

**Fair Trading Commission**

**An Overview of Public Hearings & the Process:  
The Case of Barbados**

**presented by**

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## **INTRODUCTION**

### **The URA Procedural Rules - from “Application to Decision”**

Public Hearings play an integral part in the work of the Fair Trading Commission as a regulatory institution. This process invites and affords members of the public the opportunity to participate in the Rate Making.

Section 33 of the Fair Trading Commission Act, CAP 326B, gives the Commission this general power to convene Public Hearings. More specific authorisation to hold public utility rate hearings is found in the Utilities Regulation Act, CAP 282 at section 15 (4) which states that in carrying out a review of rates, inter alia, the Commission shall hold a Hearing in accordance with the aforementioned section 33. By virtue of section 39 of the Utilities Regulation Act, the Commission is endorsed with the authority to make delegated legislation, after consultation with regulated entities and the Minister to make Rules prescribing the procedure for the conduct of rate reviews, hearing of complaints and other proceedings before the Commission.

The Utilities Regulation (Procedural) Rules 2003 “the Rules” prescribe the detailed procedure for the conduct of public Hearings.

The Rules permit the Commission to hold either:

- An oral and/or
- A Written hearing

## **Applications**

Proceedings before the Commission generally commence with the filing of an application.

An application must contain:

- 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
- d. the nature of the order or decision applied for.

Where a service provider applies for a review of rates, the service provider is required to file with the Commission at least 60 business days before making the application, a letter stating:

- (1) the purpose and scope of the proposed application
- (2) the proposed effective date for any changes in rates, and;
- (3) any other particulars useful in explaining the purpose and scope of the application

Rule 60(1) of the Rule outlines the information which a service provider must file along with an application for a rate review.

*It must also be noted that an Application for a rate review may be filed by a consumer or the Commission on its own initiative may review rates. However for the purpose of this discussion we will examine the process when initiated by a service provider.*

On receipt of a rate application for which a hearing is required a Public Notice is published in the local newspapers. The Public Notice often includes a summary of the Application and informs the public that the Application documents can be examined and/or collected from the Fair Trading Commission offices between the hours 9:00 a.m. and 4:00 p.m. Monday to Friday. Copies of the application can also be obtained from the Commission's website. Persons wishing to participate in the Public Hearing are invited to submit a letter of intervention to the Commission Secretary and must serve a copy of the letter to the service provider within 30 business days of the date specified by the Commission in its Public notice.

Rule 64 (6) of "the Rules" provides that consumer's 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. 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.*

Copies of the letters of the persons granted intervenor status are served all parties in the matter.

The Commission thereafter compiles a list of persons who have been granted intervenor status and this list is copied to all the parties who will be participating in the Hearing. The list contains names, addresses and contact details of the intervenors and or that their respective representatives. It should

be noted that some intervenors are represented by the Public Counsel<sup>1</sup>. This is encouraged by the Commission especially if some intervenors appear to be having difficulty in complying with the Rules of the Hearing. This is important since intervenors who do not abide by the Rules of the Hearings will be asked to stand down and the Commission may not hear the remainder of their intervention.

Before the Hearing, an intervenor is generally required to submit a written brief to the Commission summarising the issues he or she wishes to raise at the Hearing. The brief may also be accompanied by document(s) the Intervenor believes to be useful to his/her case.

#### **THE COMMISSION'S ROLE IN THE PROCESS**

The names of the presiding Panel members are circulated to all parties in the matter and thereafter, correspondence is circulated to the Applicant and Intervenor(s) informing them of the date and venue of the first pre-hearing conference –procedural conference. These conferences are held for the purpose of setting the date and place for the commencement of hearing, admitting certain facts or proof of them by affidavit, or for deciding any other matters that may aid in disposing of the proceeding in a just or expeditious matter. Procedural Conferences are usually open to the public unless the Commission otherwise directs. It must be noted that in addition to procedural conferences, the Commission may, at its discretion, convene issues or technical conferences for the purpose of reviewing and clarifying matters connected with the Hearing.

