

S.I. 2003 No. 104

**Utilities Regulation Act
(Act 2000-30)**

**UTILITIES REGULATION (PROCEDURAL)
RULES, 2003**

The Commission in exercise of the powers conferred on that body by section 39 of the *Utilities Regulation Act*, and after consultation with the service providers and the Minister makes the following Rules:

PART I

Preliminary

1. These Rules may be cited as the *Utilities Regulation (Procedural) Rules, 2003*. Citation.

2. In these Rules,

"affidavit" means written evidence under oath or affirmation, sworn or affirmed before a Justice of the Peace or other person authorised to administer oaths;

Interpreta-
tion.

"applicant" means a person who makes an application or files a complaint and is named by the Commission to be the applicant when used in connection with proceedings commenced on the Commission's own initiative, and includes a service provider;

"application" includes a complaint;

"business day" means any day that the Commission's offices are open for business;

"Commission" means the Fair Trading Commission, established under the *Fair Trading Commission Act, 2000*;

Act 2000-
31.

"file" means to submit to the Commission's Secretary any document to form part of the Commission's official records in any proceeding;

"hearing" means a hearing in any proceeding before the Commission and includes an oral hearing and a written hearing;

"holiday" means a Saturday, Sunday, or any public holiday;

"interrogatory" means a request in writing for information or particulars made to a party in a proceeding;

"intervenor" means a person who has been granted intervenor status by the Commission;

"motion" means a request for an order or decision of the Commission made in a proceeding;

"party" means the applicant, intervenor and any person participating in a matter who is added or substituted by the Commission as a party;

"proceeding" includes a matter brought before the Commission;

"Secretary" means the Secretary of the Commission;

"written evidence" means information and material intended to be presented by a party as evidence and shall be:

- (a) in written form with consecutively numbered paragraphs;
- (b) in written question and answer form with questions numbered; or
- (c) in a form approved by the Commission;

"written hearing" means a hearing held by means of exchange of documents.

PART II

General

Application
of proce-
dural rules.
Act 2000-
30.
Act 2000-
31.

3. These procedural rules apply to all proceedings of the Commission under the *Utilities Regulation Act, 2000* and under the *Fair Trading Commission Act, 2000*.

4. (1) The Commission may issue procedural directions, which shall govern the conduct of proceedings before the Commission and shall prevail over any provision of these Rules that is inconsistent with those directions. Procedural directions.

(2) The Commission may prescribe time limits for doing anything provided for in these Rules.

(3) The Commission may dispense with, vary or supplement, all or part of any procedure by making a procedural order.

5. (1) Where a party to a proceeding has not complied with any requirement of these Rules or any direction or procedural order issued under rule 4, the Commission may stay the proceedings until it is satisfied that such requirement has been complied with or make such other order or take such other steps as it considers just and reasonable. Failure to comply.

(2) Where a party fails to comply with a time period for filing evidence or other material, the Commission may, in addition to its powers set out in paragraph (1) disregard the evidence or other material, which is filed late.

(3) Unless the Commission orders otherwise, no proceeding is invalid by reason only of a defect or other irregularity in form.

6. In the computation of time under these Rules or an order made by the Commission: Computation of time.

(a) where there is reference to a number of business days between two events, they shall be counted by excluding the business day on which the first event happens and including the business day on which the second event happens; and

(b) where the time for doing an act under these Rules expires on a holiday, the act may be done on the next business day.

7. (1) The Commission may on its own initiative or upon motion by a party extend or abridge a time limit directed by these Rules or by the Commission, on such conditions as the Commission considers just and reasonable. Extending or abridging time.

(2) Where a party cannot meet a time limit directed by these Rules or by the Commission, the party shall promptly notify the Secretary and apply for an extension under this Rule.

(3) The Commission may exercise its discretion under this Rule before or after the expiration of a time limit, with or without a hearing.

(4) The Secretary shall notify all parties in writing of any extension of time granted under this Rule.

Notice of motion.

8. (1) Any matter which arises during a proceeding and which requires a decision or order of the Commission shall be brought before the Commission by Notice of Motion.

(2) A Notice of Motion shall be in writing and shall:

(a) contain the decision or order sought, the grounds upon which the motion is made, and an indication of any oral or other evidence sought to be presented;

(b) be accompanied by a supporting affidavit setting out a clear and concise statement of the facts;

(c) be accompanied by any documents that may support the motion; and

(d) indicate that a date for the hearing of the motion will be fixed by the Commission.

(3) The party bringing the motion shall file a Notice of Motion and serve it on all parties to the proceeding within 2 business days of the date of filing.

(4) Where the Commission decides that the motion will be heard, the Commission shall issue a Notice of Hearing of Motion to all parties to the proceedings at least 2 days before the motion is scheduled to be heard.

(5) A person who wishes to respond to the Notice of Motion, or to reply to a response, may file and serve

(a) a written response or reply;

(b) an indication of any oral evidence sought to be presented; and

(c) a document which may support the response or reply,
at least 5 business days before the motion is scheduled to be heard.

(6) In hearing a motion the Commission may permit oral or other evidence in addition to the supporting documents accompanying the notice, response or reply.

(7) The Commission may permit an oral motion to be made at an oral hearing and it shall be disposed of in accordance with such procedures as the Commission may order.

DOCUMENTS, FILING, SERVICE

9. The Commission may issue orders, letters of direction, notices, and other documents under the signature of the Secretary. Commission documents.

10. Unless otherwise directed by the Commission, every written document filed by a party in a proceeding shall be: Form of documents.

- (a) prepared on white durable quality A4 size paper reduced to that size, or folded to that size if reduction would be illegible, with each page numbered;
- (b) printed, typed or written clearly and legibly on both sides of each page, with a margin, not less than 1½ inches wide, to be left blank on the left side of the face of the paper; and
- (c) marked with the assigned Commission file number or other pertinent subject matter identification.

11. (1) Documents shall be filed with the Secretary. Filing of Documents.

