



FAIR TRADING COMMISSION

ELECTRICITY SECTOR: PENALTY FRAMEWORK

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INTRODUCTION

The Fair Trading Commission (the “Commission”) has the responsibility to ensure that regulated entities provide safe, efficient and reliable service under a Standards of Service (“SoS”) framework. According to the Fair Trading Commission Act, CAP. 326B of the Laws of Barbados (the “FTCA”), “Standards of Service” is defined at Section 2 as *“the quality and extent of service supplied by service providers.”*

Further to the Commission’s function of determining the SoS applicable and monitoring performance to ensure compliance, the Commission is authorised to impose financial penalties for breaches of the SoS, as a means to effectively enforce its functions under the legislation which it administers.

The Commission has therefore developed a penalty framework which outlines a model for the calculation of financial penalties to be enforced against regulated entities in the electricity sector, for SoS breaches.

This model seeks to use the expected profits and avoided costs associated with a regulated entity’s breach of the SoS framework in the calculation of the penalty. In this model, “avoided costs” refer to costs which the regulated entity should have incurred before the breach, was not undertaken; such costs have been identified through the Commission’s investigation as having a causal link to the breach of the SoS. Any financial benefit derived from the actions or inactions found to have caused or been linked to the breach, shall also be captured by this definition where they result in additional profit (i.e., expected profit). The Commission, in its discretion may determine when it is necessary to impose such a penalty, pursuant to powers bestowed within the relevant legislation.

The Commission endeavours to continually develop its existing SoS framework, to further strengthen the enforcement aspect of its regulatory toolkit.

SECTION 1: LEGISLATIVE FRAMEWORK

Section 4(3) of the Fair Trading (Amendment) Act, 2020 (FTCA) and Sections 3(1) and 4 of the Utilities Regulation Act CAP. 282 of the Laws of Barbados (the “URA”), set out the Commission’s authority to determine the SoS for a regulated entity and the considerations that must be given when determining the same. Rule 63(2) of the Utilities Regulation Procedural Rules 2003, S.I. 2003 No.104 of the Laws of Barbados (as amended) (the “URPR”) details the issues that may be included in the development of these SoS. Together, these pieces of legislation provide the over-arching authority and guidance for the Commission’s development and establishment of the SoS for a regulated sector.

As it relates to the Commission’s ability to enforce its established SoS, the Commission is empowered, by virtue of Section 38 of the URA, to impose penalties on a regulated entity which fails to comply with the SoS.

Section 38 of the URA stipulates that:

“The Commission may make

(a) rules;

(b) regulations; and

(c) orders with respect to

(i) imposing penalties for non-compliance with prescribed standards of service; and

(ii) prescribing amounts to be paid to the person referred to in section 21 for failure to provide a utility service in accordance with the standards of service set by the Commission.”

SECTION 2: ROLE AND PURPOSE OF THE COMMISSION'S PENALTIES

Generally, penalties typically pursue multiple objectives, including: compensation, restitution, punishment and deterrence. Penalties enforced in utility regulation are no exception, given that the principal aim of utility regulation is to act as a 'proxy' for competition in a market where effective competition is either limited or non-existent, since competition and market forces typically drive efficiency.

Black's Law Dictionary defines a penalty as "punishment imposed on a wrongdoer, usually in the form of imprisonment or fine; especially, a sum of money exacted as punishment for either a wrong to the state or a civil wrong (as distinguished from compensation for the injured party's loss). Though usually for crimes, penalties are also sometimes imposed for civil wrongs"¹.

In this regard, any penalties applied by the Commission are intended to perform a largely deterrent function, affording an appropriate level of protection to consumers, while also penalising the regulated entity if deemed necessary.

This framework proposes the use of an effects-based approach to establish a base penalty based on the avoided costs and expected profits of a breach, before applying adjustments for aggravating factors and repeated breaches.

By establishing such a base penalty, it is intended that the deterrent function of the penalty is achieved, as the regulated entity, which is assumed to be a profit maximiser and would therefore seek the most profitable actions, automatically sees no potential benefit from a breach event. Moreover, as the base penalty may be increased due to aggravating factors, breaches are further disincentivised. Thus, a breach, deliberate or otherwise, is likely to result in a financial penalty greater than or at least equal to any gains.

¹ Black's Law Dictionary (2019) (Eleventh Edition).

