



## **CHAPTER 9.03**

# **WATER AND SEWERAGE ACT**

### **Revised Edition**

Showing the law as at 31 December 2008

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

#### **WATER AND SEWERAGE ACT**

Act 14 of 2005.. in force 15 May 2006 (S.I.40/2006)

Amended by Act 13 of 2008 in force 20 October 2008

#### **WATER AND SEWERAGE (SERVICE LEVY) ORDER – Section 85**

Statutory Instrument 102/2008 in force 19 November 2008

#### **WATER AND SEWERAGE (CODE OF CONDUCT) REGULATIONS – Sections 38 and 97**

Statutory Instrument 103/2008.in force 19 November 2008

#### **WATER AND SEWERAGE (GENERAL PROVISIONS) REGULATIONS – Section 97**

Statutory Instrument 104/2008 in force 19 November 2008

**WATER AND SEWERAGE (APPEALS TRIBUNAL) REGULATIONS – Section 97**

Statutory Instrument 105/2008 in force 19 November 2008

**WATER AND SEWERAGE (TARIFF) REGULATIONS – Section 97**

Statutory Instrument 106/2008 in force 19 November 2008

## CHAPTER 9.03

# WATER AND SEWERAGE ACT

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**SCHEDULE**

## CHAPTER 9.03

# WATER AND SEWERAGE ACT

(Acts 14 of 2005 and 13 of 2008)

AN ACT to provide for the management of water resources and to regulate the delivery of water supply services and sewerage services throughout Saint Lucia and for related matters.

Commencement [15 May 2006]

## PART 1 PRELIMINARY

### 1. SHORT TITLE

This Act may be cited as the Water and Sewerage Act.

### 2. INTERPRETATION

In this Act—

“**abstraction licence**” means an abstraction licence granted under Division 4 of Part 2;

“**abstraction licence fee**” means an abstraction licence fee payable under section 18;

“**abstraction licensee**” means a person who holds a valid abstraction licence under this Act;

“**application fee**” means an application fee to be submitted with an application made under this Act;

“**Agency**” means the Water Resource Management Agency established under section 3;

“**annual tariff review**” means the annual tariff review under section 80;

“**Appeals Tribunal**” means the Appeals Tribunal appointed under section 96;

“**application**” means an application made under this Act;

- “**applicant**” means a person making an application under this Act;
- “**aquifer**” means a geological structure or formation or an artificial land fill permeated or capable of being permeated permanently or intermittently with water;
- “**auditor**” means a person who is a member of the Institute of Chartered Accountants in Saint Lucia or any other person who is a member of another professional accounting association and who is approved as an auditor by the Minister responsible for finance;
- “**Board**” means the Board of the National Water and Sewerage Commission appointed under section 36;
- “**bore**” means any bore, hole, well, excavation or other opening in the ground naturally or artificially constructed or improved for the purpose of intercepting, collecting, obtaining or using groundwater or disposing of any water or waste below the surface of the ground, or which extends to an aquifer;
- “**Bureau of Standards**” means the Bureau of Standards established under the Standards Act;
- “**business risk**” means the risk derived from a service licensee’s own decisions regarding its operations, investments and costs;
- “**Chairperson**” means the Chairperson of the Board appointed under section 36;
- “**Commission**” means the National Water and Sewerage Commission established under section 36;
- “**consumer**” means a person who uses a service;
- “**continuity**” means the condition by which potable water supply service or sewerage services are provided continuously, avoiding interruptions;
- “**cross subsidy**” means differentiating tariffs for certain categories of customers so that the contribution by a group of customers pays for part of the cost of services supplied to other customers or group of customers;
- “**customer**” means a person who subscribes for a service;



“**Deputy Director**” means the Deputy Director of the Water Resource Management Agency appointed under section 3;

“**Director**” means the Director of the Water Resource Management Agency appointed under section 3;

“**direct subsidy**” means the granting of revenue by the Government—

- (a) to certain customers to pay part of the cost of their access to a service; or
- (b) to the provider of a service to help pay part of the cost of service connection, service or construction of the works necessary for the maintenance, refurbishment, and expansion of facilities;

“**dispose**” includes transfer, destroy, sell, abandon, dismantle;

“**economic equilibrium**” means that the revenues from a service rendered allow for the full recovery of all efficiently incurred costs and reasonable compensation for the cost of capital in the provision of that service;

“**Executive Director**” means the Executive Director of the Commission appointed under section 40;

“**environment**” means all aspects of a person’s surroundings, including the physical, biological, economic, cultural and social aspects of such surroundings;

“**extraordinary tariff review**” means the extraordinary tariff review under section 82;

“**facilities**” means the premises and apparatus required to provide services;

“**Fund**” means the Water and Sewerage Fund established under section 53;

“**gathering ground**” means an area of land declared to be a gathering ground under section 8;

“**Government**” means the Government of Saint Lucia;

“**groundwater**” means all water occurring or obtained from below the surface of the ground other than water contained in works, not being a bore, for the distribution,

storage or treatment of water or waste, and includes water occurring in or obtained from any bore or aquifer;

“**levy**” means the water and sewerage service levy established under section 85;

“**licence**” means a licence granted under this Act;

“**licensee**” means a person who holds a valid licence under this Act;

“**low-income household**” means a household with an annual income of less than the amount set as the personal allowance under the Income Tax Act, Cap. 15.02;

“**member**” means a member of the Board appointed under section 36;

“**meter**” means any appliance used to measure, ascertain or regulate the amount of water taken or used from waterworks by means of any service, as well as any appliance used in estimating the flow of water in or from any part of waterworks;

“**Minister**”—

- (a) when referred to in Part 2 means the Minister responsible for agriculture;
- (b) when referred to in Part 3 means the Minister responsible for public utilities;

“**owner**” in relation to any building or land includes a person other than a mortgagee who for the time being—

- (a) is entitled to dispose of the right of ownership of the building or land whether in possession or reversion; or
- (b) holds or is entitled to the rights and profits of the building or land under a lease or agreement, the unexpired term whereof exceeds 3 years; or
- (c) where the person referred to in paragraph (a) or (b) is absent or under any disability, his or her agent or if there is no such agent, the occupier of the building or land;

“**permit fee**” means the permit fee under section 31;

“**permit holder**” means a person who holds a valid permit under this Act;

“**person**” includes a body corporate or an unincorporated body;

“**pollution**” means the man-made or man-induced alteration of the physical, biological, chemical, and radiological integrity of water and other media;

“**potable water**” means water which meets quality standards set under this Act and to any other law in force in Saint Lucia;

“**potable water supply service**” includes the—

- (a) treating of water to make it potable water;
- (b) storing, bottling, transporting, or distribution of potable water,

and the sale or offer for sale of that water as potable water;

“**prescribed**” means prescribed in the regulations;

“**raw water**” means water which does not meet the quality standards for potable water set under this Act and any other law in force in Saint Lucia;

“**raw water supply service**” includes the, storing, transporting and distribution of raw water and the offer for sale or the sale of raw water;

“**regulations**” means regulations made under section 97;

“**repealed Act**” means the Water and Sewerage Act 1999, No. 13 of 1999;

“**Reserve Fund**” means the Reserve Fund established under section 53(3);

“**rooftop catchment**” means any installation or device suitable for the collection of rainwater on the roof of a building or dwelling house;

“**service**” includes a water supply service, a sewerage service and the construction, operation, maintenance, rehabilitation, expansion, management and exploitation of works necessary for a water supply service or a sewerage service under a service licence;

- “**service connection**” means a connection for receipt of a service;
- “**service licence**” means a service licence granted under Division 2 of Part 3;
- “**service licensee**” means a person who holds a valid service licence under this Act;
- “**service licence fee**” means a service licence fee payable under section 61;
- “**sewage**” includes residential, industrial and commercial waste and such other matter or substance as may be prescribed;
- “**sewerage service**” includes the removal of sewage by pipe from the exterior of any domestic, commercial, governmental, industrial or other building and the collection, transportation, treatment and disposal of such sewage;
- “**sewerage works**” means any works for the collection, transmission, treatment and disposal of sewage or any part of such works;
- “**subsistence garden**” means a garden, used in connection with a dwelling or group of dwellings for the subsistence of the residents of the dwelling, the produce of which is predominantly consumed by the residents;
- “**street**” includes any highway, road, lane, footway, square, court, alley or passage, whether a thoroughfare or not;
- “**tariff**” means the rate charged to the customer by the service licensee for a service, calculated according to the tariff scheme;
- “**tariff scheme**” means a tariff scheme established under section 78;
- “**tariff review**” means an annual tariff review, an extraordinary tariff review or a triennial tariff review;
- “**triennial period**” means the period of 3 years between each triennial tariff review;
- “**triennial tariff review**” means a triennial tariff review under section 81;

“**universal service**” means service which allows all persons access within one kilometer of their dwelling;

“**waste**” includes any solid, liquid or gaseous material including but not limited to logs, bottles, tins, sawdust, derelict vehicles, cartons, plastic, paper, glass, food, animal remains, garbage, refuse, debris, gravel stone, sand dirt or sewage or other material which may cause pollution;

“**waste control area**” means an area declared to be a waste control area under section 24;

“**water**” includes—

- (a) water flowing or situated upon the surface of any land;
- (b) water flowing or contained in any natural course for water or any lake or spring whether or not it has been altered or artificially improved;
- (c) estuarine or coastal water;
- (d) groundwater; and
- (e) water contained by works acquired, constructed, improved or operated by or on behalf of a service licensee;

“**water control area**” means an area declared to be a water control area under section 23;

“**watercourse**” includes all rivers, streams, ditches, gullies, culverts, dykes and passages through which water flows, whether on the surface or underground, except water mains and sewers;

“**water resource**” includes—

- (a) any surface of any land upon which water is situated or is flowing; and
- (b) any watercourse;

“**water supply service**” includes potable water supply service and raw water supply service;

“**waterworks**” includes all existing reservoirs, intakes, catchments, dams, tanks, cisterns, deep wells or boreholes, tunnels, pillar beds, conduits, aqueducts, pipes,

fountains, sluices, valves, hydrants, pumps and all other structures or appliances which—

- (a) are used or intended to be used or constructed for the supply, storage, purification, conveyance, support, measurement or regulation of water by or on behalf of a service licensee, or
- (b) may be used or constructed for the purposes referred to in paragraph (a) by a service licensee, and which belong to or are managed by or leased to the service licensee;

“works” includes the facilities and works of expansion, replacement and network improvement for the provision of a service.