(2) A document may be filed by:

- (a) hand delivery;
- (b) courier service;
- (c) ordinary or registered mail;
- (d) facsimile; or

(e) any other means directed by the Commission.

(3) Documents filed shall be date stamped when received at the Commission's office, and any document received by the Commission after 4.00 p.m. or on a holiday shall be considered filed on the next business day.

(4) A party may request written confirmation from the Secretary that where a document is filed by facsimile that the facsimile was properly received.

(5) Where a filing is made by the facsimile, the party shall file the original and all copies by 10.00 a.m. on the next business day, or as directed by the Commission.

(6) Subject to rule 22, where an oral hearing is in progress, any document may be filed at the hearing.

Public
record.

12. Subject to rule 13, documents filed in respect of a proceeding shall be placed on the public record.

Confiden-
tial
documents.

13. (1) A party may, upon the filing of a document, request that all or any part of the document be held in confidence by the Commission.

(2) A request for confidentiality shall:

(a) include a summary of the nature of the information in the document;

(b) address:

(i) the reasons for the request, including the details of the nature and extent of the specific harm that would result if the document were publicly disclosed, namely either party's information which, if made public would likely create a competitive disadvantage for the party;

(ii) measures that have been taken by the party, by the party and the party's customer or by the party's customer, to prevent dissemination of the information in the ordinary course of business;

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- (iii) any objection to placing an abridged version of the document on the public record and the reasons for such an objection;
 - (c) be filed with the Commission and served on the parties.
 - (3) A request under paragraph (1) shall be placed on the public record.
 - (4) Where a party has made a request under this Rule, the document, if filed with the Commission, shall be held in confidence unless the Commission decides, with a hearing, that the document should be placed on the public record.
 - (5) Where the Commission holds a hearing under paragraph (1), the Commission may direct that the hearing be held in the absence of the public in accordance with rule 39.
 - (6) A person may object to a request for confidentiality by filing an objection and serving the objection on the parties at least 2 business days prior to the hearing.
 - (7) An objection shall address the reasons:
 - (a) why the party requires public disclosure of the document; and
 - (b) why public disclosure would be in the public interest.
 - (8) After giving the party claiming confidentiality an opportunity to reply to an objection, if any, the Commission may:
 - (a) order that the document
 - (i) be placed on the public record;
 - (ii) be held in confidence by the Commission; or
 - (iii) need not be disclosed to the Commission;
 - (b) order that an abridged version of the document be placed on the public record; or
 - (c) make any other order the Commission may deem to be in the public interest.

(9) In considering a request under this Rule, the Commission shall apply the criteria set out in paragraph (1) of rule 39 and the burden of satisfying the Commission that a document should be held in confidence is on the person claiming confidentiality.

(10) Information that has been determined by the Commission to be confidential shall be treated as follows:

- (a) an original and 7 copies of the information shall be provided for use by the Commission and staff; and
- (b) the copies referred to in paragraph (1) shall be stamped confidential and held within the Commission offices in secure locations.

(11) Where the staff or any party desires to place some or all of the information which has been determined to be confidential into the record during a Commission proceeding, whether by exhibit, pleadings, testimony, direct or cross-examination, oral argument, or brief, then such party or staff shall notify all parties and the Commission in advance that such confidential information is proposed to be introduced and request that it be placed by the Commission in a sealed record.

(12) Where any of the information which has been determined to be confidential in accordance with paragraph (11) is thereafter released or made public by unauthorised disclosure by anyone other than the party who sought its protection, the protection shall remain in full force and effect, binding all parties and the Commission.

Amend-
ments.

14. (1) The Commission may, upon such terms as it may determine, allow, or order an amendment to any document that in the opinion of the Commission, may tend to prejudice, embarrass any person, or delay the fair hearing of the case upon its merits or where, in the opinion of the Commission, such an amendment is necessary for the purpose of hearing and determining the real question in issue in the proceeding.

(2) A party may, with leave of the Commission, amend any document where significant new information becomes available before the decision or order is issued, and where the information is necessary for the purpose of hearing and determining the real questions in issue in the proceeding the Commission will determine if a hearing is necessary.

(3) A party introducing a totally new matter by amendment shall attach a sworn affidavit explaining why the matter was not submitted with the original document, and should identify the amendment by having it typed in italics.

(4) Where all or any part of a document is amended, the party shall clearly indicate on each amended page

(a) the date of amendment; and

(b) the part of the page amended.

(5) The amended document shall be served on all parties to the proceedings.

15. (1) An affidavit shall be confined to the statement of facts within the personal knowledge of the person making the affidavit unless the facts are clearly stated to be based on the information and belief of the person making the affidavit. Affidavits.

(2) Where a statement is made on information and belief, the source of the information and the grounds on which the belief is based shall be set out in the affidavit.

(3) An exhibit that is referred to in an affidavit shall be marked as such by the person taking the affidavit, and the exhibit shall be attached to and filed with the affidavit.

WITNESSES AND EVIDENCE

16. (1) The Commission may direct the form in which evidence shall be filed. Witnesses
and
evidence.

(2) The Commission may order that:

(a) any particular facts be proved by affidavit;

- (b) the affidavit of a witness be read at an oral hearing; and
- (c) a witness be examined before a Commissioner or other person authorised to administer oaths.

(3) Subject to paragraphs (1) and (2) witnesses at an oral hearing shall be examined orally under oath or affirmation, or as directed by the Commission.

(4) Any party who wishes to present evidence at an oral hearing shall prior to the appearance of its witness, file and serve its written evidence as directed by the Commission.

(5) The witness of a party presenting evidence at an oral hearing must confirm under oath or affirmation that the written evidence was prepared by the witness or under the direction or control of the witness and is accurate to the best of his or her knowledge or belief.

(6) Written evidence supplementing the written evidence referred to in paragraph (4) may be filed after the date directed with the permission of the Commission, and shall be served as directed by the Commission.