This penalty framework also gives greater context to the Commission's quarterly and annual SoS evaluations, as falling short of established benchmarks may easily translate into the imposition of a penalty against a regulated entity, particularly where there are instances of significant shortfalls or repeated failures to meet the benchmarks set by the Commission.

SECTION 3: CRITERIA FOR PENALTY IMPLEMENTATION

Breaches by any regulated entity within the electricity sector shall be analysed and considered on a case-by-case basis, before the Commission determines if it will impose a penalty for a breach of the SoS, pursuant to section 38 of the URA. The main factors to be considered by the Commission when determining whether to impose a penalty against a regulated entity are:

- a) the duration of a breach;
- b) the number of persons affected by a breach;
- c) any resulting harm or injury due to a breach; and
- d) the historical performance of the regulated entity in relation to the SoS.

Failure of a regulated entity to meet the established targets, as defined within the SoS framework for a particular standard, or performance results that suggest a negative widespread effect on consumers, may result in the automatic imposition of a penalty. This provision is applied subject to exemptions for force majeure conditions and any prevailing extenuating circumstances.

SECTION 4: DISCUSSION AND APPLICATION OF PENALTY FRAMEWORK

In the determination of any penalty, it is critical to consider the importance of proportionality, and the need for the prescribed penalty to mirror the severity of the breach². In their research paper analysing financial penalties, researchers at the University College of London (“UCL”) Faculty of Law, highlighted that economic theory supports the need for a fine/penalty to be at least equal to the expected profits of the breach³. This is a fundamental point upon which any proposed penal framework can be built. Further, it is important that a penal framework encapsulates both the harm caused by a breach, and the potential gain that may have accrued to the service provider from it. The North-American Electric Reliability Corporation (“NERC”) also discusses the concept of expected profits, highlighting that “any monetary penalty issued for a violation involving an economic choice to violate shall, at a minimum, disgorge any profits the entity acquired as a consequence of the behaviour, whenever and to the extent that they can be determined or reasonably estimated.”⁴

This framework therefore proposes the use of an effects-based approach to establish a base penalty which captures the avoided costs and expected profits of a breach, before applying adjustments for aggravating factors and repeated breaches. These aggravating factors collectively are utilised to capture the severity of the breach, as well as to ensure that any harm caused by the breach is factored into the penalty. The result is a penalty which reflects the severity of the breach.

² Lianos, I., Jenny, F., Wagner von Papp, F., Motchenkova E., David, E. et al (2014) “An Optimal and Just Financial Penalties System for Infringements of Competition Law: A Comparative Analysis (CLES Research paper series 3/2014, UCL Faculty of Laws: London”, accessed February 25, 2021, <https://www.fne.gob.cl/wp-content/uploads/2014/11/Estudio.pdf>

³ Ibid.

⁴ North American Electricity Reliability Commission (NERC), “Sanction Guidelines of the North American Electric Reliability Corporation”.

An effects-based approach can be defined as an economic approach that relies on case by case analyses in order to provide an accurate estimate of the harm caused by the conduct of companies i.e., regulated utilities⁵.

In relation to penalty setting, this approach does not rely heavily on presumptions and proxies, as is the case with other possible methods of calculation. Instead, the approach is guided by economic theory that purports the penalty should be at least equal to the expected profits originating from the violation.

An effects-based approach presents a simple but targeted method of calculating a base penalty, well suited to the regulatory context of the Commission. It allows the Commission to utilise its existing human resources, procedures for regulatory reporting and co-operative evidence gathering to determine reasonable penalties, proportional to the severity of the breach, where other competing methods may require additional resources to complete the same objective.

In relation to the regulatory context of the Commission, an advantage to the use of an effects-based approach is its reliance on financial information provided by the offending regulated entity by way of affidavit evidence. This co-operative approach increases the reliability of the final penalty, as the information provided is fed directly into the base penalty, before adjustments are applied based on the regulated entity's conduct⁶. Overall, this approach minimises subjectivity, thereby enhancing the reliability of its output.

In developing a framework to meet these objectives, it is also important to outline a method by which a maximum penalty is determined, this ensures that the regulated entity is not rendered insolvent as a result of penalty imposition.

⁵Lianos, I., Jenny, F., Wagner von Papp, F., Motchenkova E., David, E. et al (2014) "An Optimal and Just Financial Penalties System for Infringements of Competition Law: A Comparative Analysis (CLES Research paper series 3/2014, UCL Faculty of Laws: London"; Executive Summary pg.9.