*(Amended by Act 13 of 2008)*

## **PART 2**

### **WATER RESOURCE MANAGEMENT**

#### **Division 1**

*Water Resource Management Agency*

### **3. ESTABLISHMENT OF AGENCY**

- (1) There is hereby established the Water Resources Management Agency for the purpose of managing water resources.
- (2) The Agency shall be under the portfolio of the Minister responsible for agriculture and shall be administered by a Director assisted by a Deputy Director and other necessary administrative and technical personnel appointed by the Public Service Commission.
- (3) The Director shall report to the Minister.
- (4) The Minister may appoint such persons as the need arises on an *ad hoc* basis to give technical advice to the Agency.

### **4. FUNCTIONS AND POWERS OF THE AGENCY**

- (1) The functions and powers of the Agency include the following—

- (a) receiving and considering applications for abstraction licences, and permits for use of water in water control areas and permits for discharge of waste in waste control areas and making recommendation to the Minister for the approval of such applications;
  - (b) establishing and maintaining a database of information necessary and relating to water resource management;
  - (c) promoting the sustainability of water resources;
  - (d) advising on the conservation and use of water resources;
  - (e) promoting public awareness concerning the use and management of water resources;
  - (f) undertaking water resources assessment and planning, including surveying, monitoring, research and development;
  - (g) developing watershed management plans and facilitating regulation accordingly;
  - (h) undertaking the preparation of water master plans and allocation schemes;
  - (i) advising the Government on the administration of enactments that relate to or in any way affect the conservation or use of water resources;
  - (j) providing technical advice to the Commission in support of the Commission's regulatory functions;
  - (k) advising the Minister in relation to abstraction licences under Division 4;
  - (l) advising the Minister in relation to water control areas and waste control areas under Division 5;
  - (m) advising the Minister in relation to water related emergencies under Division 3;
  - (n) advising the Minister in relation to gathering grounds under Division 2.
- (2) Where the Agency reasonably suspects that an abstraction licensee or a permit holder is in breach of this Act, the Regulations or an abstraction licence or a permit held by an abstraction licensee or a permit holder or where an allegation of breach is made to the Agency against an abstraction licensee or a permit holder, the Agency may conduct any investigation it considers necessary in relation to the abstraction licensee

or permit holder and may perform any of the following in the course of such investigation —

- (a) compel the production of documents and records in the custody or control of the abstraction licensee or permit holder;
  - (b) compel the appearance of an employee or officer of an abstraction licensee or permit holder or any other person for the purpose of ascertaining compliance with this Act, the Regulations or the abstraction licence or permit;
  - (c) inspect, examine or make copies of any document or record in the possession of the abstraction licensee or permit holder relevant to the abstraction licence or permit held by the abstraction licensee or permit holder;
  - (d) require the verification of income and all other matters pertinent to an abstraction licence or a permit;
  - (e) or inspect any premises for the purpose of ascertaining compliance with this Act, the Regulations or the permit; or
  - (f) seize, remove or impound any document or records relating to an abstraction licence or a permit for the purposes of examination and inspection.
- (3) In carrying out the provisions of subsection (2), the Agency may consult any department of Government or statutory body likely to be affected, and shall send to the department of Government or statutory body likely to be affected, a copy of any report prepared by the Agency in consequence of any investigation made under subsection (2).

*(Amended by Act 13 of 2008)*

## **5. REVENUE OF AGENCY**

- (1) All sums received by the Agency in respect of application fees, licence fees and permit fees and other charges imposed by the Agency under this Act shall be paid into the Consolidated Fund.

*[Next page is page 16A]*



- (2) For the proper discharge of its functions the Agency shall receive its revenue from sums allocated to the Agency by Parliament.

*[Next page is 17]*



**Division 2***Crown Rights in Water, Protection of Water and Gathering Grounds***6. CROWN RIGHTS IN WATER**

- (1) The right to water is hereby vested in the Crown and may be exercised on its behalf by the Minister in accordance with this Act.
- (2) The Crown shall, in exercising its right to water under subsection (1)—
  - (a) investigate, use, control, conserve, protect, manage and administer water in Saint Lucia for domestic purposes;
  - (b) engage in industrial, commercial, hydro-electrical, geothermal, navigation, fishing and agricultural activities in so far as such activities relate to water;
  - (c) preservation of flora and fauna in gathering grounds; and
  - (d) prevent and mitigate the effects of erosion, drainage, pollution and flooding.

**7. PROTECTION OF WATER**

Where upon recommendation by the Agency, the Minister is satisfied that the quantity or quality of any water is threatened, the Minister shall—

- (a) cause to be carried out, such operations as he or she considers appropriate to prevent any matter from entering the water, or to remove or dispose of any matter and to remedy or mitigate any pollution caused by the presence of any matter in the water; and
- (b) immediately request the Minister responsible for health and any other Minister to take appropriate action in accordance with the law in force in Saint Lucia.

**8. GATHERING GROUNDS**

- (1) All areas of land on which water is collected for the purposes of water works which are declared to be gathering grounds under the repealed Act or declared to be a protected forest or

protected reserve under the Forest Soil and Water Conservation Act are hereby declared to be gathering grounds under this Act.

- (2) The Minister shall as soon as is practicable after the commencement of this Act publish a list specifying the boundaries of all areas of land declared to be gathering grounds in accordance with subsection (1).
- (3) Where, on the advice of the Agency, the Minister is satisfied that an additional gathering ground is required for the purposes of extending or augmenting the water supply, the Minister shall cause the limits or areas thereof to be marked out and the Minister shall, subject to subsection (5), by order published in the *Gazette* and at least 2 newspapers in general weekly circulation in Saint Lucia, specify the boundaries of the area and declare the area to be a gathering ground.
- (4) Where an order is published under subsection (3), the land declared to be a gathering ground shall be acquired by the Government and compensation shall be payable to the owner of the land in accordance with the Land Acquisition Act.
- (5) No area of land within the limits of a gathering ground shall be granted, devised or otherwise disposed of except in keeping with such conditions as may be laid down by the Minister.

## 9. PROTECTION OF DEFINED AREA AROUND GATHERING GROUNDS

- (1) On the advice of the Agency and for the purpose of protecting the quantity or quality of water in any gathering ground the Minister may, by order published in the *Gazette* and at least 2 newspapers in general weekly circulation in Saint Lucia—
  - (a) define an area of land around a gathering ground which is in need of protection;
  - (b) prohibit or regulate the doing within that area of land of any act specified in the order; and
  - (c) construct mechanisms to restrict access to that area of land.
- (2) Where an order is published in the *Gazette* under subsection (1), the Government shall pay adequate compensation to the owner of the land for the loss of the use prohibited or regulated.

- (3) Despite subsection (1)(b), the acts prohibited or regulated by the order made by the Minister under this section shall include—
  - (a) the placing, deposit or discharge within the area of material of any kind that is likely to impair the quality or significantly reduce the quantity of the water or the storage capacity of the gathering ground;
  - (b) such other acts or omissions as may be considered likely to impair the quality or significantly reduce the quantity of the water or the storage capacity of the gathering ground.
- (4) A person who contravenes an order made under this section commits an offence and upon summary conviction is liable to a fine of not less than \$3,000 or to imprisonment for a term of not less than 6 months or to both and to a further fine of not less than \$50 for each day during which the offence continues.

### **Division 3**

#### *Emergencies*

## **10. WATER-RELATED EMERGENCIES**

- (1) Where on the advice of the Agency the Minister is satisfied that by reason of an exceptional shortage of rain, or contamination of water, a serious deficiency of supplies of water exists or is threatened, the Minister shall forthwith, by order published in the *Gazette*, in at least 2 newspapers in general weekly circulation in Saint Lucia and by any other media declare a water-related emergency and may—
  - (a) permit the taking of water from any source specified in the order;
  - (b) prohibit or limit the use of water for any purpose specified in the order;
  - (c) prohibit or limit the taking by any person of water from a source specified in the order if the Minister is satisfied that the taking of water from that source depletes or otherwise affects the supplies available to the public;
  - (d) prohibit any activity which may cause the contamination of the water; and

- (e) cater for any other matter as appears to the Minister to be expedient to meet the water-related emergency.
- (2) An order made under subsection (1) shall be revoked by the Minister by order published in the *Gazette*, in at least 2 newspapers in general weekly circulation in Saint Lucia and by any other media, as soon as practicable after the deficiency or threatened deficiency has been made good or removed.
- (3) A person who contravenes a provision of an order made under subsection (1)(b), (c) or (d) commits an offence and upon summary conviction is liable to a fine of not less than \$3,000 or to imprisonment for a term of not less than 6 months or to both and to a further fine of not less than \$50 for each day during which the breach continues.