(7) The written evidence of the applicant shall be deemed to include

- (a) the application or other document initiating the proceeding;
- (b) the information filed under rule 20;
- (c) written evidence filed and served under paragraph (4); and
- (d) any other information provided by the applicant in an interrogatory response.

(8) The written evidence of an intervenor shall be deemed to include

- (a) the letter of intervention, if any;
- (b) information filed under rule 20;
- (c) written evidence filed and served under paragraph (4); and
- (d) any information provided by the party in an interrogatory response.

17. (1) At a hearing the Commission may admit any evidence including hearsay, relevant to the subject matter of the proceeding. Hearsay evidence.

(2) The rules of evidence will not be applied strictly but the Commission will be cautious in assessing evidence which is hearsay and evidence contained in documents which have not been attested to or in which there has been no opportunity for full cross-examination.

(3) Where the Commission deems evidence irrelevant or otherwise improper that evidence will not be considered.

18. The Commission may receive and act on any facts agreed on by the parties without proof or evidence. Agreed facts.

19. (1) The Commission shall hear expert evidence. Expert evidence.

(2) Where a person is called upon to give expert evidence each party will have an opportunity to cross-examine a proposed expert and make submissions before the Commission makes a determination on the experts qualifications.

(3) Where a person is not found to be qualified to give expert evidence on a particular subject matter, the Commission may still receive the witness's evidence.

(4) The Commission will determine what weight should be given to each witness's testimony; and the qualifications and experience of the witness will be a factor in determining the weight to be given to that witness's testimony.

(5) Every party who intends to introduce the evidence of an expert witness at the hearing shall, at least 30 business days before the commencement of the hearing, serve an affidavit of the expert witness on each other party and any intervenors.

(6) The affidavit referred to in paragraph (5) shall be filed with the Commission at least 15 business days before the commencement of the hearing.

(7) A party on whom an affidavit under rule 15 has been served and who wishes to rebut a matter set out in the affidavit with expert evidence

shall, at least 15 days before the commencement of the hearing, serve the affidavit of an expert witness on each other party and any intervenors.

(8) The affidavit shall include a full statement of the evidence of the deponent and the qualifications of the deponent as an expert.

Additional
Information.

20. The Commission may direct a party to provide such further information, particulars or documents as the Commission considers necessary to enable the Commission to obtain a full and satisfactory understanding of any issue in the proceeding.

Witness
panel.

21. (1) The Commission may receive evidence from a panel of witnesses composed of two or more persons, where the parties have first had an opportunity to make submissions in that regard.

(2) Questions that are addressed to a witness panel may be directed at specific members or at the panel in general.

(3) Persons on a witness panel may not confer amongst themselves.

(4) Where a question is directed to a specific member of a panel and that panel member asserts an inability to answer due to lack of knowledge or qualifications, the Commission may permit another member of the panel to respond or add to the response.

Production
of docu-
ments.

22. (1) Any party who intends to rely on a document that has not been filed shall file and serve the document on all parties at least 2 business days in advance of referring to it in the proceeding.

(2) Unless the Commission otherwise directs, a party who fails to comply with this Rule shall not put the document in evidence or use it in the cross-examination of a witness.

(3) Where in a document a party refers to another document upon which the party intends to rely, any other party may file and serve a notice upon the party to produce the document for inspection and copying.

(4) Where the party fails to produce the document within 2 business days after receiving the notice, a party may file a Notice of Motion to have an appropriate order made by the Commission.

23. The Commission may require the whole or any part of a document filed to be verified by affidavit. Verification
by affidavit.

24. (1) "Service" means the delivery of documents relating to any proceeding to a person or to the representative of that person. Service.

(2) Service may be made by:

(a) hand delivery;

(b) courier service;

(c) ordinary or registered mail;

(d) facsimile delivery; or

(e) any other means directed by the Commission.

(3) The Commission may direct service of any document by public advertisement.

(4) Where an oral hearing is in progress, service may also be made by:

(a) providing the document to the parties present at the hearing;

(b) serving the document on any other party who is not present and requests a copy of the document; or

(c) any other means directed by the Commission.

(5) Where service is made by facsimile, the document shall include a cover page indicating:

(a) the name, address, and the telephone, and facsimile numbers of the sender;

(b) the name of the person to be served;

(c) the date and time the document is transmitted;

(d) the total number of pages transmitted including the cover page;

(e) the telephone and facsimile access numbers from which the document is transmitted; and

(f) the name and telephone number of a person to contact if a problem arises with the transmission.

(6) A party may request confirmation of service from a party that is served by facsimile.

(7) Service will be effective:

(a) where the document is delivered by hand, courier or by facsimile, on the same day that the delivery is made, subject to paragraph (9);

(b) where the document is delivered by registered mail, on the 5th business day after the date of mailing;

(c) where service is made by public advertisement, on the last business day of publication where there is more than one business day of publication; or

(d) where service is made by any other means, within the time directed by the Commission.

(8) Where the Commission so directs, a party who has served a document shall file an affidavit of service that indicates how, when, and to whom service was made.

(9) Any documents served after 4:00 p.m. or on a holiday shall be considered served on the next business day.

Commence-
ment of
proceed-
ings.

25. (1) A proceeding before the Commission shall be commenced by the filing of an application.

(2) A proceeding initiated by the Commission may be commenced by notice, or as directed by the Commission.

Applica-
tions.

26. (1) Every application shall contain

(a) a clear and concise statement of the facts;

(b) the grounds for the application;

(c) the statutory provision under which the application is made; and

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- (d) the nature of the order or decision applied for.
 - (2) Every application shall:
 - (a) be divided into consecutively numbered paragraphs each of which refers to a portion of the subject of the application;
 - (b) be signed by the applicant or the applicant's representative;
 - (c) provide the full name, address, and the telephone and facsimile access numbers of the applicant or the applicant's representative; and
 - (d) provide any other information that may be useful in explaining or supporting the application.
 - (3) Where the applicant is of the opinion that the application affects any other person, the application shall
 - (a) set out the name and address of that person; and
 - (b) contain a brief and explicit statement explaining why the application affects that person.
 - (4) Despite paragraph (3), where it is impractical to set out the names and addresses of all persons affected by the application because they are too numerous or for any other reason, the application shall include
 - (a) a general description of the persons affected; and
 - (b) the reasons why it is impractical to set out the names and addresses of those persons.
 - (5) Unless otherwise directed by the Commission the applicant shall file 3 copies of an application, together with the application fee, if any.
 - (6) Upon the filing of an application the Secretary shall notify the applicant in writing that the application has been accepted for filing and provide the applicant with an assigned reference number.
 - (7) Where the application is incomplete, or does not comply with this Rule or any procedural order issued by the Commission, and the applicant fails to provide the information required to enable the application to be filed, the Commission may reject the application.