⁶ Adjustments for aggravating factors, repeated breaches (the Multiplier) and if applicable, a discount for accepting responsibility and avoiding the significant administrative cost associated with an appeal.

4.1 ASSUMPTIONS OF PENALTY FRAMEWORK

The model is based on the following assumptions:

- 1) The penalty must be a positive number;
- 2) The breach triggering the enforcement of a penalty was avoidable and can be linked to some measure of avoided costs and/or expected profits by the regulated entity;
- 3) The Commission can at least estimate any avoided costs and/or expected profits linked to a breach;
- 4) The regulated entity is assumed to be a profit maximiser⁷;
- 5) The regulated entity under investigation is assumed to be a profitable company, as indicated by its audited financial statements. Further, this assumption posits that the regulated entity has enjoyed a non-negative rate of return for at least three (3) of the preceding five (5) years;
- 6) The audited financial statements of the regulated entity are assumed to be accurate and reliable.
- 7) The penalty enforced is constrained, so as not to render the regulated entity insolvent;
- 8) Aggravating Factors (AFs) are based on evidence accumulated during the Commission's investigations of the breach;
- 9) Augmentation of the Aggravating Factor Adjustment (AFA) begins with each present factor assigned the value of 25%; the regulated entity shall carry the burden of proof, to disprove or rebut the magnitude or presence of each AF; and
- 10) Generation/service loss is captured and adequately quantified via the respective regulated entity's generation/service metric.

⁷ This means selling a quantity of a good or service, or fixing a price, where total revenue (TR) is at its greatest above total cost (TC), Economics Online, <https://www.economicsonline.co.uk/>

4.2 PENALTY FORMULA

$$\text{Total Penalty [P]} = \underbrace{(\text{Avoided Costs} + \text{Expected Profit of Breach})}_{\text{Base Penalty}} \times \underbrace{(1+\text{AFA}) \times (1+\text{M}) \times (1-\text{FAF})}_{\text{Adjustments}}$$

NB: **(AFA)** - Aggravating Factor Adjustment;

(M) - Multiplier; and

(FAF) - Final Adjustment Factor.

4.2.1 Definition of variables

Total Penalty (P) = The total amount calculated for the regulated entity to pay into the Consolidated Fund, on the direction of the Commission, for the breach of the Commission's SoS framework. This total is determined by applying adjustments⁸ to the base penalty. The Total Penalty enforced must be less than or equal to the maximum penalty determined by this framework.

4.2.2 Base Penalty

The Base Penalty is determined as the sum of the avoided costs and expected profits of a breach of the SoS. The Commission, through its investigation of each specific breach, will identify and determine the cause and outcomes of a breach. This suggests that in every case, the nature of the base penalty calculation will be unique. Additionally, should the base penalty be found to include historical avoided costs⁹ (i.e., avoided costs dating back to before the calendar year of the SoS breach event),

⁸ Adjustments for Aggravating Factors (AFA), the Multiplier (M) and the Final Adjustment Factor (FAF).

⁹ The historical avoided costs (includes historical expected profits) are defined as avoided costs which should have been expended in previous calendar years, before the year in which the SoS breach occurred.

then the appropriate percentage change in the Retail Prices Index (RPI)¹⁰ is imposed on the base penalty, as a proxy, to capture the Present Value of the historical avoided cost.

4.2.3 Adjustments

- I. ***Aggravating Factor Adjustment (AFA)*** -This adjustment factor, which is represented as a percentage, is applied to increase the base penalty. Each aggravating factor as listed in section 4.4 below carries a weight of between 0% and 25%. The Commission, in its discretion, determines the impact or severity of a specific factor, applying an appropriate percentage in this range, starting from the default value of 25%, making reductions based on the investigative findings. The application of lower percentages is intended to reflect the lower severity of a factor. The converse applies for higher percentages. Collectively, if present, all aggravating factors can have the combined maximum impact of increasing the base penalty by 275%.

- II. ***Multiplier (M)*** = This element amplifies the quantum of the penalty based on repeated breach events. Three levels of breach events are included in the Multiplier. This is reflected in the penalty formula as $(1+M)$, where M represents a count of additional breach events. By expressing the multiplier as $(1+M)$, this ensures that the equation's output is correct, resulting in no increase to the penalty where no additional breach events have taken place, as M would assume the value 0, and the entire equation would simply be multiplied by 1.