#### **Division 4**

#### *Abstraction of Water*

### **11. PRIVATE USE OF WATER**

- (1) Subject to sections 10 and 25, the occupier of any land, his or her family and employees ordinarily resident on that land are entitled to abstract and use any water within the boundary of that land for the domestic necessities of his or her household, including the watering of livestock and the irrigation of a subsistence garden provided that such abstraction or use does not compromise the quality or the quantity of the water supply.
- (2) The rights under subsection (1) shall not extend to the intentional blocking of access to water by any person.

### **12. REQUIREMENT FOR ABSTRACTION LICENCE**

- (1) A person shall not abstract water for any use other than a use specified in section 11 unless that person is a holder of a valid abstraction licence.
- (2) A person who contravenes subsection (1) commits an offence and upon summary conviction is liable to a fine of not less than \$3,000 or to imprisonment for a term not less than 6 months or to both and to a further fine of not less than \$50 for each day during which the offence continues.

- (3) An abstraction licence granted under this Division shall not have the effect of dispensing with the necessity of obtaining any other permission where such permission is required under any law in force in Saint Lucia.

### **13. ABSTRACTION LICENCE AS OF RIGHT**

A person who has been abstracting water for a continuous period of 24 months prior to the date of commencement of this Act is, subject to section 18, entitled on application to the Agency made within 6 months of commencement of this Act in accordance with section 14, to the grant of an abstraction licence for a period which expires one year after the date of commencement of this Act.

### **14. APPLICATION FOR ABSTRACTION LICENCE**

- (1) Subject to subsection (2), a person may in the prescribed form apply to the Minister for an abstraction licence to abstract water for use other than the use to which section 11 applies.
- (2) A person shall submit the application made under subsection (1) to the Agency together with the prescribed application fee.

### **15. RECOMMENDATION BY AGENCY**

- (1) Subject to subsections (2), (3) and (4) and to section 13, where an application is submitted to the Agency under section 14, the Agency shall, having regard to the factors referred to in subsection (6), make a recommendation to the Minister for the grant or refusal of an abstraction licence to the applicant and shall give written reasons for a recommendation of refusal.
- (2) The Agency may within 14 days of the receipt of an application, request additional information from the applicant for the purpose of considering an application.
- (3) Where the Agency makes a request for information under subsection (2), the applicant shall submit that information within 14 days of the request or within a further period of time granted and specified in writing by the Agency.
- (4) The Agency shall not unreasonably refuse to give a further time period under subsection (3).

- (5) The Agency shall submit a recommendation under subsection (1) to the Minister, within 28 days of the application being made or information requested under subsection (3) being submitted as the case may be.
- (6) The factors referred to in subsection (1) are as follows—
  - (a) the ecology, hydrology and hydrogeology of the area;
  - (b) the established and projected water demands in the area; and
  - (c) the current and projected availability of water in the area.

## **16. GRANT OR REFUSAL OF ABSTRACTION LICENCE**

- (1) In accordance with a recommendation made under section 15, the Minister shall grant or refuse an abstraction licence and shall within 14 days of the receipt of the recommendation notify the applicant of the grant or the refusal and shall give the reasons in writing for a refusal.
- (2) A person aggrieved by the decision of the Minister under subsection (1) shall have the right of appeal in accordance with section 96.

## **17. NO RECOMMENDATION OR NOTICE**

- (1) If no recommendation is made by the Agency within the period specified in section 15(5) or if no notification is given by the Minister to the applicant within the 14 day period specified in section 16(1), the applicant shall have the right to make a case before the Agency and the Agency shall hear the case following an application to the Agency by the applicant.
- (2) The application for a hearing before the Agency shall be in the prescribed form.
- (3) Where, after a hearing under subsection (2)—
  - (a) the application is refused, or
  - (b) the Agency fails to make a recommendation or the Minister fails to give a notice within 14 days of the hearing;

the applicant shall have the right to appeal under section 96.



**18. ISSUANCE AND FORM OF ABSTRACTION LICENCE**

An abstraction licence granted under this Division shall be issued on payment of the prescribed abstraction licence fee to the Agency and be in the prescribed form and—

- (a) shall clearly establish the scope of the abstraction licence; and
- (b) shall include the terms and conditions, in addition to those provided for in this Act or the regulations, under which the abstraction licence is granted, based on the situation regarding the relevant natural resources.

**19. VALIDITY OF ABSTRACTION LICENCE**

Subject to sections 13 and 21, an abstraction licence shall be valid for the period specified in it.

**20. BREACHES BY ABSTRACTION LICENSEE**

Where an allegation of breach of the terms of an abstraction licence is made by an aggrieved person to the Agency or where the Agency reasonably suspects an abstraction licensee of being in breach of its abstraction licence, the Agency, shall conduct an investigation in accordance with section 4(2) and if it finds that—

- (a) the person's allegations or its suspicions are substantiated, it shall so notify the abstraction licensee of its findings and where appropriate issue directions to the abstraction licensee—
  - (i) requesting the abstraction licensee to stop the breach and take remedial action and stipulating a time period within which such remedial action is to be completed, and
  - (ii) requesting the abstraction licensee to compensate the Government or any person aggrieved for any foreseeable damages caused by the breach within a specific time period;
- (b) the person's claim is frivolous or vexatious or that its suspicions are incorrect, it shall stop its investigations and the person bringing the action shall be liable for the cost incurred.

**21. SUSPENSION OR REVOCATION OF ABSTRACTION LICENCE**

Where an abstraction licensee fails to comply with any direction given by the Agency under section 20, the Agency shall advise the Minister who may suspend or revoke the abstraction licence of the abstraction licensee in accordance with the terms of the abstraction licence.

**22. OFFENCE OF NOT COMPLYING WITH DIRECTION OF AGENCY FOR ABSTRACTION LICENCE**

An abstraction licensee who fails to comply with a direction of the Agency given under section 20 commits an offence and upon summary conviction is liable to a fine of not less than \$3,000 or to imprisonment for a term of not less than 6 months or to both and to a further fine of not less than \$50 for each day during which the offence continues.

**Division 5***Water and Waste Control Areas and Permits***23. WATER CONTROL AREA**

- (1) Where on the advice of the Agency the Minister is satisfied that the regulating of water use or classes of use of water in any area is necessary in the public interest, the Minister shall by order published in the *Gazette* and at least 2 newspapers in general and at least weekly circulation in Saint Lucia, declare the area as a water control area.
- (2) In exercising his or her authority under subsection (1), the Minister shall have regard to the following factors—
  - (a) the ecology, hydrology and hydrogeology of the area;
  - (b) the established and projected water demands in the area; and
  - (c) the current and projected availability of water in the area.
- (3) An order under subsection (1) shall specify the boundaries of the water control area, the abstraction, use or classes of use required to be regulated.

**24. WASTE CONTROL AREA**

- (1) Where on the advice of the Agency, the Minister is satisfied that the regulating of the discharging of wastes or classes of wastes into or on—
  - (a) any land;
  - (b) any sewer or drain;
  - (c) any bore; or
  - (d) any water,

is necessary to protect the water resources from pollution or reduction in water quality, the Minister shall by order published in the *Gazette* declare the area to be a waste control area.

- (2) In exercising his or her authority under subsection (1), the Minister shall have regard to the factors listed in section 23(2), and to the necessity of protecting the health of the public and the requirements of established and intended uses of water resources, including protection of the fauna and flora of watercourses and he or she shall also have regard to the desirability of protecting and enhancing the environment.
- (3) An order under subsection (1) shall specify the boundaries of the waste control area and the waste or classes of waste required to be regulated.

**25. REQUIREMENT FOR PERMIT**

- (1) A person shall not use water in a water control area or discharge waste or a class of waste in a waste control area, except in accordance with a permit for the purpose granted to that person by the Minister under this Division.
- (2) A person who contravenes subsection (1) commits an offence and upon summary conviction is liable to a fine of not less than \$3,000 or to imprisonment for a term of not less than 6 months or to both and to a further fine of not less than \$50 for each day during which the offence continues.
- (3) A permit granted under this Division shall not have the effect of dispensing with the necessity of obtaining any other permission where such permission is required under any law in force in Saint Lucia.

**26. PERMIT AS OF RIGHT**

A person who has been using water in a water control area for a continuous period at least of 24 months immediately prior to the date of commencement of this Act is, subject to section 31, entitled on application made in accordance with section 27, to the Agency made within 6 months of commencement of this Act, to the grant of a permit for a period which expires one year after the date of commencement of this Act.

**27. APPLICATION FOR PERMIT**

- (1) Subject to subsection (2), a person may in the prescribed form apply to the Minister for a permit to—
  - (a) abstract or use water in a water control area; or
  - (b) discharge waste or a class of waste in a waste control area.
- (2) A person shall submit the application made under subsection (1) to the Agency together with the prescribed application fee.