Dismissal of
application.

27. Where the applicant in breach of these Rules or any order of the Commission, has not taken any steps with respect to an application for more than one year from the date of filing, the Commission may declare the application dismissed unless the applicant, within the time specified by the Commission, shows cause why the application should not be dismissed.

Withdrawal
of applica-
tions.

28. (1) An applicant may withdraw an application

(a) before any step is taken by the Commission or a party, by filing at any time a notice of withdrawal of the application signed by the applicant or the applicant's representative, and serving the notice on the other parties; or

(b) at the hearing of the application with the permission of the Commission.

(2) A party may by motion seek leave of the Commission to discontinue participation in a proceeding at any time before the Commission gives its final decision.

(3) The Commission may impose conditions on any withdrawal or discontinuance, including costs, as it considers appropriate.

Notice.

29. (1) Upon the filing of an application, the Commission may

(a) give directions as to the form and service of the notice of application;

(b) give directions as to the form and service of the notice of hearing; and

(c) direct service of a combined notice of application and hearing.

(2) Where a proceeding is initiated by the Commission, the Commission may give directions to the person named by the Commission to be the applicant respecting the form and service of notices.

(3) Where a party has been directed to serve a notice under this Rule, the party shall file an affidavit that indicates how, when and to whom service was made.

30. The Commission may adjourn a hearing from time to time either on its own initiative or upon motion by a party, and on such conditions as the Commission considers appropriate.

Adjourn-
ments.

PREHEARING PROCEDURES AND CONFERENCES

31. (1) The Commission may provide for interrogatories to

Interroga-
tories.

- (a) clarify evidence filed by a party;
- (b) simplify the issues of the matter before the Commission;
- (c) permit a full and satisfactory understanding of the matters to be considered.

(2) A party may with leave of the Commission serve interrogatories which shall

- (a) be directed to the party from whom the response is sought;
- (b) be numbered consecutively, or as otherwise directed by the Commission, in respect of each item of information requested and should contain a specific reference to the evidence;
- (c) be grouped together according to the issues to which they relate;
- (d) contain specific requests for clarification of a party's evidence, documents or other information that are in the possession of the party and are relevant to the proceeding;
- (e) be filed and served as directed by the Commission; and
- (f) set out the date on which they are filed and served.

32. (1) Subject to paragraph (2) where interrogatories have been directed and served on a party that party shall

Responses
to inter-
rogatories.

- (a) group the answers together according to the issue to which they relate;
- (b) repeat the question at the beginning of its response;
- (c) provide a full and adequate response to each interrogatory on a separate page or pages;

- (d) number each response to correspond with each item of information requested or with the relevant exhibit or evidence;
 - (e) specify the intended witness, witnesses or witness panel that prepared the response;
 - (f) file and serve the response as directed by the Commission; and
 - (g) set out the date on which the response is filed and served.
- (2) A party who is unable or unwilling to provide a full and adequate response to an interrogatory shall file and serve a response
- (a) where the party contends that the interrogatory is not relevant, setting out specific reasons in support of that contention;
 - (b) where the party contends that the information necessary to provide an answer is not available or cannot be provided with reasonable effort, and the response shall set out the reasons for the unavailability of such information, and provide any alternative available information that the party considers would be of assistance to the person directing the interrogatory;
 - (c) where the party contends that the information sought is of a confidential nature, and the response shall set out the reasons why it is considered confidential and any harm that would be caused; or
 - (d) explaining why such a response cannot be given.
- (3) Where a party is not satisfied with the response provided, the party may bring a motion requesting that the matter be settled by an order or decision of the Commission.

Technical
conferences.

33. (1) The Commission may direct the parties to participate in technical conferences for the purposes of reviewing and clarifying an application, an intervention, a reply, the evidence of a party, or matters connected with interrogatories.

(2) A technical conference shall be open to the public unless the Commission otherwise directs.

(3) Any agreement reached at a technical conference shall be transcribed and the transcript shall be filed and served on the parties and form part of the record of the proceedings.

34. (1) The Commission may identify issues that it will consider in a proceeding where, in the opinion of the Commission

Issues
conferences.

- (a) the identification of issues would assist the Commission in the conduct of the proceeding;
- (b) the documents filed do not sufficiently set out the matters to be deliberated at the hearing; or
- (c) the identification of issues would assist the parties to participate more effectively in the hearing, and

the Commission may serve copies of the list of issues on the parties.

(2) The Commission may direct the parties to participate in an issues conference for the purposes of identifying issues and formulating a proposed list of issues to be presented to the Commission.

(3) A proposed list of issues shall set out:

- (a) all of the issues that the parties have agreed should be contained on the list;
- (b) any contested issues; and
- (c) issues that the parties agree should not be considered by the Commission.

(4) The proposed list of issues list shall be filed before it is scheduled to be dealt with by the Commission.

(5) The Commission may hold a hearing for the purpose of fixing the list of issues.

(6) The Commission shall issue a procedural order setting out a list of issues to be determined in the proceeding.

(7) A party who seeks to amend the list of issues shall do so by way of motion.

(8) Unless otherwise directed by the Commission an issues conference shall be held in public.

Procedural
conferences.

