

BARBADOS

NO.: FTC-02/09 BL&P – RADJ

FAIR TRADING COMMISSION

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

Trading Commission Act, CAP. 326B

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

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

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

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

AND IN THE MATTER of The Fair

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

Barbados Consumers Research Organisation, Inc.

APPLICANT

AND

The Barbados Light & Power Co. Limited

RESPONDENT

Office of Public Counsel

INTERVENORS

Barbados Association of Retired Persons (BARP)

Barbados Small Business Association (BSBA)

CANBAR Technical Services Ltd.

Barbados Association of Non-Governmental Organisations (BANGO)

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

Dr. Roland Clarke

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

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COMMISSION SECRETARY
FAIR TRADING COMMISSION

APR 20 2010

R. Walcott

WRITTEN SUBMISSION FOR A REVIEW OF DECISION AND ORDER

WRITTEN SUBMISSIONS BY THE BARBADOS CONSUMERS RESEARCH ORGANISATION, INC., (BARCRO) – REVIEW OF DECISION AND ORDER.

INTRODUCTION

1. The Barbados Consumers Research Organisation, Inc., (BARCRO), as Applicant, thanks the Fair Trading Commission "Commission" for their letter Ref. FTC-0001/2010-BL&P-RADJ of 30 March, 2010.
2. BARCRO, the Applicant, is extremely heartened by this development, which we see as providing an added opportunity for both the FTC and BARCRO to better serve the consumers of Barbados. The Applicant regrets that the Commission did not accede to its request to have a stay of allowing the Respondent to commence its new charging as from 1 March, 2010.
3. It is in this vein of compromise and collaboration that the Applicant submits the following submissions, based on what it deems priority areas for the purposes of these submissions and, other areas not referred to herein but remain the subject of the NOTICE OF MOTION, will exact no lesser examination by the Commission.
4. We take note from the Commission's letter dated 6 April, 2010 that Public Counsel has withdrawn his application in connection with this matter. It will be known that Public Counsel is a creature of Statue and, therefore, may still have a continued interest on the behalf of the consumers of Barbados, in accordance with Sections 9 (1), (a), (b), (i), (ii), (iii) and (iv) of the Utilities Regulation Act, CAP.282. and as stated at Section 5 of our NOTICE OF MOTION FOR A REVIEW OF DECISION AND ORDER.

SUBMISSIONS

5. The Applicant's interests in the DECISION AND ORDER relate to the fact that these require the Applicant and consumers, generally, to pay a higher rate and, excessive customer charges, for electricity. The evidence does not support these excesses. When the timing – during a Global Economic Recession - together with the ability of consumers are taken into account, and link this to the fact that the Respondent was prepared to accept a lower rate of return, as evidenced in the Commission's DECISION AND ORDER, which makes this an irrefutable fact.
6. Let us show the arithmetical conclusions that the Commission made in their DECISION AND ORDER: the Respondent requested that the Rate Base be moved from 6.07 per cent to 10.48 per cent. Had this been accepted by the Commission it would have represented an increase of 72.65 per cent of the said Rate Base. Instead, the Commission's DECISION AND ORDER ruled that the Rate Base be moved to 10.00 per cent. This is equivalent to an

increase of 64.74 per cent or, a mere 7.91 per cent less than the Respondent had requested. The Applicant recognises that the Commission has made some downward movement – albeit very minimally - and would, therefore, merely state that this Rate of Return still does not exactly pass the test of fairness and reasonableness. There is, however, recognition by the Applicant that a show of effort has been attempted.