The three levels of breach events captured by the multiplier are:

- 1) ***Multiple Major Breach events over a 24-month period*** - This captures events which the Commission, classifies as major. Such a classification may be based on the breach severity, which considers factors such as duration of the breach and

¹⁰The Retail Price Index (RPI) is one of the two main measures of consumer inflation.

the number of customers affected. A second major breach event, increases M to 1, effectively doubling the penalty as $1+M = 2$. The value of M increases by 1 for each additional major breach event over a 24 -month period. Consider, for the third breach in the period, M is assigned the value of 2, such that $1+M = 3$, effectively tripling the penalty.

This ensures that the penalty serves a stern deterrent function. Where a breach has occurred as a result of any force majeure condition, prevailing extenuating circumstances or exemption conditions, such an event shall not be counted in the application of the multiplier.

- 2) *Repeat violations* – The value of M is increased by 0.5 for each repeat violation. This captures minor breach events over a 24-month period.
- 3) *Failure to establish corrective measures to an identified recurring issue* – The value of M increases by 0.1 each time the Commission identifies a reoccurrence of an issue, whether or not it results in a breach. This measure is not limited to a 24-month period. The Commission may utilise its discretion in determining a suitable cut-off period; this period may vary based on the nature of the issue.

Consider this illustration of the Multiplier’s possible application:

A regulated entity experiences two major service outages in a 24-month period, while also experiencing two smaller isolated minor outages in this same period. The cause of these outages has been found to be a recurring issue which has happened on four (4) occasions in the past.

Calculating $1+M$:

- One major outage increases M by 1;
- two minor outages increase M by 0.5 each; and
- four recurring issue increases M by 0.1 each time.

Recall Multiplier = 1 + M;

Therefore, Multiplier = 1 + (1 + 0.5 + 0.5 + 0.4) = 3.4

III. *Final Adjustment Factor (FAF)* - This factor permits for the total penalty to be discounted by 25% where the regulated entity accepts responsibility for the breach, while also accepting the Commission's penalty. Importantly, this factor cannot reduce the total penalty below the base penalty, as the base penalty is the minimum value which ensures that the regulated entity is disgorged of any profits acquired as a consequence of its breach behaviour. This adjustment factor incentivizes the entity to accept responsibility for the breach, while also accepting the Commission's penalty.

4.3 MAXIMUM PENALTY

This penalty framework also considers the establishment of a maximum prescribed penalty, having considered the maximum penalties utilised in other jurisdictions, such as those prescribed by the Federal Energy Regulatory Commission (FERC). In this framework, the maximum penalty will be determined as a percentage of operating revenue (in the breach year) no greater than the average of the three (3) most recent, non-negative actual rates of return of the regulated entity over the past five (5) years¹¹. The application of such a method allows for the setting of an effective maximum enforcement threshold for a monetary penalty, while not rendering the entity insolvent. This penalty value may be paid in instalments over a reasonable period, determined by the Commission, after giving consideration to the regulated entity's ability to pay¹². Similarly, under extenuating circumstances, the Commission may invoke a significant reduction, or seek not to enforce a penalty, particularly where the breach may have been caused or intensified due to those circumstances.

¹¹ The average of the three (3) most recent, non-negative actual rates of return within the last 5 years, is determined as illustrated below.

Consider the following recent rates of return: 2016: 4%, 2017: 22%, 2018: 0%, 2019: 20%, 2020: -6%. The maximum penalty will be capped at a value equivalent to the average of 20%, 0% and 22%, that is equivalent to a rate of return of 14%. Therefore 14% of Operating Revenue would be the maximum penalty based on the rates of return in this example. In this way, it circumvents a lower limit imposed based on one year of losses among several years of abnormal profits.

¹² North American Electricity Reliability Commission (NERC), "Sanction Guidelines of the North American Electric Reliability Corporation". <https://www.nerc.com/FilingsOrders/us/RuleOfProcedureDL/Appendix%204B%20effective%2020210119.pdf#search=penalty>.