35. (1) In addition to technical conferences and issues conferences, the Commission may direct the parties to make submissions in writing or to participate in procedural conferences for the purposes of

- (a) admitting certain facts or proof of them by affidavit;
- (b) permitting the use of documents by any party;
- (c) recommending the procedures to be adopted before the Commission;
- (d) setting the date and place for the commencement of the hearing;
or
- (e) deciding any other matter that may aid in the disposing of the proceeding in a just or expeditious manner.

(2) The Chairman may designate a member of the Commission to preside at a procedural conference.

(3) A member of the Commission who presides at a procedural conference may make such orders in accordance with these Rules, as he or she considers appropriate with respect to the conduct of the proceeding.

(4) A procedural conference shall be open to the public unless the Commission otherwise directs.

HEARINGS

Sittings.

36. Where an oral hearing has commenced, the Commission shall hold the hearing on a day-to-day basis unless prevented by some reasonable cause.

Written
hearings.

37. (1) The Commission may hold a written hearing.

(2) Where the Commission holds a written hearing, it may dispose of the proceeding on the basis of the written documentation filed by the parties.

(3) The Commission may determine at any time that the proceeding shall be disposed of by means of an oral hearing.

(4) Subject to rule 13, all parties are entitled to receive every document that the Commission receives in a written hearing.

38. (1) A party who requires the attendance of a person as a witness at an oral hearing may with leave of the Commission obtain a summons from the Secretary and the summons shall require the person to produce the documents and things set out in the summons. Summons.

(2) Unless the Commission otherwise directs, the summons shall be served personally at least 2 business days before the time fixed for the attendance of the person before the Commission unless the Commission otherwise directs, and the party shall at the same time pay attendance money as is paid for attendance before the High Court.

39. (1) The Commission may hold an oral hearing or part of an oral hearing in the absence of the public where the Commission is of the opinion that Hearing in the absence of the public.

- (a) the circumstances so warrant;
- (b) matters involving public security may be disclosed; or
- (c) trade secrets, financial, commercial, scientific, technical or personal matters may be disclosed at the hearing of such a nature and that the desirability of avoiding disclosure in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.

(2) Subject to paragraph (3), where in any proceeding the Commission directs an oral hearing or part of the hearing to be held in the absence of the public, the hearing may be attended only by

- (a) the persons testifying before the Commission;
- (b) Commission employees and advisers authorised by the Commission;

- (c) Counsel of the Commission;
- (d) representatives for the persons testifying and for each party to the proceeding, unless the Commission is of the opinion that there is good reason why a representative should not be permitted to attend the hearing;
- (e) a consultant, to assist a representative, at the discretion of the Commission and on such conditions as the Commission considers appropriate; and
- (f) such other persons as the Commission is of the opinion should be present, and on conditions the Commission considers appropriate.

(3) Every person except for Commission employees and advisors authorised by the Commission permitted to attend the segment of an oral hearing held in the absence of the public, shall file a Declaration and Undertaking.

(4) The Declaration and Undertaking referred to in paragraph (3) shall be in the Form set out in the *Schedule*.

(5) Evidence and transcripts with respect to the hearing filed under this Rule shall be marked "Confidential" and shall be kept separate from the public record, and access to the evidence and transcripts shall only be by order of the Commission.

(6) Where an expert witness is to testify at the hearing, confidential information may be made available to that witness at the discretion of the Commission and on such conditions as the Commission considers appropriate.

(7) Evidence and transcripts of the hearing under this Rule may be made available to the parties to the proceeding at the discretion of the Commission and on such conditions as the Commission considers appropriate.

(8) Where an argument before the Commission requires that evidence be heard in the absence of the public oral testimonies may be given in the absence of the public.

(9) The relevant portion of written testimony may be separately submitted to the Commission and shall be marked "Confidential", kept separate from the public record and access shall only be by order of the Commission.

(10) Subject to the Commission's direction, all parties attending a hearing under this Rule shall, at the end of the argument phase of the hearing, return the transcripts, notes, and any other confidential documents, in a sealed envelope to the Secretary who may keep them with the documents mentioned in paragraph (5) or destroy them.

40. (1) In hearings on applications and complaints the proceedings shall be opened and directed by the Chairman who shall be responsible for the proper conduct of the hearing. Procedure at the oral hearing.

(2) Where the Chairman is absent, the Deputy Chairman or another member chosen by the Commission shall take the chair, provided always that whenever the Chairman is present, the Chairman shall preside.

41. (1) Unless the Commission otherwise directs, at the beginning of every hearing each party shall give a brief opening statement that describes the issues that the party will address at the hearing. Opening statements.

- (2) The opening statement referred to in paragraph (1) shall include
- (i) a description of the nature of the application;
 - (ii) an outline of the evidence the party intends to introduce;
 - (iii) a list of witnesses;
 - (iv) the topics to be covered; and
 - (v) the amount of time required.

42. (1) Unless the Commission otherwise directs the evidence at the hearing shall be presented by the parties in the following order Presentation of evidence.

- (i) the applicant;
- (ii) Public Counsel;

- (iii) intervenors in order of intervention;
 - (iv) Commission Counsel or Staff.
- (2) Examination of witnesses shall proceed as follows:—
- (i) direct examination by applicant;
 - (ii) cross-examination by each intervenor;
 - (iii) cross-examination by Commission Counsel or Staff;
 - (iv) examination by Commissioners;
 - (v) re- examination by applicant.
- (3) Cross-examination will be permitted to the extent necessary for full and true disclosure of facts.
- (4) The Commission may, in the exercise of its discretion, permit inquiry into additional matters as if on direct evidence.
- (5) Cross-examination may be conducted either personally, or through the Public Counsel or other Counsel.
- (6) At the conclusion of the applicant's evidence, the intervenors and other parties to the proceedings shall be given the opportunity to lead evidence followed by cross-examination of the applicant, by the Public Counsel and then by other participants in order of intervention and finally by the applicant.
- (7) A Commissioner or the Commission's Counsel may at anytime question any witness for clarification of anything the witness may have said or generally.
- (8) In order to prevent repetitive lines of enquiry the Commission may limit cross-examination of witnesses to any extent or in any matter it deems appropriate, having regard to the just, expeditious and economic conduct of the proceedings.