**28. RECOMMENDATION BY AGENCY FOR PERMIT**

- (1) Subject to subsections (2), (3) and (4) and to section 26, where an application is submitted to the Agency under section 27, the Agency shall, having regard to the factors mentioned in subsection (6), make a recommendation to the Minister for the grant or refusal of a permit to that applicant and shall give reasons for a recommendation of refusal.
- (2) The Agency may, within 14 days of the receipt of an application, request additional information from the applicant for the purpose of considering an application.
- (3) Where the Agency makes a request for information under subsection (2), the applicant shall submit that information within 14 days of the request or within a further period of time granted and specified in writing by the Agency.
- (4) The Agency shall not refuse to grant a further time period under subsection (3) unless it is reasonable to do so.
- (5) The Agency shall submit a recommendation made under subsection (1) to the Minister within 28 days of the application

being made or information requested under subsection (3) being submitted as the case may be.

- (6) The factors referred to in subsection (1) are as follows—
- (a) the ecology, hydrology and hydrogeology of the area;
  - (b) the established and projected water demands in the area; and
  - (c) the current and projected availability of water in the area.

## **29. GRANT OR REFUSAL OF PERMIT**

- (1) In accordance with a recommendation made under section 28, the Minister shall grant or refuse a permit and shall within 14 days of the receipt of the recommendation notify the applicant of the grant or the refusal and shall give the reasons in writing for a refusal.
- (2) A person aggrieved by the decision of the Minister under subsection (1) shall have the right of appeal in accordance with section 96.

## **30. NO RECOMMENDATION OR NOTICE FOR PERMIT**

- (1) If no recommendation is made by the Agency within the period specified in section 28(5) or if no notification is given by the Minister to the applicant within the 14 day period specified in section 29(1), the applicant shall have the right to make a case before the Agency and the Agency shall hear the case following an application by the applicant.
- (2) The application for a hearing before the Agency shall be in the prescribed form.
- (3) Where, after a hearing under subsection (1)—
- (a) the application is refused, or the Agency fails to make a recommendation; or
  - (b) the Minister fails to give a notice within 14 days of the hearing;
- the applicant shall have the right to appeal under section 96.

### **31. ISSUANCE AND FORM OF PERMIT**

A permit granted under this Division shall be issued on payment of the prescribed permit fee to the Agency and be in the prescribed form and shall—

- (a) clearly establish the scope of the permit;
- (b) include the terms and conditions, in addition to those provided for in this Act or the regulations, under which the permit is granted, based on the situation regarding the relevant natural resources.

### **32. VALIDITY OF PERMIT**

Subject to sections 26 and 34, a permit shall be valid for the period specified in it.

### **33. BREACHES BY PERMIT HOLDER**

Where an allegation of breach of the terms of a permit is made to the Agency by an aggrieved person or where the Agency reasonably suspects that a permit holder is in breach of the permit holder's permit, the Agency, shall conduct an investigation in accordance with section 4(2) and if it finds that—

- (a) the person's allegations or its suspicions are substantiated, it shall so notify the permit holder of its findings and where appropriate issue directions to the permit holder including a direction to stop the breach;
- (b) the person's allegations are frivolous or vexatious or its suspicions are incorrect, it shall stop its investigations and the person bringing the action shall be liable for the cost incurred.

### **34. SUSPENSION OR REVOCATION OF PERMIT**

Where a permit holder fails to comply with a direction given by the Agency under section 33, the Agency shall advise the Minister who may suspend or revoke the permit of the permit holder in accordance with the terms of the permit.

**35. OFFENCE OF NOT COMPLYING WITH DIRECTION OF AGENCY FOR PERMIT**

A permit holder who fails to comply with a direction given by the Agency under section 33 commits an offence and upon summary conviction is liable to a fine of not less than \$3,000 or to imprisonment for a term of not less than 6 months or to both and to a further fine of not less than \$50 for each day during which the offence continues.

**PART 3  
WATER SUPPLY AND SEWERAGE SERVICES****Division 1***Commission***36. ESTABLISHMENT OF COMMISSION**

- (1) There is hereby established a Commission to be known as the National Water and Sewerage Commission for the purpose of regulating the delivery of water supply services and sewerage services throughout Saint Lucia.
- (2) The Commission is a body corporate to which section 19 of the Interpretation Act applies.
- (3) The Commission shall be administered by a Board which, subject to subsection (4), comprises a Chairperson and 4 other members, excluding the Executive Director, appointed by the Cabinet from among persons of high repute and integrity and who have experience of, and proven capacity in, matters relating to regulation of public services, public health, water resource management, industry, finance, economics, engineering, accountancy, commerce, consumer affairs or law.
- (4) A person shall be disqualified from being a member of the Board if that person—
  - (a) holds or is beneficially interested in any stock, share, bond, debenture or other security of, or other interest in, any service licensee or any other company which is in competition with, or provides similar services to those provided by the service licensee;
  - (b) is adjudged by a court to be a bankrupt;

- (c) is declared by a court to be physically or mentally incapacitated by reason of unsoundness of mind;
  - (d) has been convicted of an offence involving dishonesty;
  - (e) is the holder of any paid office with the Government of Saint Lucia.
- (5) Cabinet shall by order publish the names of the members of the Commission in the *Gazette*.

*(Amended by Act 13 of 2008)*

### **37. FUNCTIONS AND POWERS AND EXEMPTION FROM LIABILITY OF COMMISSION**

- (1) The functions and powers of the Commission include the following—
- (a) receiving and considering applications for the—
    - (i) provision of a water supply service,
    - (ii) provision of a sewerage service;
  - (b) making recommendations to the Minister for the approval of applications made under paragraph (a);
  - (c) establishing and approving tariff schemes in accordance with Division 5 of this Part;
  - (d) promoting economy and efficiency in the delivery of any services;
  - (e) subject to this Part, ensuring the economic regulation of any service;
  - (f) determining the validity of a claim by a customer against a service licensee in accordance with the terms of the service licence in the event that the customer and the service licensee have not been able to resolve the claim and determining the consequences that result from such a determination;
  - (g) advising the Minister in the financing and carrying out of the water works;
  - (h) advising the Minister on the standards to be set in the regulations relating to—
    - (i) the provision of a service,
    - (ii) environmental performance,



- (i) advising the Minister with regard to the enacting of regulations;
  - (j) administering the provisions of this Act and the regulations;
  - (k) publishing information to be specified in the regulations;
  - (l) determining principles and issuing instructions to each service licensee regarding the accounting and information systems required as the basis for the service licensee's tariff calculations;
  - (m) providing information to be prescribed in the regulations regarding a service licensee's activities and performance;
  - (n) establishing and maintaining a database of information relating to water supply, water demands and water pricing;
  - (o) identifying research and development resources;
  - (p) considering the operation of any enactments related to or in any way affecting the supply of water or sewage disposal, and making to the Minister such representations with respect to matters of general concern arising in connection with the operation of those enactments, and making such recommendations for their extension or modification as the Commission thinks fit.
- (2) Where the Commission reasonably suspects that a service licensee is in breach of this Act, the regulations or a licence held by the service licensee as the case may be, or where an allegation of breach is made to the Commission against a service licensee, the Commission may conduct any investigation it considers necessary in relation to the service licensee and may perform any of the following in the course of such investigation—
- (a) compel the production of documents and records in the custody or control of the service licensee;
  - (b) compel the appearance of an employee or officer of a service licensee, or any other person for the purpose of ascertaining compliance with this Act, the regulations or the relevant service licence;

- (c) inspect, examine or make copies of any document or record in the possession of the service licensee relevant to the service licence held by the service licensee;
  - (d) require verification of income and all other matters pertinent to the service licence or service;
  - (e) enter or inspect any premises for the purpose of ascertaining compliance with this Act, the regulations, and the licence; and
  - (f) seize, remove or impound any document or records relating to the service licence or service for the purpose of examination and inspection.
- (3) In carrying out the provisions of subsection (2), the Commission may consult any Department of Government or statutory body likely to be affected, and shall send to the Department of Government or statutory body likely to be affected, a copy of any report prepared by the Commission in consequence of any investigation made under subsection (2).
- (4) In ensuring economic regulation of the services under subsection (1)(e), the Commission shall have regard to the principles listed in the Schedule.
- (5) The Commission shall not be liable for the acts of a service licensee.

### **38. COMMISSION TO REGULATE OWN PROCEDURE**

Subject to this Act and to the regulations, the Commission shall regulate its own procedure.

### **39. SEAL**

- (1) The Commission shall have an official seal.
- (2) The affixing of the official seal of the Commission shall be in the presence, and witnessed by the signature, of the Chairperson.
- (3) All documents, other than those required by law to be under seal, which are executed by, and all decisions of, the Board shall be signed by the Chairperson or any other member duly authorized in writing by the Chairperson to act on behalf of the Chairperson.

**40. EXECUTIVE DIRECTOR**

- (1) The affairs of the Commission on shall be managed by the Executive Director, appointed by the Board after consultation with Cabinet, who shall be *ex officio* the Secretary to the Board and who shall attend meetings of the Board.
- (2) The Board after consultation with Cabinet may, during the absence of the Executive Director, appoint a person to act as Executive Director upon such terms and conditions as the Board may determine.