7. On the other hand, customers of the Respondent had got accustomed to paying \$3.00 and \$5.00 per month, respectively, for the Meters, which read the usage of electricity. The Applicant always found that the charges levied on them were not fair and reasonable to consumers of the Respondent. The Commission was moved to agree to a new terminology called “**Cost of Service**” without so much as seeking from the Respondent what is to be the increase in “**Value of Service**” as a methodology for the customers. The resultant costs to customers: **DOMESTIC SERVICE CUSTOMERS:** 0 – 150 kWh old Tariff was \$3.00, now increased to \$6.90, equivalent to an **increase of 130 % (per cent)**; 151 – 500 kWh old Tariff was given an increase to \$11.50, equivalent to an **increase of 282% (per cent)**; over 500 kWh old Tariff was given an increase to \$16.10, equivalent to an **increase of 436.7% (per cent)**. **GENERAL SERVICE CUSTOMERS:** 0 – 100 kWh old Tariff was \$5.00, now increased to \$9.20, equivalent to an **increase of 84% (per cent)**; 101 – 500 kWh old Tariff was given an increase to \$12.65, equivalent to an **increase of 153% (per cent)**; over 500 kWh old Tariff was given an increase to \$16.10, equivalent to an **increase of 220% (per cent)**. **SECONDARY VOLTAGE POWER CUSTOMERS:** Customer charge has an **increase to 2300% (per cent)** and the Demand Charge from \$4.00 to \$27.60, equivalent to an **increase of 590% (per cent)**. **LARGE POWER CUSTOMERS:** Customer charge has an **increase to 34,500% (per cent)** and the Demand Charge (per kVA) from \$3.00 to \$25.30 – **increase equivalent to 743% (per cent)**. **So the contrast is stark in arithmetical terms. As seen in 6 above, the Commission disallowed 7.91% (per cent) to the Respondent but allowed between 84% (per cent and 34, 500% (per cent) to be exacted on consumers. It has to be appreciated that even when the customer is a LARGE POWER USER, it is the consumer of the entity that pays, not only his own electric bill, but subsidises the payment of that entity as well. The point has to be made, the consumer – including the little old lady - assists in the payment of each business’ utility bill that he/she patronises as well as any or all that he/she has of his/her own account.**
8. It is known that the charging of significantly different rates to different categories of customer is a well established practice. This is consistent with Section 18 of the URA, the Act, through the use of the “**value of service**”, as opposed to the “**cost of service**”, approach to pricing.

9. This Applicant will be interested in finding out what special or extra "services" that will be rendered to the Respondent's customers to justify the heavy burden imposed by these charges in the name of "Cost of Service"?
10. Furthermore, the Respondent gives the impression that the Cost of Service design would "lessen the impact of the overall revenue increase on customers in the lower income bracket". Ref. Page 260 Schedule K. This is simply not true. What is true is that for users of electricity in the two (2) classes, between 1 kWh and some point between 400 kWh and 500 kWh, the basic energy charge in the new rates structure is slightly lower. However, this slight reduction is offset by the customer (fixed) charge, which is increased and varies with the usage of electricity. There is no equity in these charging structures. **It is questionable how a fixed charge could become a variable-fixed charge in principle and on what equitable basis would the Regulator approve it?**
11. Objective vii, on page 6 (0260) of Schedule K, is to "lessen the rate impact of the overall revenue increase on customers in the lower income bracket". This objective is not met as the reduction in the "basic energy charge" is offset by the increase in "customer charge". In fact, somewhere between the 400 kWh and 500 kWh usage, where the new rate structure for the "basic energy charge" catches up with the old rate structure for domestic service. In the general service category, only the user of 100 kWh per month or less gets a very small reduction in the bill. All other categories experience increases in the cost of electricity.
12. There is a lack of uniformity in the three-tiered structure of the Respondent for the basic energy charge. The structure is designed to apportion the cost of service among the different classes of customers in a fair manner. This presumes the previous structure was not fair.
13. The issue of fairness and reasonableness cannot be seen only in terms of the absolute contributions of the respective customer categories to the required revenue, but must also be seen in the context of their relative marginal contributions. The dramatic increases in the new parity ratio, as compared to the previous, best demonstrate the relative burden being requested of the Domestic and General Service categories, vis-a-vis the Secondary Voltage Power and the Large Power categories.
14. The rate for the first tier of basic energy charge reveals a ratio 1 to 1.2267 for the domestic and general customers; that is \$0.150 per kWh and \$0.184 per kWh, respectively for the first 100 kWh per month. The ratio should be kept for the three upper tiers as well. There is no principle to justify the proposed rate structure using a higher ratio with higher usage between the two classes of customers. The principle of vertical equity requires that unequals be treated

unequally; while horizontal equity demands that equals be treated equally. It is fair to charge general service customers more for the same usage of electricity as Domestic customers and the ratio of fairness should be kept throughout the various levels of usage. It follows, therefore, that the two upper tiers of the proposed basic energy charge must be revised downwards to satisfy the equity principle. This demands that the new rates for the basic energy charge for general services be revised as follows: from \$0.217 to \$0.216 for the next 400 kWh per month; from \$0.259 to \$0.245 for the next 1,000 kWh per month and from \$0.290 to \$0.275 for the next 1,500 kWh per month. This is simply a test for fairness and reasonableness, as the Law mandates.