43. When a party offers new exhibits or revised exhibits at a hearing, the party must provide sufficient copies for all parties and the Commission. Distribution at hearing.

44. The Commission may make provisions for oral argument to be made by the parties immediately following the close of evidence although written argument may be filed at that time instead of oral argument if directed to do so by the Commission. Argument.

45. Unless otherwise directed by the Commission arguments shall be presented in the following order Order of arguments.

- (a) the applicant;
- (b) Public Counsel;
- (c) intervenors in order of intervention;
- (d) commission counsel/staff; and
- (e) reply by the applicant.

46. (1) Verbatim transcripts of evidence heard will be produced and transcripts available within 2 business days of the presentation of the evidence. Transcripts.

(2) Each party shall bear its own costs for transcripts, including charges for expedited service when a party requests it.

47. (1) The Commission shall adjourn to consider its decision. Ruling.

(2) The decision of the Commission shall be based upon a consideration of the whole of the record of the material properly before the Commission.

SPECIAL PROVISIONS

48. (1) Radio and television recording of a hearing which is open to the public may be permitted on the conditions the Commission considers appropriate. Media coverage.

(2) The Commission may refuse to permit the recording of all or any part of a hearing if, in the opinion of the Commission, such coverage would inhibit the testimony of specific witnesses or disrupt the proceeding in any way.

(3) Where recording is allowed, the Commission shall permit

- (a) equipment which does not produce distracting sound or light to be used;
- (b) existing audio systems present in the hearing room to be used;
- (c) restrict the movement of media personnel while the hearing is in progress; and
- (d) equipment to be positioned unobtrusively in the hearing room before the hearing begins and shall not allow the equipment to be relocated while the hearing is in progress.

Conduct of hearings.

49. (1) All persons appearing before the Commission in any proceeding shall conform to the conduct required in a High Court of Barbados.

(2) Parties to hearings, their Counsel and spectators will conduct themselves in a respectful manner and conduct that is contemptuous by any person appearing at a hearing shall be grounds for excluding that person from the hearing.

Evidence in other proceedings.

50. Information or evidence received in a proceeding before the Commission, or any report, decision, finding or order made in respect of a proceeding may, on the motion by a party, be received in the proceeding.

Combined and joint hearings.

51. (1) Where two or more proceedings are pending before the Commission and it appears that

- (a) they have an issue or question of law, fact or policy in common; or
- (b) hearing the two proceedings together will result in the most expeditious, just, and least expensive determination of the proceedings;

the Commission may order that:

- (i) the proceedings be combined;
- (ii) the proceedings be heard at the same time;
- (iii) the proceedings be heard one immediately after the other;
- (iv) the proceedings be stayed until after the determination of any other of them;
- (v) the evidence adduced in one proceeding shall be applied in the other proceeding;
- (vi) an order or decision made with respect to a proceeding shall be applied to the other proceeding or to any other proceedings.

(2) The Commission may make such other orders as it deems appropriate in the circumstances.

(3) Where a party objects to the consolidation of proceedings, such consolidation shall not occur until after the party has had an opportunity to be heard by the Commission on the issue.

52. Where in the opinion of the Commission there is a question or issue of law or jurisdiction that should be decided before a proceeding continues, the Commission may direct that the question or issue be raised for a determination by the Commission; and the Commission may adjourn the whole or any part of the proceeding pending the determination of the question or issue.

Questions or issue of law.

REVIEW OR VARIATION

53. (1) The Commission may at any time, without notice or a hearing of any kind, correct a typographical error, error of calculation, misstatement, ambiguity, technical error or other similar error made in its decision or order.

Commencement of review or variation.

(2) Any party to a proceeding may by motion request a review of a final decision or order.

(3) Any other person to whom the Commission has granted permission may request a review of a final decision or order.

(4) A request for permission under paragraph (2) shall state the person's interest in the decision or order, and shall provide reasons for involving the parties in a review of a final decision or order.

(5) The Commission may at any time indicate its intention to review any matter or to rescind or vary any order by serving a letter on all of the parties to the proceeding.

(6) A request to review shall be filed within 14 business days of the date of the decision or order.

(7) A request made after this date may be considered where the Commission is satisfied that the request is made within a reasonable time in the circumstances.

Motion for
review or
variation.

54. (1) Every Notice of Motion made under rule 53(2), in addition to the requirements of rule 8 shall

- (a) set out the grounds upon which the motion is made sufficient to justify a review or raise a question as to the correctness of the order or decision and the grounds may include
 - (i) error of law or jurisdiction;
 - (ii) error of fact;
 - (iii) a change in circumstances;
 - (iv) new facts that have arisen;
 - (v) facts that were not previously placed in evidence in the proceedings and could not have been discovered by reasonable diligence at the time;
 - (vi) an important matter of principle that has been raised by the order or decision;
- (b) request a delay in the implementation of the order or decision or any part pending the determination of the motion if required;
- (c) contain the full name, address and the telephone, facsimile and electronic access numbers of the person bringing the motion and the representative upon whom documents may be served.

(2) A person who was not a party to the proceeding must within 14 business days of the order or decision obtain the leave of the Commission by way of a motion, before that person may bring a motion under rule 53.

55. (1) The Commission shall determine with a hearing, in respect of a motion brought under rule 53 the threshold question of whether the matter should be reviewed or whether there is reason to believe the order should be rescinded or varied. Determinations.

(2) Where the Commission finds that the matter should be reviewed or that there is reason to believe the order should be rescinded or varied, it may in its discretion, either dispose of the motion or issue procedural orders with respect to conducting the review on the merits.

(3) The Commission may adopt whatever procedures it deems to be just and expeditious in the individual circumstances of each motion including providing for the combining of consideration of the threshold question and the review on the merits.