*(Amended by Act 13 of 2008)*

**41. MEETINGS OF BOARD**

- (1) The Board shall meet at such times as may be necessary or expedient for the transaction of business and such meetings shall be held at such places and times as the Chairperson shall determine.
- (2) The Chairperson of the Board may at any time call a special meeting of the Board and shall call a special meeting to be held within 7 days of a written request for that purpose addressed to the Chairperson by any other member of the Board.
- (3) The Chairperson and any other member of the Board shall be deemed to be present at a meeting of the Board if that Chairperson or the member participates by telephone and all members participating in the meeting are able to hear and to speak to each other.

**42. QUORUM**

A meeting of the Board is duly constituted for all purposes if at the commencement of the meeting there is a quorum of not less than 3 members of the Board, excluding the Executive Director, participating in the meeting.

*(Amended by Act 13 of 2008)*

**43. VOTING**

- (1) Decisions of the Board shall be taken by a majority of votes.

- (2) The Chairperson shall have the right to vote and in cases of equal division the Chairperson shall have the casting vote.

#### **44. CONFIDENTIALITY**

- (1) Every member, officer or employee of the Commission shall at all times preserve and aid in preserving confidentiality with regard to all matters coming to his or her knowledge in the performance of his or her duties.
- (2) Except for the performance of his or her duties or under legal obligation, no member, officer or employee of the Commission shall communicate any confidential matter to any person or, unless under legal obligation, grant access to any person to any records in the possession, custody or control of the Commission.

#### **45. DECLARATION OF INTEREST AND ABSTENTION FROM VOTING**

- (1) A member of the Board who is in any way, either directly or indirectly, interested in a matter before the Commission shall declare the nature of his or her interest at the first meeting of the Board at which it is practicable to do so and shall leave the meeting upon the matter coming up for discussion.
- (2) A declaration and the departure of a member of the Board from the meeting in accordance with subsection (1) shall be noted in the minutes of the meeting.
- (3) A member of the Board shall not—
  - (a) vote in respect of a matter before the Board in which he or she is in any way interested, whether directly or indirectly; or
  - (b) seek to influence the vote of any other member of the Board in relation to the matter.
- (4) A member of the Board who fails to comply with subsection (3) shall be promptly removed from the Board.

**46. TERMS OF APPOINTMENT**

- (1) The appointment of a member of the Board shall, subject to subsection (2), be for a period of not less than 3 years and no more than 7 years and the person so appointed shall be eligible for re-appointment.
- (2) The appointments of the members of the Board shall be staggered in accordance with the regulations.

**47. REVOCATION**

Cabinet may at any time, in writing, revoke the appointment of any member of the Board if, upon evidence, Cabinet is satisfied that the member is disqualified from being a member of the Board under section 36(4), or is guilty of neglect of duty, misconduct or malfeasance.

**48. RESIGNATION**

- (1) A member of the Board shall, by letter to the Cabinet Secretary resign from the membership of the Board immediately if that member becomes disqualified by virtue of section 36(4).
- (2) A member of the Board may, for any reason other than disqualification under section 36(4), resign from the membership of the Board by giving at least 3 months notice in writing to Cabinet of his or her resignation.

**49. VACATION**

The office of a member of the Board is vacated—

- (a) upon the death of the member;
- (b) if the member becomes disqualified under section 36(4);
- (c) if the member resigns from membership under section 48;
- (d) if Cabinet revokes the appointment of that member under section 45 or 47; or
- (e) if the member fails to attend 3 consecutive meetings of the Board without presenting a medical certificate or without being excused by Cabinet in writing.

**50. DECISIONS NOT INVALIDATED**

- (1) A vacancy in the membership of the Board shall not invalidate a decision of the Board made at a meeting with the quorum required under section 42.
- (2) Where a disqualified member sits at a meeting of the Board, the Board may review and amend its decision within 2 months of that decision being made.

**51. STAFF**

- (1) The Commission may, in accordance with the regulations, appoint such staff as it may require for the proper carrying out of its functions under this Act.
- (2) A person appointed under subsection (1) shall perform the duties assigned to him or her by the Executive Director.

**52. REMUNERATION**

The members of the Board shall be remunerated in accordance with the regulations.

*(Amended by Act 13 of 2008)*

**53. FUND FOR USE BY COMMISSION**

- (1) There is hereby established a fund to be known as the Water and Sewerage Fund to be used by the Commission as revenue for the execution of its functions and the discharge of its obligations under this Act.
- (2) The Fund shall consist of—
  - (a) sums received by the Commission in respect of application fees and service licence fees and other charges imposed by the Commission under this Act;
  - (b) the levy collected by any service licensee under section 85;
  - (c) sums allocated to the Commission by Parliament;
  - (d) revenue raised by the Commission in the form of loans, grants, investments or other means; and

- (e) all other sums that may become payable to or vested in the Commission in respect of matters incidental to its powers and duties.
- (3) The Commission may establish a Reserve Fund into which may be paid any surplus funds of the Commission.
- (4) The Commission may withdraw any funds from the Reserve Fund in cases of a shortfall for purpose of exercising its functions or discharging its duties under this Act.
- (5) Subject to any general or specific direction of Cabinet, the funds in the Reserve Fund may be invested in securities by the Commission on such terms and conditions determined by the Commission except that the Commission shall not invest its funds in securities offered by any person under its supervision.

#### **54. FINANCIAL YEAR OF COMMISSION**

The financial year of the Commission shall begin on 1 January and shall end on 31 December in each year.

#### **55. BUDGET AND PLAN OF ACTION OF COMMISSION**

The Board shall not later than October 31st in each year cause to be prepared and shall adopt and submit to Cabinet—

- (a) a budget with the estimates of its income and expenditure; and
- (b) a plan of action;

for the Commission in respect of the next financial year.

#### **56. ACCOUNTS OF COMMISSION**

The Commission shall keep proper records of accounts in accordance with generally accepted international standards and principles and shall prepare and retain financial statements in respect of each financial year.

#### **57. AUDIT OF COMMISSION**

- (1) The Commission shall as soon as is practicable after each financial year have its accounts audited annually by an

independent auditor appointed by the Board, who shall conduct the audit in accordance with generally accepted international auditing standards and principles.

- (2) The Board, the Executive Director and staff of the Commission shall grant to the auditor appointed under subsection (1) access to all books, deeds, contracts, accounts, vouchers, or other documents which the auditor may deem necessary and the auditor may require the person holding or accountable for such document to appear, make a signed statement or provide such information in relation to the document as the auditor deems necessary.
- (3) A person required to appear, make a signed statement or to provide information under subsection (2) and who fails to comply commits an offence and upon summary conviction is liable to a fine not exceeding \$3,000 or to imprisonment for a term not exceeding 6 months or to both and to revocation of his or her appointment as a member of the Board, the Executive Director or a staff member of the Commission in accordance with this Act.

#### **58. AUDITOR'S REPORT OF COMMISSION**

An independent auditor appointed under section 57 shall as soon as practicable and not later than 2 months after the end of each financial year submit copies of the audited financial statement of the Commission and a report on the financial statement to the Board.

#### **59. ANNUAL REPORT OF COMMISSION**

- (1) Subject to subsection (2) and not later than 3 months after the end of each financial year, the Commission shall submit to Cabinet an annual report on the work and activities of the Commission for that financial year and Cabinet shall not later than one month later lay the same in Parliament.
- (2) An annual report under subsection (1) shall be in the form prescribed and shall be accompanied by the auditor's report under section 58 and the annual reports of all service licensees submitted to the Board under section 74.
- (3) A summary of an annual report under subsection (1) shall be published in the *Gazette* and at least 2 newspapers in general



and at least weekly circulation in Saint Lucia and the entire annual report shall be available to the public on payment of the prescribed fee to the Commission.

*[Next page is 39]*



**Division 2***Service licence***60. REQUIREMENT FOR SERVICE LICENCE**

- (1) A person shall not carry on a water supply service, or a sewerage service unless that person is the holder of a valid service licence granted under this Act.
- (2) A person who contravenes subsection (1) commits an offence and upon conviction, on indictment, is liable to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 15 years or to both and to a further fine not exceeding \$500 for each day during which the offence continues.
- (3) A service licence granted under this Division shall not have the effect of dispensing with the necessity of obtaining any other permission where such permission is required under any law in force in Saint Lucia.

**61. APPLICATION FOR SERVICE LICENCE**

- (1) The Minister may by notice published in the *Gazette* and in at least 2 newspapers in weekly and general circulation in Saint Lucia and by any other media invite persons to tender applications for the provision of a service together with a closing date for tendering of applications.
- (2) Subject to subsection (3), a person wishing to carry on a service shall, whether or not a notice is published under subsection(1), submit an application to the Commission for a service licence to provide a water supply service or a sewerage service to the public or to a part of the public.
- (3) An application under subsection (2) shall be in the prescribed form and shall be accompanied by the prescribed service licence fee.