Prior to the commencement of the substantive hearing the Commission may provide for interrogatories. Interrogatories are usually 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. The Rules

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require that full and adequate responses to each interrogatory must be given by the party to whom it is directed

### **Confidentiality of Information**

All documents filed in respect of the proceedings are generally a part of the Public Record and are accessible by parties to the proceeding and members of the public. Provision is made in the Rules for a party to the proceeding to request that be given confidential status. In such cases Rules 13 of the Rules must be adhered to by the requesting party.

Rule 13 (2) states that:

- (2) Any requests for confidentiality shall:
  - (a) include a summary of the nature of the information in the document, and
  - (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;
    - (iii) any objection to placing an abridged version of the document on the public record and the reasons for such an objection.

The Commission must hold the document in confidence until a hearing is convened and the Commission decides whether or not the document should be placed on the public record.

Where the Commission holds a hearing, the Commission may direct that the Hearing be held in the absence of the Public where the Commission is of the opinion that:

- the circumstances so warrant;
- matters involving public security may be disclosed; or
- 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.

At in-camera hearings the Commission may specifically direct that attendees (except for Commission employees and advisors who have been authorised by the Commission) are required to sign and file a Declaration and Undertaking Form. All evidence and transcripts pertaining to the Hearing must be marked “confidential” and kept separate from the public records and access to this evidence or transcripts shall only be by order of the Commission except for the Applicant.

At the end of the Hearing, all parties who attended are required to return the transcripts, notes, and any other confidential documents, in a sealed envelope to the Commission who can either keep them with the other evidence or transcripts or destroy them.

## **PRESENTATION OF EVIDENCE**

### **Opening Statement**

When the substantive hearing begins each party is permitted to give a brief opening statement that describes the issues that he/she will address. The Applicant usually goes first and is followed by Public Counsel and then the Intervenors. The Applicant is given more time than the intervenors to give an opening statement as it their case to prove.

### **Leading of Evidence**

The Rules prescribe the order in which the evidence at the oral hearing is to be presented. Generally the following order is followed

- The Applicant;
- Public Counsel;
- Intervenors in order of intervention; and
- Commission counsel or staff.

Both the Applicant and the Intervenors are permitted to bring witnesses to give oral evidence to substantiate their cases. Intervenors and Public Counsel are permitted to cross examine the Applicant's witnesses. At the conclusion of the Applicant's evidence, the intervenors and other parties to the proceedings are given the opportunity to lead evidence as well. Thereafter, the Applicant, is given the opportunity to cross-examine, Public Counsel's and the Intervenors' witnesses.

Panel members or the Commission Counsel may at any time throughout the Hearing question any witness for clarification of anything the witness may have said or generally.



The Commission may make provisions for an oral argument to be made by parties immediately following the close of evidence or decide to receive written arguments instead. Arguments are usually presented first by the Applicant, followed by Public Counsel, the Intervenors, Commission Counsel or staff and finally a reply by the Applicant.

## **Decision**

At the conclusion of the evidentiary part of the Hearing the Commission adjourns to consider the evidence and draft a decision. The Decision of the Commission is based upon a consideration of the whole of the record of the material properly presented.

## **Written Hearings**

The Commission also has the discretion to hold written Hearings. If the Commission decides to hold a written hearing the Applicant is subsequently informed and a Public Notice is published in the daily papers inviting persons to participate. This Notice gives a specific deadline for the submission of documentation by the Applicant and interested parties.

The Applicant's written submissions are circulated to the other parties, who in turn file their response in the form of a written submission by a specific date that is set by the Commission. The Intervenors submissions are then circulated to the Applicant who has approximately fourteen (14) business days to submit a final statement.

Thereafter, the Commission informs parties that the matter is adjourned, and the Commission will then issue its decision after deliberation of all the evidence presented.