56. (1) Upon receipt of a motion under this Part and a request for a stay of the implementation of the order or decision or any part pending the determination of the motion, the Commission may delay the implementation of the order or decision or any part, on such conditions as it considers appropriate. Delay in implementation of order or decision.

PART III

RATE REVIEW APPLICATIONS

57. (1) A service provider shall file the following with the Commission at least 60 business days before making an application under this Part a letter stating Directions on procedure.

- (a) the purpose and scope of the proposed application;
- (b) the proposed effective date for any changes in rates; and
- (c) any other particulars useful in explaining the purpose and scope of the application.

(2) Except where special conditions apply or unless otherwise directed by the Commission a party to a proceeding shall have from the date of the filing of an application

(a) 30 business days for the filing of letters of intervention, and interrogatories;

(b) 60 business days for the filing of responses to interrogatories.

(3) A service provider who makes an application to the Commission in which a hearing is deemed necessary shall on the request of the Commission pay in advance such sum as is stipulated by the Commission to cover the cost of the hearing, and the cost shall be a fair and reasonable estimate of the expenses related to the conduct of the hearing.

(4) A service provider is entitled to reimbursement of any funds advanced in excess of the actual cost of the hearing.

Form of
application.

58. In addition to the requirements of rule 57, an application for a review in rates shall include 7 copies of the following documents:

(a) a request for a review in rates containing a summary of the application for a review and the grounds supplemented with a table of present and proposed tariff amendments;

(b) memoranda of support consisting of the material intended to be introduced as evidence at the hearing, and filed in the form of numbered memoranda prepared by or under the direction of the persons who will be available for questioning at any ensuing hearing.

Notice.

59. On filing an application under this Part, a service provider shall leave at its principal business office a copy of all material furnished to the Commission under rule 57(4).

Information
to be filed
with
applica-
tions.

60. (1) A service provider shall apply in writing to the Commission for a rate review and shall include in addition to the information required by rule 26 such information as is prescribed by the Commission including

- (a) identification of the test period and information on how it was determined;**
- (b) calculation of the rate base including**
 - (i) details of fixed assets in the rate base;**
 - (ii) calculation of working capital for rate base purposes;**
 - (iii) identification of materials and supplies for rate base purposes;**
 - (iv) reconciliation of fixed assets in the rate base with fixed assets used in financial reporting;**
 - (v) calculation of depreciation in the rate base;**
 - (vi) statements of operating and maintenance expenses by the department;**
 - (vii) calculation of deferred taxes and investment tax credits;**
 - (viii) calculation of corporate taxes payable;**
 - (ix) statement of depreciation expenses;**
 - (x) statement of exchange losses (or profits);**
 - (xi) statement of long and short-term interest expenses;**
 - (xii) statement of dividends;**
 - (xiii) reasonable rate of return to be used together with a justification showing how the reasonable return was calculated;**
 - (xiv) statement showing revenue requirements;**
 - (xv) earnings coverage tests;**

- (xvi) sales projections;
- (xvii) memorandum on capital expansion;
- (xviii) schedule of present rates;
- (xix) schedule of proposed rates;
- (xx) five year forecast based on present rates; and
- (xxi) five year forecast based on proposed rates.

(2) The Commission may order that an application for a rate review be accompanied by a statement specifying

- (a) maximum rates in monetary terms; or
- (b) a formula to determine maximum rates.

(3) The formula referred to in paragraph (2)(b) may include factors which adjust an initial monetary maximum rate for elements such as inflation, exchange rate movements, energy price movements and expected efficiency gains; and maximum rates determined by another incentive-based approach to pricing.

(4) Where a formula is specified in the service provider's request for rate adjustment then a time period during which it is intended that the formula will apply should also be stated.

Staff
Analysis.

61. (1) The staff of the Commission shall within 30 business days of receipt of an application for a review in rates prepare a summary and analysis of the application.

(2) The Commission may employ a person having professional, technical or other knowledge to assist the staff in summarizing the issues and providing a preliminary assessment of the reasonableness of the case presented by the service provider.

- (3) The Staff Analysis may contain the following
- (a) a review of the service provider's accounting system to ascertain whether it complies with the code of account prescribed by the Commission or proposed by the service provider as part of the service provider's reporting requirements, and whether it is otherwise reasonable and appropriate;
 - (b) an examination of the methods used by the service provider for estimating revenues, expenditures and earnings;
 - (c) a review of the reasonableness and prudence of expenses incurred and a review of the reasonableness of the method used for allocating those expenses;
 - (d) a comparison of capital expenditures, revenues, operating expenses and net income estimated by the service provider during the last rate review, and the actual values of these parameters over the period between the last rate review and the present;
 - (e) a review of the calculations of the rate of return on assets;
 - (f) an examination of the service provider's method of calculating the energy adjustment charge, where applicable, and a comment on its actual impact on revenue requirements;
 - (g) a check on the calculations of the proposed rates to determine whether they are necessary to meet the service provider's revenue requirements; and
 - (h) any additional matters relating to the rate base, operating costs, rate of return, or schedule of maximum rates deemed necessary by the Commission.

(4) The Commission's staff shall present its summary and analysis to the Commissioners.

62. (1) The Commission may convene a conference at which it shall seek to determine the issues raised by the service provider.

Identifica-
tion of
Issues.

(2) The conferences referred to in paragraph (1) shall be observed by the public unless otherwise directed by the Commission.

(3) At the conference, the Commission shall share the issues raised in the staff analysis with the parties.

(4) The Commission may revise its staff analysis after consultation with the service provider.

(5) The service provider may revise its rate review application after consultation with the Commission.

(6) The Commission shall publish the service provider's rate review application where it has been revised after the conference.

(7) The Commission may at this time determine a preliminary schedule for the hearing process and set an overall time limit.

Service
standards.

63. (1) Where a service provider makes an application for a rate review, proposed service standards must be presented as part of that request.

(2) Service standards may include issues such as

(a) universality of service;

(b) the provision of new services;

(c) the extension of services to new customers;

(d) the maximum response time permitted for responding to customer complaints and queries; and

(e) standards related to service quality which are specific to each sector.