15. It is true that the Commission has the authority to set rates and this is stated clearly at Sections 4(3) and 3(1) of the Fair Trading Commission Act, CAP.326B and Utilities Regulation Act, CAP.282 respectively. So, we accept "fairness and reasonableness" are mere concepts but this latter Act now moves these economic concepts and bring them into the legal framework in practical terms. It is, therefore, mystifying to the Applicant why the Commission has not realised that in its own DECISION AND ORDER, at Sections 13 and 14, it states the need to balance the interests of the consumers and of the utility company as set out at Sections 3(2) and 3(3) of the Utilities Regulation Act, CAP. 282.
16. In the first ever Appeal against a DECISION of the Public Utilities Board (PUB) by the Barbados Light & Power Company Limited, Chief Justice S. E. Gomes ruled that the test or standard by which the fairness and reasonableness of rates is to be determined is "that which will produce a fair return on the fair value of the Company's property, used and useful, in its public services." He reasoned that:

"The question to be determined therefore is – is the proposed rate fair and reasonable? This question involves a consideration of certain subsidiary questions, the first of which is – is any test or standard prescribed by the Act by which the fairness and reasonableness of the rate is to be determined? In my view there is, and it is to be found in subsection (2) of section 20 of the Act. That subsection provides that whenever the Board, upon an examination of the books and records or of the property of a public utility, considers that the rates of the public utility are producing a return in excess of a fair return upon the fair value of the property of the concern, used and useful in its public service, it may prescribe such temporary rates for a trial period of six months as will produce a fair return upon such fair value, and these rates are to become permanent at the end of the period unless the public utility complains that they are unfair and unreasonable. Although

this subsection deals with the fixing of temporary rates the test or standard prescribed also applies, in my view, to the fixing of non-temporary rates, for no other test is provided in the remainder of the Act and, indeed, it would be strange if there was when it is remembered that temporary rates are to become permanent unless there is objection by the public utility."

Chief Justice Gomes also opined, along the lines of established practice in the USA, that: "The fixing of just and reasonable rates involves a balancing of the investor and consumer interests. From the standpoint of the investor it is required that there be enough revenue for capital costs of the business, including service of debt and dividends on the stock. The return to the equity owner should be commensurate with return on investments in other enterprises having corresponding risks. The return should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital." This should clear any misunderstanding any would have that the only concern of the Commission is to satisfy the interests/requirements of the supplier and investor. The concept of "fair value" is hereby introduced.

The PUB, in its DECISION in the 1974 Light and Power Rate Hearing, observed that "it remains now to determine a fair return, which the Company is entitled to earn on its rate base of \$61, 670, 622. In doing so the Board has a responsibility to balance the interests of the investor and the company on the one hand and the consumer on the other." The "end-result doctrine" is clearly in use here.

17. This Applicant stands by the position of its Motion when it states that the Commission made an **ERROR OF FACT AND LAW** when, at an Issues Conference in Procedural Order No. 2, it directed itself and ordered to remove "Standards of Service" from the Regulatory Rate Hearing. According to the Utilities Regulation Act, CAP. 282 at Section 10,

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

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

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

(c) standards of service

shall contain a statement setting out the

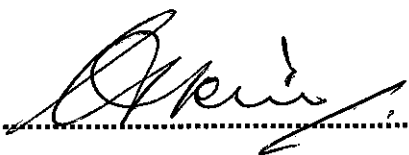
- (i) existing rates, principles or standards of service;
- (ii) proposed new rates, principles or standards of service;
- (iii) justification for the review of the rates, principles or standards of service; and
- (iv) date from which the service provider proposes that the new rates, principles or standards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