**62. RECOMMENDATION BY COMMISSION FOR SERVICE LICENCE**

- (1) Subject to subsections (2), (3) and (4), where applications are submitted to the Commission under section 61, the Commission

shall evaluate the applicants in accordance with the regulations made under section 97(2) and—

- (a) if satisfied that an applicant has the requisite technical and managerial capacity and experience in the management of similar service and the financial ability for the execution of the service and is the best applicant for the grant of a service licence, make a recommendation to the Minister for the grant of a service licence to that applicant; or
  - (b) if not satisfied that the applicant has met the requirements referred to in paragraph (a), make a recommendation to the Minister, with reasons, for the refusal to grant a service licence to that applicant.
- (2) The Commission may within 14 days of the an application being made or within 14 days of the closing date for applications, whichever is later request additional information from an applicant for the purpose of considering the application.
  - (3) Where the Commission makes a request for information under subsection (2), the applicant shall submit that information within 14 days of the request or within a further period of time granted and specified in writing by the Commission.
  - (4) The Commission shall not refuse to grant a further time period under subsection (3) unless it is reasonable to so refuse.
  - (5) The Commission shall submit a recommendation made under subsection (1) to the Minister within 28 days of the application being made or information requested under subsection (3) being submitted as the case may be.

### **63. GRANT OR REFUSAL OF SERVICE LICENCE**

- (1) In accordance with a recommendation made under section 62, the Minister shall grant or refuse a service licence and shall within 14 days of the receipt of the recommendation notify the applicant of the grant or the refusal and shall give the reasons in writing for a refusal.
- (2) A person aggrieved by the decision of the Minister shall have the right of appeal under section 96.

**64. NO RECOMMENDATION OR NOTICE FOR SERVICE LICENCE**

- (1) If no recommendation is made by the Commission within the period specified in section 62(5) or if no notification is given by the Minister to the applicant within the 14 day period specified in section 63(1), the applicant shall have the right to make a case before the Commission and the Commission shall hear the case following an application by the applicant.
- (2) The application for a hearing before the Commission shall be in the prescribed form.
- (3) Where, after a hearing under subsection (2)—
  - (a) the application is refused; or
  - (b) the Commission fails to make a recommendation or the Minister fails to give a notice within 14 days of the hearing,the applicant shall have the right to appeal under section 96.

**65. ISSUANCE AND FORM OF SERVICE LICENCE**

A service licence granted under section 63 shall be issued on payment of the prescribed service licence fee, and—

- (a) shall clearly establish the scope of the service, including the activities for maintenance and repair of the existing works and the construction of facilities for the expansion and improvement of the service;
- (b) shall include the terms and conditions, in addition to those provided for in this Act or the regulations, under which the service is to be provided by the service licensee;
- (c) shall outline the principles and shall provide instructions regarding the accounting and information systems required to form the basis on which tariffs are to be calculated;
- (d) shall specify the financial reporting obligations of the service licensee;
- (e) may require a service licensee to provide guarantees for securing the performance of obligations; and
- (f) may specify special conditions for providing the service, based on the situation regarding the relevant natural

resources, and the applicable technical and economic conditions.

## **66. VALIDITY OF SERVICE LICENCE**

Subject to section 88, a service licence shall be valid for the period specified therein and shall be renewable in accordance with the terms of the service licence.

### **Division 3** *Service licensee*

## **67. OBLIGATIONS OF SERVICE LICENSEE**

Despite the obligations established in its service licence, a service licensee shall—

- (a) provide the services defined in its service licence in accordance with the law in force in Saint Lucia;
- (b) provide to the Commission such complete and regular information as the Commission requires in order to prove compliance with the tariff, tariff scheme, plan of action, claim proceedings and appeals; and
- (c) facilitate, in accordance with the regulations, the access and interconnection of other service licensees who provide services.

## **68. RIGHTS AND POWERS OF SERVICE LICENSEE**

A service licensee shall have all the rights and powers of a service licensee specified in this Act and in its service licence.

## **69. SUB-CONTRACTING**

- (1) A service licensee may, with the approval of the Commission, sub-contract certain of its activities to one or more third parties.
- (2) Where a service licensee has sub-contracted an activity under subsection (1), the service licensee's obligation to perform that activity remains in every respect, and the service licensee shall continue to be responsible for the performance and discharge of the activity.

**70. BUDGET AND PLAN OF ACTION OF SERVICE LICENSEE**

A service licensee shall not later than 3 months prior to the end of its financial year cause to be prepared and submit to the Commission—

- (a) a budget with the estimates of its income and expenditure;  
and
- (b) a plan of action,

for the service licensee in respect of the next financial year.

**71. ACCOUNTS OF SERVICE LICENSEE**

The service licensee shall keep proper records of accounts in accordance with generally accepted international standards and principles and shall prepare and retain financial statements in respect of each financial year.

**72. AUDIT OF SERVICE LICENSEE**

- (1) The service licensee shall as soon as is practicable after each financial year have its accounts audited annually by an independent auditor appointed by the service licensee, who shall conduct the audit in accordance with generally accepted international accounting standards and principles.
- (2) The service licensee, its directors and employees shall grant to the auditor appointed under subsection (1), access to all books, deeds, contracts, accounts, vouchers, or other documents which the auditor may deem necessary and the auditor may require the person holding or accountable for such document to appear, make a signed statement or provide such information in relation to the document as the auditor deems necessary.
- (3) A person required to appear, make a signed statement or to provide information under subsection (2) and who fails to comply commits an offence and upon summary conviction is liable to a fine not exceeding \$3,000 or to imprisonment for a term not exceeding 6 months or to both.

**73. AUDITOR'S REPORT OF SERVICE LICENSEE**

An independent auditor appointed under section 72 shall as soon as practicable and not later than 2 months after the end of each financial

year submit copies of the audited financial statement of the service licensee and a report on the financial statement to the service licensee.

#### **74. ANNUAL REPORT OF SERVICE LICENSEE**

- (1) Subject to subsection (2) and not later than 3 months after the end of each financial year the service licensee shall submit to the Commission an annual report on the work and activities of the service licensee for that financial year.
- (2) An annual report under subsection (1) shall be in the form prescribed and shall be accompanied by the auditor's report under section 73.
- (3) A summary of an annual report under subsection (1) shall be published in the *Gazette* and at least 2 newspapers in general weekly circulation in Saint Lucia and the entire annual report shall be available to the public on payment of the prescribed fee to the service licensee.

#### **75. STANDARDS**

- (1) Subject to subsection (2), a service licensee shall comply with—
  - (a) the minimum standards for the quality of potable water set by the Ministry responsible for health and the Bureau of Standards under the Public Health Act and the Standards Act; and
  - (b) the minimum standards set under the regulations made under section 97(2)(o).
- (2) In accordance with the Public Health Act, after consultation with the Commission and the Bureau of Standards, the Minister responsible for health may—
  - (a) set different standards for the quality of potable water based on the particular characteristics of the various localities, regions or sectors where the services are to be or are being provided; and
  - (b) establish the terms for the achievement of those standards;



and the service licensee shall, by complying with those standards, be exempt from the provisions of subsection (1).

#### **Division 4**

##### *Customer*

#### **76. RIGHTS OF CUSTOMER**

In addition to any other right contained in the contract between customer and the customer's service licensee, the customer shall have the right to—

- (a) be informed by the service licensee of the rights and obligations of the service licensee under the service licence; and
- (b) receive a service which complies with the minimum standards of quality of water, provision of service and environmental performance, provided for under this Act;
- (c) access the contents of a service licence and receive a copy of a service licence or part of a service licence on payment of the prescribed fee to the Commission;
- (d) make a claim to the Commission against his or her service licensee in accordance with the terms of the service licence in the event that the customer and the service licensee are not able to resolve the claim.

#### **77. OBLIGATIONS OF CUSTOMER**

- (1) In addition to any other obligation contained in the contract between the customer and the customer's service licensee, the customer shall—
  - (a) pay for the services provided or made available in accordance with the applicable tariff;
  - (b) pay the levy;
  - (c) comply with the technical regulations issued by the service licensee related to service connections and the maintenance of internal facilities;
  - (d) allow the service licensee to install a meter on the property where service is to be made available to the customer in a location fixed by the service licensee;

- (e) shall keep the meter located on his or her property in the same condition as existed when installed, fair wear and tear excepted;
  - (f) report a damaged meter to the service licensee as soon as the damage occurs or becomes known to the customer;
  - (e) permit the service licensee or its agents and employees to read the meter in accordance with the terms established in the service licence.
- (2) Where a customer fails, after giving the prescribed notice, to comply with subsection (1), the service licensee may suspend the service to that customer except where the customer is an essential service within the meaning of the Essential Services Act.
- (3) Nothing in subsection (2) shall interfere with the right of the licensee to sue its customer for payment of the amount owed to the service licensee.

#### **Division 5**

#### *Tariff Scheme, Tariff, Tariff Review, Subsidies and Levy*

### **78. TARIFF SCHEME AND TARIFF**

- (1) A tariff scheme for the services of a service licensee shall be based on the following general principles—
- (a) tariffs must recover—
    - (i) the efficiently incurred costs of the service, and
    - (ii) a reasonable return on capital,thereby permitting the service licensee to attain the objective of economic equilibrium;
  - (b) a tariff scheme must be explicit and elaborated in a manner so as to be easily understood, and must be made available to customers;
  - (c) subject to paragraph (d) a tariff must not be unduly discriminating, in the sense that all customers in the same category will be treated equally;
  - (d) when demand so permits, different tariffs may be established for differing localities, seasons, categories of customers, volumes of water provided and volumes of sewage discharged, if costs of the services so justify;

- (e) subject to paragraph (d), a tariff scheme must not penalize the service licensee for—
    - (i) past benefits or benefits obtained from operating the services,
    - (ii) efficiency increases different from those considered in the tariff reviews; and
  - (f) a tariff scheme may permit the granting of a direct subsidy in accordance with section 83 or a cross subsidy in accordance with section 84.
- (2) The Commission shall by order published in the *Gazette* and at least 2 newspapers in general weekly circulation in Saint Lucia—
- (a) establish a tariff scheme for the services of a service licence;
  - (b) modify an existing tariff scheme in accordance with the modifications approved by the Commission for the services of a service licensee in accordance with sections 80, 81 or 82.