(3) The proposed service standards shall be consistent with the proposed rates.

(4) The proposed service standards may be considered in the hearing.

(5) In its ruling, the Commission may set minimum service standards.

64. (1) Any person may participate as an intervenor at a rate review and service standards hearing.

Application
for
intervenor
status.

(2) A person who wishes to participate in a proceeding, shall comply with the applicable Rules.

(3) A person who intends to actively participate in the proceeding by submitting evidence, argument, interrogatories or by cross-examining a witness or witnesses shall file a letter of intervention as required by rule 64(5).

(4) A person shall not file a letter of intervention unless the person intends to actively participate in the proceeding in the manner set out in rule 64(3).

(5) A person may apply to actively participate in the proceeding by serving and filing a letter of intervention to the Commission and serving a copy thereof on the service provider

- (a) within 30 business days of the filing date; or
 - (b) where a public notice has been issued, on or before the date specified in the notice.
- (6) Every letter of intervention shall
- (a) be divided into paragraphs and numbered consecutively;
 - (b) describe the intervenor, the interest of the intervenor in the proceeding and the grounds for the intervention;
 - (c) contain subject to rule 64(7) a concise statement of the nature and scope of the intervenor's intended participation;
 - (d) request the written evidence if it is desired; and
 - (e) set out the full name, address, telephone number and facsimile number of no more than 2 representatives including counsel of

the intervenor for the purposes of service and delivery of documents in the proceeding.

(7) Where by reason of an inability or insufficient time to study an application or other document initiating the proceeding, a person is unable to include the information required in the letter of the intervention that person shall

(a) state this fact in the letter of intervention as filed and served under rule 64(5); and

(b) within

(i) 15 business days of receipt of a copy of the written evidence, or

(ii) 15 business days of the filing of the letter of intervention, or within 3 business days after the issues have been formulated by the Commission,

(iii) 3 business days after the issues have been formatted by the Commission,

whichever is later, re-file and serve the letter of intervention with the information required by rule 64(6).

(8) Upon the filing of a letter of intervention, the Secretary shall notify the person applying for intervention status in writing that the letter of intervention has been accepted for filing and status has been granted, and the Secretary shall supply copies of the submission to the other parties.

65. A person may request permission to file a letter of intervention after the time limit directed by the Commission by filing a Notice of Motion, and shall include a letter of intervention together with reasons why the application is late, and the Commission may dispose of the motion by a decision or order with or without a hearing.

66. (1) The Secretary shall maintain a list of persons who have been granted intervention status by the Commission in respect of a proceeding including their addresses for service, their telephone or facsimile access numbers and the names and numbers of their representatives.

(2) The Secretary shall issue the list of intervenors to all parties in the proceeding.

67. (1) Unless the Commission otherwise directs, before a hearing, an intervenor shall submit a written brief to the Commission summarizing the issues he or she wishes to raise in the hearing, and shall be accompanied by any documents which may be useful in explaining or supporting the intervention. Directions to intervenors.

(2) Interventions must relate to specific sections in the service provider's application or the Staff Analysis.

(3) Having reviewed the intervenors' briefs, the Commission shall prepare a detailed schedule for the hearing at least 5 business days before the hearing, setting out when each intervenor is scheduled to speak.

(4) Intervenors shall be informed of the date and time that they are scheduled to speak and the time allotted for their intervention at least 5 business days before the hearing.

(5) Unless the Commission otherwise directs intervenors shall be limited to a specified time to make their case.

(6) The applicant may object to questions on the basis of relevance and the Commissioners shall decide on whether a witness will be required to answer a question.

(7) Intervenors may be represented by Public Counsel. The Commission will encourage intervenors to exercise this right if they appear to be having difficulty in complying with the Rules of the Hearing.

(8) The Commission may encourage intervenors to be represented by Public Counsel where it appears as though the intervenors are having difficulty complying with the Rules of the Hearing.

(9) Intervenors who do not abide by the Rules of the Hearing shall be asked to stand down and the Commission may not hear the remainder of their intervention.

Rate review
decision.

68. (1) The Commission shall at the end of deliberations adjourn to prepare its decision.

(2) The Commission shall publish its decision, including, where appropriate a schedule of maximum rates and service standards, and the reasons for its decision.

(3) The Commission may set rates, or where appropriate a formula for establishing maximum rates rather than a schedule of monetary maximum rates.

(4) The hearing is concluded when the Commission Panel issues its decision on the application.

(5) Decisions of the Commission shall be available free of charge upon request and shall be sent to all participants of the hearing.

SCHEDULE

(Rule 39(4))

FORM

DECLARATION AND UNDERTAKING

IN THE MATTER OF an application by *[insert name of applicant]*.

I *[insert name]*, a(n) *[employee, officer, director, etc.]* of/a *[witness, representative, consultant, etc.]* for the applicant, DECLARE THAT:

1. I am ordinarily resident in Barbados.
2. I am/am not an employee, officer, director or shareholder of the party for whom I appear or any other person known by me to be a participant at this hearing.
3. I have read/been informed of the Rules of Procedure of the Fair Trading Commission and the orders of the Commission that relate to this hearing.
4. I understand that any breach of the Commission's orders could be the subject of contempt proceedings in the High Court.
5. I will maintain the confidentiality of any information or evidence presented during that portion of the hearing held in the absence of the public and I will not disclose any such information or evidence to any person who is not entitled to know of it.
6. I will not reproduce in any manner without the prior written approval of the Commission any information or evidence presented during that portion of the hearing held in the absence of the public or, any notes, transcripts or written submissions dealing with information received, evidence taken and submissions made during or in respect of that portion of the hearing.
7. I will personally deliver to the Secretary of the Commission at the end of the hearing or after the application has been granted any notes, transcripts or written submissions made during or in respect of that portion of the hearing held in the absence of the public.

Date:

Signature:

Printed Name:

Made by the Commission this 25th day of July, 2003.

Mr. FRANK KING
Chairman of the Commission.