18. Further, the Commission made an **ERROR OF FACT AND LAW** when it ignored its own rules. Rule 63 (1) clearly states: **“Where a service provider makes an application for a rate review, proposed service standards must be presented as part of that request.”** (Our emphasis) Rules 63 (2) (a) to (e) (4) and (5) also speak to this matter.
19. The Commission made an **ERROR OF FACT** since in agreeing to shift the 2.64 cents per kWh of fuel cost from the base energy rate to the Fuel Clause Adjustment (FCA), it made no proper arrangement to make sure that consumers do not face an unfair burden and that proper adjustments are ordered so as to ensure efficiency, transparency and accountability. This represents a change of circumstances when compared to what was in place hitherto. The Applicant will not make a big issue out of moving the 2.64 cents to the FCA, except to state that it represents an added shift in the costing structure. The Commission made an **ERROR OF FACT** since, after the Rate Hearing, the **DECISION AND ORDER** has failed to make sure that consumers will see an effective measure put in place to justify that meter readings, whether actual or interim, will reflect a true position. It is a serious concern that people leaving their homes and going abroad still see an incremental increase in their billing as if someone resided in the empty premises. Also, there is no solution to people getting high bills during the month of December even if their usage patterns remain similar to other months.
20. The Applicant had reason to write to the Barbados Light & Power Co. Limited (BL&P) as follows: “It is being represented by various consumers of BL&P that your **INTERIM BILLING** does not reflect previous billing, since the amounts are generally higher than previous bills. Surely, it must be your concern that all bills should be accurate readings and we wonder why you do not encourage customer readings, if you are incapable of providing the reading. Even if an approximate reading were forwarded to your customers there only needs to be a section of the bill for customers to enter a 30 day reading, and

for you to accept, pending the actual reading, which your employees will render at a later date. **IT IS NOT GOOD ENOUGH FOR YOUR COMPANY TO OVERCHARGE CONSUMERS, AS A GUISE OF INTERIM READING AND, FOR YOU TO HAVE LARGE SUMS OF MONEYS WITHOUT THE SAID CUSTOMERS GETTING ANY INTEREST PAYMENTS FOR SAME. ANY ADVANCES YOU REQUIRE, TO BOOST YOUR CASH FLOWS, SHOULD BE ARRANGED BY THE COMMERCIAL BANKS AND NOT YOUR CONSUMERS.**"

21. The Respondent replied, as follows: "Thank you for your email. We apologize for our late response... We do accept readings from our customers during the Interim months. In addition, customers can enter their readings online through our Web Self Service facility. For you to be able to do this, you will need to register the account with us at www.blpc.com.bb. You may view the demo for instructions. Your account is billed on the 8th working day of the month. During the Interim months (even months of the year - February, April, June etc) you can insert your reading (by midday) for billing or call our Customer Services Department to have your account billed."
22. **We urge the Chairman, Commissioners and consumers, generally, to take note of this bit of good advice, from the Respondent that will keep your money where it is supposed to be – in your pockets.**
23. The Commission made an **ERROR OF FACT** by not correcting the way Interim billing is conducted. It is a concern that all billings should reflect a true position.
24. The Commission made an **ERROR OF FACT** since it accepted the time meters are kept on customers' properties before any change or testing is exacted. The Respondent never brought any data or evidence to substantiate its claims. Given that the Respondent agrees that a meter costs an average of \$47, it follows that there is a lower and an upper cost. Since we are unable to find consumers who have had checks or changes to their meters, unless followed by complaints. We maintain that where a meter remains on a house for forty (40) years, financial returns –meter charges prior to the **DECISION AND ORDER - of \$1, 440 for the Domestic Service and \$2, 400 for the General Service Customers** are excessive profiteering at the expense of consumers. If the new Tariffs are allowed to remain, these will be bordering on criminal excesses and the Applicant feels sure that this will not be tolerated by the Commission.

DATED THIS 20 DAY OF APRIL, 2010.

SIGNED:.....

H. MALCOLM A. GIBBS-TAITT

DIRECTOR-GENERAL/REPRESENTATIVE,

BARBADOS CONSUMERS RESEARCH ORGANISATION, INC. (BARCRO).

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BARBADOS

NO.: FTC02/09 BL&P – RADJ

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