## 79. TYPES OF REVIEWS

There shall be 3 types of tariff reviews carried out in relation to the service of a service licensee as follows—

- (a) annual tariff review;
- (b) triennial tariff review; and
- (c) extraordinary tariff review;

which will be considered by the Commission in approving a tariff or a tariff scheme or a modification of a tariff scheme in accordance with sections 80, 81 or 82.

## 80. ANNUAL TARIFF REVIEW

- (1) An annual tariff review shall be carried out annually by a service licensee within a triennial period between the ninth and the eleventh month in each 12 month period following the date of commencement of the service licence of that service licensee.

- (2) In carrying out the annual tariff review the service licensee shall ensure that the value of the tariff is maintained in real terms, regardless of the evolution of the service licensee's own costs and using an index stipulated in the service licence.
- (3) The service licensee shall submit to the Commission the new tariffs if any which it requires to be applied in accordance with the tariff scheme together with supporting information for approval and publication in accordance with subsection (4).
- (4) The Commission —
  - (a) may amend the new tariffs required by the service licensee and submitted to it pursuant to subsection (3), if it considers that an error has been made in calculating the new tariffs; or
  - (b) shall, if it accepts the tariffs submitted to it pursuant to subsection (3), publish the new tariffs, the corresponding indices and the effective date in two newspapers in general and weekly circulation in Saint Lucia at least one month prior to the effective date.

*(Amended by Act 13 of 2008)*

## **81. TRIENNIAL TARIFF REVIEW**

- (1) The Commission shall carry out and complete a triennial tariff review in accordance with subsections (2), (3), (4) and (5) for a triennial period of at least 60 days before the end of that triennial period.
- (2) In carrying out a triennial tariff review, the Commission shall review the tariff scheme and level of tariffs in the service licensee's tariff scheme, taking into consideration the new quality and expansion goals set by the Commission and the investment plan of the service licensee for the ensuing triennial period.
- (3) The Commission shall prepare a draft report of the triennial tariff review stipulating the new tariff scheme or the modification of the service licensee's tariff scheme including the tariff scheme and the level of tariffs which is required to be applied to generate the required revenues for the service licensee to enable it to fulfil its obligations during the

subsequent 3 years or remaining term of its licence whichever is shorter, and shall publish the draft report in the *Gazette* and at least 2 newspapers in general weekly circulation in Saint Lucia and shall invite comments from the public within at least 2 weeks from the date of publication.

- (4) The Commission shall consider the comments made by the public under subsection (3) and shall make the changes to the report as it sees fit.
- (5) The Commission shall not later than 60 days prior to the end of the triennial period, publish the report stipulating the new or modified tariff scheme in the *Gazette* and in at least 2 newspapers in general weekly circulation in Saint Lucia.
- (6) The new or modified tariff scheme referred to in subsection (5) shall be applied during the triennial period next ensuing the one in which the triennial review was carried out.

*(Amended by Act 13 of 2008)*

## **82. EXTRAORDINARY TARIFF REVIEW**

- (1) An extraordinary tariff review shall be carried out by the Commission where due to one or more circumstances listed in subsection (2), a service licensee experiences what in its view constitutes a significant variation in its cost structure in relation to what was approved in the previous annual tariff review or triennial tariff review as the case may be.
- (2) For purposes of subsection (1), a circumstance constitutes—
  - (a) a substantial and unforeseen modification made to the water or sewerage quality standards or to the regulations imposing a substantial change in the conditions under which the services are provided and which entail a cost to the service licensee;
  - (b) the creation, substitution or modification of taxes affecting the service licensee or the provision of the services; or
  - (c) a substantial and unforeseen change in the conditions under which the services are provided, including a situation of *force majeure*;

provided that in any event, the impact triggering an extraordinary review, will be defined in the service licence.

- (3) In carrying out an extraordinary tariff review the Commission shall define the marginal effect of each applicable circumstance listed in subsection (2) on the economic equilibrium of the service licensee.
- (4) The Commission shall prepare a draft report of the extraordinary tariff review stipulating the new tariff scheme or the modification of the service licensee's tariff scheme including the tariff scheme and the level of tariffs which are required to be applied to generate the required revenues for the service licensee to enable it to fulfil its obligations during the remaining term of the triennial period or its service licence whichever is shorter, and shall publish the draft report in the *Gazette* and at least 2 newspapers in general weekly circulation in Saint Lucia and shall invite comments from the public within at least 2 weeks from the date of publication.
- (5) The Commission shall consider the comments made by the public under subsection (4) and shall make the changes as it sees fit to the report.
- (6) The Commission shall as soon as is reasonably practicable publish the report stipulating the new or modified tariff scheme in the *Gazette* and at least 2 newspapers in general weekly circulation in Saint Lucia.
- (7) The new or modified tariff scheme referred to in subsection (6) shall be applied during the remaining term of the triennial period in which the extraordinary review was carried out or the remaining term of the service licence whichever is shorter.

*(Amended by Act 13 of 2008)*

### **83. DIRECT SUBSIDY**

- (1) Cabinet may, by order published in the *Gazette*, grant a direct subsidy for the provisions of a service in order to ensure that low income households obtain access to the service.
- (2) An order under subsection (1) shall specify the beneficiaries of the direct subsidy and the precise extent of the subsidy.

- (3) The Commission shall advise Cabinet on the determination of all aspects of any direct subsidy including the conditions under which it is to apply as well as on the applicable conditions.
- (4) The operation of any direct subsidy shall be reviewed not less than annually by the Commission which shall thereupon, as a result, make such recommendations to Cabinet as it deems appropriate regarding the termination or continuation of, or any amendment to, the direct subsidy.
- (5) Subject to subsection (1), Cabinet may by order in the *Gazette* terminate, continue or amend any existing direct subsidy.

#### **84. CROSS SUBSIDY**

- (1) Cabinet may by order published in the *Gazette* provide a cross subsidy for the provision of a service in order to ensure that low income households obtain access to the service.
- (2) An order under subsection (1) shall specify the beneficiaries to the cross subsidy and the precise extent of the cross subsidy.
- (3) The Commission shall advise Cabinet on the determination of all aspects of the cross subsidy including the conditions under which it is to apply.
- (4) The operation of any cross subsidy shall be reviewed not less than annually by the Commission which shall, as a result, make such recommendations to Cabinet as it deems, appropriate regarding the termination or continuation of, or any amendment to, the cross subsidy.
- (5) Subject to subsection (1), Cabinet may by order in the *Gazette* terminate, continue or amend any existing cross subsidy.

#### **85. LEVY**

- (1) There is hereby established a levy to be known as the water and sewerage service levy which shall be charged to every customer for the provision of a potable water supply service or sewerage service.
- (2) The amount of the levy in relation to a service licensee and the rate of any interest payable by a service licensee under subsection (5) shall be determined by Cabinet by order

published in the *Gazette* and at least 2 newspapers in general weekly circulation in Saint Lucia.

- (3) The levy shall be charged by each service licensee to every one of its customers in the customer's monthly invoice and the levy shall be collected by the service licensee.
- (4) The service licensee shall submit the levy to the Commission within 28 days of collection and the levy shall form part of the revenue of the Fund in accordance with section 53.
- (5) Where a service licensee fails to comply with subsection (4), the service licensee shall be liable for the payment of the levy together with interest at the rate determined by Cabinet under subsection (2).

### **Division 6**

#### *Breaches, offences and penalties*

#### **86. BREACH RELATING TO MINIMUM STANDARDS OF POTABLE WATER**

In the event that the quality of water provided as potable water to a customer falls below the minimum standards set under this Act or to any other law in force in Saint Lucia, the service licensee providing the water shall immediately on becoming aware of the fall in standard inform—

- (a) the Commission in writing; and
- (b) its customers, directly wherever possible and through television, radio, the print media, and any other reasonable means of communication,

indicating the preventive measures to be taken and describing the problem that caused the lowering of the water quality, the reason the problem arose, the measures being, and to be, taken by the service licensee to restore the stipulated minimum water quality level and the estimated time and expense needed for these restorative purposes, and the Commission shall direct the service licensee accordingly and the service licensee shall comply with the directions of the Commission.

#### **87. BREACHES BY THE SERVICE LICENSEE**

- (1) A service licensee shall be in breach of its service licence if it—
  - (a) unjustifiably interrupts the provision of its service;



- (b) provides potable water which fails to meet the minimum standards required under this Act and to any other law in force in Saint Lucia;
  - (c) breaches the minimum standards set under the regulations made under section 97(2)(o) for—
    - (i) the-provision of service,
    - (ii) environmental performance;
  - (d) does not comply with the tariff scheme;
  - (e) applies an incorrect invoice to a customer; or
  - (f) fails to comply with any provisions of this Act, the regulations or its service licence.
- (2) When an allegation of breach mentioned in subsection (1) has been made to the Commission by a person aggrieved, or where the Commission reasonably suspects that a service licensee is in breach of its service licence, the Commission shall conduct an investigation into the allegation in accordance with sections 37(2) and section 38 and if it finds that—
- (a) the person's allegations or its suspicions are substantiated, it shall so notify the service licensee of its findings and where it deems appropriate issue directions to the service licensee—
    - (i) requesting the service licensee to take remedial action and stipulating a time period within which such remedial action is to be completed; and
    - (ii) requesting the service licensee to compensate one or more of its customers for any foreseeable damages caused to such customer or customers by the breach within a specific time period;
  - (b) the person's claim is frivolous or vexatious, it shall stop its investigations and the person bringing the claim shall be liable for the cost incurred.