4.4 LIST OF AGGRAVATING FACTORS

Aggravating Factors
A regulated entity engages in concealment, impediment or the provision of false/inaccurate information
The Commission's investigation determined there was management involvement in relation to a breach
The Commission determined that the breach was an intentional violation
The regulated entity refuses to cooperate with the Commission
The Commission has identified recklessness of the regulated entity in relation to the breach
Severe harm was caused to consumers as a result of the breach
The Commission is satisfied that the regulated entity failed to address the breach in a reasonable time
The regulated entity has a history of non-compliance
The regulated entity has an inefficient or non-existent internal compliance programme
The regulated entity failed to self-report the breach
The regulated entity failed to provide ready compensation to all affected parties

Instructions:

- a. Each aggravating factor listed in the table above should be considered based on the circumstance of the breach, as each event will be unique;*
- b. Each aggravating factor identified in a given scenario increases the AFA by between 0 and 25%, based on the Commission's interpretation of the given factor's severity. Each factor present starts at a default value of 25% and can be reduced as the Commission considers the evidence of the breach event and the response of the regulated entity.*

4.4.1 Definition of Aggravating Factors

Whenever used in this framework, the following aggravating factors have the definitions outlined below, as developed by the Commission.

- 1) **Concealment, impediment or provision of false/inaccurate information** – concealment and impediment refers to the act or process of hiding or intentionally omitting information or deliberately hindering/delaying the investigation of the Commission. Provision of false/inaccurate information refers to the submission of information by the regulated entity to the Commission in relation to the breach which is misleading, inaccurate, unreliable or fails to entirely reflect the true breach event.
- 2) **Management involvement** – the participation of the regulated entity’s management in the violation, either in the lead up to the breach, or after the breach. This definition captures behaviour of the regulated entity’s management which may be viewed as deliberate or irresponsible that caused the breach.
- 3) **Intentional violation** – a deliberate and thoughtfully planned action or omission committed by the regulated entity which results in a breach.
- 4) **Refusal to cooperate and comply with the Commission** – refers to the regulated entity’s failure to adhere to the Commission’s directives and assist the Commission in its investigations.
- 5) **Recklessness of regulated entity** – the actions or inactions of the regulated entity which, while not necessarily deliberate or planned, demonstrate a clear failure of the regulated entity to follow established due diligence measures or good industry practice or a failure to consider possible breach or violation, which may naturally result from its conduct.
- 6) **Severe harm caused to consumers due to breach** – describes any act that causes adverse health complications, physical injury and/or death, and significant financial distress to the consumer as a result of the violation.
- 7) **Failure to address breach in reasonable time** – refers to the regulated entity’s failure to rectify the breach within a reasonable timeframe. Consideration is given to the circumstances surrounding the breach, as the Commission determines what constitutes a ‘reasonable timeframe’ in each scenario.
- 8) **History of regulated entity’s non-compliance** - refers to the regulated entity’s past actions that were contrary to the Commission’s directives, decisions, orders, regulations, legislation or SoS.

- 9) ***Ineffective or non-existent internal compliance program*** – refers to the regulated entity's ineffectual and in some instances absent set of internal policies and procedures that are utilised by the entity to ensure compliance with SoS regulations, as well as other industry guidelines and voluntary standards.
- 10) ***Failure to self-report*** – refers to an instance where the regulated entity fails to provide details on a breach in an open and forthcoming manner.
- 11) ***Failure to administer compensation to all affected eligible parties*** – refers to the regulated entity's failure to administer compensatory payments to all affected parties who have claimed and are eligible for compensation, within the stipulated timeframe, pursuant to the relevant SoS framework.

SECTION 5: ADMINISTRATION OF A COMMISSION-IMPOSED PENALTY

5.1.1 Intention to impose a penalty

The regulated entity shall be issued with an ‘Intention to Impose a Penalty Notice’ outlining the calculation of any penalty to be applied, along with the intended timeframe for payment, a period not exceeding twenty-four (24) months.

5.1.2 Written and Oral representations

Where the Commission has issued this Notice, the regulated entity as of right shall be provided with an opportunity to make written representations to the Commission within twenty (20) working days. At any point during this period the regulated entity may communicate to the Commission in writing its willingness to challenge or accept the penalty as outlined in the Notice. In addition to making written representations, the regulated entity may also request to be heard orally by the Commission to further put its case.

5.1.3 Assessment of representations

Where the regulated entity makes written representations, the Commission will consider those written representations before reaching a decision, which could include taking the action outlined in the Notice; taking a different action; or taking no action. In addition to making written representations, the regulated entity may also request to be heard orally by the Commission to further put its case. Where a request for an oral hearing is made, the Commission shall hear the regulated entity before disposing of the matter and issuing its Decision and Order based on the written and oral representations made by the regulated entity. Where the Commission receives no representations or response to the “Intention to Impose a Penalty Notice” from the regulated entity, by the stated deadline, the Commission may determine that the contents of the Notice are undisputed and proceed to issue its Decision and Order and impose the penalty.

