the Fuel Clause Adjustment (FCA), it made no proper arrangement to make sure that consumers do

not face an unfair burden and that proper adjustments are ordered so as to ensure efficiencies, transparency and accountability. This represents a change of circumstances when compared to what was in place hitherto.

9. The Commission made an **ERROR OF FACT** since, after the Rate Hearing, the DECISION AND ORDER has failed to make sure that consumers will see an effective measure put in place to justify that meter readings, whether actual or interim, will reflect a true position. It is a serious concern that people leaving their homes and going abroad still see an incremental increase in their billing as if someone resided in the empty premises. Also, there is no solution to people getting high bills during the month of December even if their usage patterns remain similar to other months.

10. The Commission made an **ERROR OF FACT** by not correcting the way Interim billing is conducted. It is a concern that all billings should reflect a true position. There is no encouragement of the Respondent to accept customers own reading, pending the actual reading by its employees at some other time. It is not good enough for the Respondent to overcharge consumers, as a guise of Interim reading and, for the Respondent to receive large sums of moneys without the said consumers getting any interest payments for the said overcharged moneys. Any advances the Respondent require, to boost its cash flows, should be arranged through the commercial banks and not its customers.

11. The Commission made an **ERROR OF FACT** since it accepted the time meters are kept on customers' properties before any change or testing is exacted. The supplier never brought any data to substantiate its claims. Given that the Applicant agrees that a meter costs an average of \$47, it follows that there is a lower and an upper cost. Since we are unable to find consumers who have had checks or changes to their meters, unless followed by complaints. We maintain that where a meter remains on a house for forty (40) years, financial returns of **\$1, 440 for the Domestic Service and \$2, 400 for the General Service Customers** are excessive profiteering at the expense of consumers.

12. According to the Law, transcripts will be made available within 2 business days of the presentation of the evidence, according to Rule 46 (1). Since, at no time did this comply, the Commission made an **ERROR OF FACT AND LAW**. The Commission erred in Law when it cited Rule 44 as an incorrect interpretation of the Law and thus deprived the Applicant of the opportunity to properly make oral submissions, notwithstanding being allowed to put written submissions at a later time.

13. The Commission made an **ERROR OF FACT** in arriving at its DECISION AND ORDER since these are against the weight of evidence presented to the Hearing.

14. The Commission made an **ERROR IN LAW** when it decided that the transcripts were not necessary, as legally required, for Intervenors to properly make their final arguments.

15. The Commission made an **ERROR OF FACT AND LAW** when during the Issues Conference of Procedural Order No.2 it failed to give the Barbados Consumers Research Organisation, Inc., (BarCRO), Intervenor, leave to bring witness Mr. Lindsay Holder, a qualified economist, to examine the application of the Applicant, by stating that the witness could be brought providing that he be "**public spirited**". **The Commission then further ruled that Public Counsel will have the means to bring expert witnesses to the Hearing. This never happened.** This showed a prejudicial stance and did not give equality to the justice system. Further, noting that when everything is said and done, the consumers are the eventual payers of everything, this was an injustice done to the consumers.

16. It has been brought to our attention that three (3) Generators were bought by the BL&P and only one (1) was put into use, since two (2) could not fit at the Spring Garden facility. Since these factors were never brought to the Hearing it represents **A CHANGE IN CIRCUMSTANCES**. There is further concern that the cost of the 2 Generators (\$23 m and \$30 m) not in use is in the region of \$53 million and since the burden of proof rests with the supplier or Applicant, the matter needs to be fully addressed and ventilated.

17. The Commission made an **ERROR OF FACT** when allowing for different costing for Meter reading and few related matters, which is suggested as Cost of Service with little or no regard to Value of Service.

18. The BL&P, as supplier and Applicant brought its Application twenty-six (26) years, after being awarded a Rate increase at a Review conducted by the Public Utility Board (PUB) in 1983. The Commission made an **ERROR OF FACT** by not penalising the supplier for being tardy enough to bring an Application at such an inopportune time, given the economic conditions.

19. The Commission has not been helpful in spelling out all the facts, therefore, it made an **ERROR OF FACT** by not stating that an increase in the Rate Base from 6.07 to 10.00 is equivalent to an increase of the Rate Base of 60.7 per cent.

20. Mr. Steven Worme, as a spokesman for the Applicant, stated on VOB's Radio Programme "Tell it like it is" hosted by Ms. Vere Brathwaite that the increase in the rates is only 5 per cent. This has to be an **ERROR OF FACT AND LAW** since the Applicant had not reported in accordance with the DECISION AND ORDER of the Commission and this can be viewed as subjudice. This needs clarification since we have seen numbers published by BL&P suggesting increases vary from over \$3 to over \$57 a month. It is not possible for these to be the same percentage rate.

21. It is worrying that the Commission would have been assisted, in reaching its decision by independent consultants. It is an **ERROR OF FACT** that at no time during the Hearing those Intervenors never had an opportunity to question any of the Consultants in an effort to contrast their position with those of the Consultants or Experts for the Applicant.

**DATED THIS 18 DAY OF MARCH, 2010.**

**SIGNED:**.....



**H. MALCOLM A. GIBBS-TAITT**

**DIRECTOR-GENERAL/REPRESENTATIVE, BARBADOS CONSUMERS  
RESEARCH ORGANISATION, INC. (BarCRO).**

Representative for the Barbados Consumers Research Organisation, Inc. (BarCRO),  
whose addresses for service are as follows:

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