5.1.4 Review of Decision

Should a regulated entity so desire, it may apply to the Commission for a review of the Decision, specifying the grounds for the review.

Section 36 of the FTCA stipulates that “The Commission may on application or on its own motion review and vary or rescind any decision or order made by it and, where under this Act a hearing is required before any decision or order is made, such decision or order shall not be altered, suspended or revoked without a hearing”.

5.1.5 Offences

Section 31 of the URA stipulates that

(1) “Every service provider which fails or refuses to obey an order of the Commission made under this Act is guilty of an offence and is liable on summary conviction to a fine of \$100 000 and, in the case of a continuing offence, to a further fine of \$10,000 for each day or part thereof during which the offence continues.”

(2) “Whenever it is proved that a service provider has failed to obey an order of the Commission made under this Act, every director or officer of the service provider is guilty of an offence and liable on summary conviction to a fine of \$50,000 or to imprisonment for 6 months or to both unless the director or officer proves that all necessary and proper means in his power having regard to his position and authority were taken to obey and carry out the order of the Commission, and that he was not at fault for the failure to obey the order.”

Section 32 of the URA stipulates that

“Every service provider making a return or furnishing any information to the Commission that is false in any particular is guilty of an offence and is liable on summary conviction to a fine of \$75 000”.

5.1.6 Payment of the Penalty

A financial penalty as determined by the Commission in its application of this framework is to be paid by the regulated service provider into the Consolidated Fund, as mandated by section 3(1) of the Financial Management and Audit Act, CAP. 5 of the Laws of Barbados (the “FMA Act”)

Section 3(1) of the FMA Act states that:

“Subject to the provisions of this or any other Act for the time being in force, the revenues of Barbados shall be credited to the Consolidated Fund”.

Section 2(1) of the FMA Act defines “Revenue” as:

“Revenue means all levies, taxes, rates, duties, fees, penalties, forfeitures, rents and dues, proceeds of sale and all other amounts earned by the Crown, from whatever source arising, over which parliament has the power of appropriation;”.

5.1.7 Late Payments of the Penalty

In the event a regulated entity makes a late payment towards the penalty amount, the Commission shall utilize its regulatory discretion to impose interest on the payment, at the statutory rate of interest on judgment debts, pursuant to the Supreme Court of Judicature Act CAP. 117A of the Laws of Barbados.

5.2 NON-FINANCIAL PENALTY MEASURES

Non-financial penalty measures may be enforced in addition to, or in place of a monetary penalty levied against any regulated entity for a breach of the SoS. Where a regulated entity is unable to pay the penalty amount determined by this framework, as confirmed by the Commission's financial analysis, a non-financial penalty should be imposed. The Commission may, utilising moral suasion and or its legislative powers, enforce the following non-exhaustive list of non-financial penalty measures:

- 1) Require the regulated entity to comply with an increased frequency of regulatory reporting;
- 2) Require the regulated entity to adopt and support a charity or participate in specific charitable events and initiatives linked to resolving the harm caused by a breach;
- 3) Order the regulated the entity to publish/broadcast the Commission's decision in respect of the breach in a manner and at a frequency to be determined by the Commission;
- 4) Mandate tailored corporate rehabilitation programmes as defined by the Commission. E.g., specific training, new hires etc.; and
- 5) Report directly to the Government of Barbados on the actions (or inactions) of the regulated entity.

In addition, at any point, if a regulated entity is unable to pay the full penalty amount determined by the Commission, or defaults on paying the penalty entirely, the outstanding amount is automatically to be carried as a liability on the regulated entity's balance sheet. These outstanding amounts will attract interest annually at the statutory rate of interest on judgment debts, pursuant to the Supreme Court of Judicature Act CAP. 117A of the Laws of Barbados.

CONCLUSION

By applying an effects-based approach, this framework ensures that fair and reasonable penalties are determined. Such penalties are designed to be proportional to the severity of the breach of the SoS. In so doing, the Commission endeavours to fulfil its utility regulation mandates, acting as a proxy for competition, thereby protecting consumers. This framework brings greater context to the Commission's SoS framework by incentivising the utility to maintain a high quality of service.

The Commission acknowledges the exercise of its discretion in the determination of financial penalties against regulated entities, throughout this framework. At all times this framework is intended to be applied against the background of the Commission's values of Professionalism, Transparency and Proactive Approach, to determine reasonable penalties proportional to the severity of the breach.