## **88. REMEDIAL ACTION, SUSPENSION OR REVOCATION OF SERVICE LICENCE**

Where a service licensee fails to comply with any direction given by the Commission under section 87, the Commission shall advise the Minister who may—

- (a) utilize the security or part of the security held by way of guarantee under section 65(e), for the execution of the remedial action or payment of compensation for foreseeable damages caused by the breach; or
- (b) suspend or revoke the service licence of the service licensee in accordance with the terms of the service licence.

**89. OFFENCE OF NOT COMPLYING WITH DIRECTION OF COMMISSION**

- (1) Subject to subsection (2), a service licensee who fails to comply with a direction given by the Commission under section 87 commits an offence and upon conviction, on indictment is liable to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 15 years or to both and to a further fine not exceeding \$500 for each day during which the offence continues.
- (2) A prosecution for an offence pursuant to subsection (1) shall not be brought during the time within which an appeal may be applied for or during an appeal pursuant to section 96.

*(Amended by Act 13 of 2008)*

**90. OFFENCES IN RESPECT OF WATER SUPPLY AND SEWERAGE SERVICE**

- (1) A person shall not wilfully—
  - (a) cause any pipe, valve, cock, cistern, bath, sink, pan, water closet or other apparatus belonging to, or connected with, the waterworks, to be out of repair, or to be so used or contrived in such a way that the water supplied to such person is or is likely to be wasted, misused, unduly consumed or contaminated;
  - (b) cause any pipe belonging to or connected to a pipe of the waterworks to be used or manipulated in such a way as to occasion or allow the return of foul, noxious or impure matter therein;

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- (c) remove or tamper with any gauge, meter, measuring instrument, level, mark, or any other appliance forming part of the waterworks;
  - (d) damage any part of the waterworks or sewerage works;
  - (e) commit any act which by itself or with other acts, impedes or interrupts, or is calculated to interrupt the flow of water belonging to the waterworks;
  - (f) obstruct the lawful execution or implementation of any provision of this Act or the regulations;
  - (g) discharge any substance the composition of which damages the quality of any source of water used for water supply service; or
  - (h) use any water supply or water system for any purpose that may jeopardize the public health or alter the chemical or bacteriological balance of the water in the water supply system.
- (2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction for each offence to a fine not of less than \$3,000 or to imprisonment for a period of not less than 6 months or both and to a further fine of not less than \$50 for each day during which the offence continues.
- (3) In the event any damage results to waterworks or sewerage works from the commission of any of the offences mentioned in this section, the Court may, in addition to the punishment imposed under subsection (2), order the person convicted under that subsection to pay compensation to the service licensee.

## **91. OFFENCES OF OBSTRUCTING SERVICE LICENCE**

- (1) A person shall not obstruct or attempt to obstruct the members, officers and staff of the Commission or any service licensee in the performance of any powers or functions conferred by this Act.
- (2) A person who contravenes subsection (1) commits an offence and upon summary conviction is liable to a fine of not less than \$3,000 or to imprisonment for a term of not less than 6 months or to both and to a further fine of not less than \$50 for each day during which the offence continues.

**92. CRIMINAL LIABILITY FOR DAMAGE AND WRONGFUL SERVICE CONNECTION**

- (1) A person shall not—
  - (a) wilfully damage the facilities or alter a meter belonging to a service licensee or otherwise prevent any such meter from correctly registering the quantity of water supplied by the service licensee; or
  - (b) connect to any pipe or meter any device capable of wrongfully abstracting, diverting, consuming or using water or of preventing any meter from correctly registering any quantity of water supplied by a service licensee.
- (2) A person who contravenes subsection (1) commits an offence and upon summary conviction is liable to a fine of not less than \$3,000 or to imprisonment for a term of not less than 6 months or to both and to a further fine of not less than \$50 for each day during which the offence continues.
- (3) Where there exists upon any premises or land any device capable of wrongful abstracting, diverting, consuming or using water or of preventing any meter from correctly registering any quantity of water supplied by a service licensee the burden of proof lies on the person charged to prove that the person has not unlawfully abstracted or diverted water or has not unlawfully prevented a meter from duly registering any quantity of water supplied by the service licensee.
- (4) Without prejudice to subsection (2)—
  - (a) the court may order that the service licensee recover the amount of any damage sustained by the service licensee from a person convicted under that subsection; and
  - (b) the service licensee may discontinue service to that person.

## **PART 4 MISCELLANEOUS**

### **93. MATTERS EXCLUDED FROM DISPUTE RESOLUTION**

Sections 94 and 95 of this Act shall not apply to any issue, cause or matter arising in relation to a tariff scheme.

*(Amended by Act 13 of 2008)*

### **94. MATTERS TO BE SUBMITTED TO DISPUTE RESOLUTION**

When a dispute relating to any matter concerning anything under this Act arises between a licensee or a permit holder, and either the Commission, the Agency or the Government such dispute shall be resolved by dispute resolution in accordance with the Regulations.

*(Amended by Act 13 of 2008)*

### **95. ARBITRATOR AND APPLICABLE LAW**

*(Repealed by Act 13 of 2008)*

### **96. APPEAL**

- (1) There is hereby established an appeals tribunal for the purpose of hearing appeals against decisions of the Agency, the Commission, the Minister responsible for agriculture or the Minister responsible for public utilities.
- (2) The constitution and procedure of the Appeals Tribunal shall be as prescribed in the regulations made under section 97(2)(q).
- (3) An appeal from a decision of the Agency, the Commission, the Minister responsible for agriculture or the Minister responsible for public utilities to this Act lies to the Appeals Tribunal.
- (4) A person may, within 28 days of a decision of the Agency, the Commission, the Minister responsible for agriculture or the Minister responsible for public utilities, apply in writing to the Appeals Tribunal against that decision.

## 97. REGULATIONS

- (1) The relevant Minister, after consultation with the Agency or the Commission, as the case may be, may make regulations for the purpose of giving effect to the provisions of this Act.
- (2) Without prejudice to subsection (1), the relevant Minister, after consultation with the Agency or the Commission, as the case may be, may make regulations particularly—
  - (a) for the protection of customers and of the public generally against personal injury or damage to property arising from the operations of a service licensee;
  - (b) to provide for enquiries in connection with any accident which is or may be attributed to an escape of water or sewerage or to the state of operation of any part of the undertaking;
  - (c) relating to a tariff scheme;
  - (d) relating to the publication of information regarding the service provided by a service licensee;
  - (e) to prescribe the form of applications and service licences and permits and orders under this Act;
  - (f) prescribing the criteria for evaluating applicants for service licences;
  - (g) prescribing the form of annual reports;
  - (h) to prescribe fees payable under this Act;
  - (i) to prescribe application for hearing under section 17(2) and 64(2); and
  - (j) to provide for the staggering of the terms of appointments of the members Board under section 46(2);
  - (k) to prescribe the allowance for a member of the review panel;
  - (l) prescribing the size, nature, efficiency, materials, strength and workmanship, and the mode of arrangement, service connection, disconnection of service, alteration and repair of the water fittings to be used;
  - (m) prescribing the circumstances in which, and the methods by which, water is to be stored and treated on any premises;

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- (n) governing installation, operation and maintenance of water supply system within a private development;
  - (o) to set standards relating to—
    - (i) the provisions of a service;
    - (ii) to environmental performance;
  - (p) prescribing the manner of facilitation of access and inter connection of the other service licensees who provide services;
  - (q) prescribing the constitution and procedure of the Appeals Tribunal.
- (3) The Regulations made pursuant to this section may create an offence for a breach of a provision of the Regulations and a person is, upon summary conviction for an offence created pursuant to the Regulations, liable to a fine not exceeding \$1000 or to imprisonment for a term not exceeding 6 months.
- (4) For the purposes of this section—
- “relevant Minister”**—
- (a) in the case of matters relating to water resource management means the Minister responsible for agriculture;
  - (b) in the case of matters relating to water supply service and sewerage service means the Minister responsible for public utilities.

*(Amended by Act 13 of 2008)*

## **98. ACT BINDS THE CROWN**

This Act binds the Crown.

## **99. SAVINGS**

Any action, proceeding and any like matter commenced or pending under the repealed Act shall continue under this Act as if it had been commenced under this Act.

## SCHEDULE

(Section 37(1)(e))

### ECONOMIC REGULATION

The economic regulation of the services shall be based on the following principles—

1. discriminatory practices in the provision of services will be limited as much as possible;
2. fair competition practices will be promoted to the extent possible in the provision of services;
3. there will be no reuse of past benefits to—
  - (a) compensate deficits incurred as a consequence of business risk;
  - (b) revalidate inefficiencies in the provision of the services; and
  - (c) allow a service licensee to appropriate profits obtained from restrictive practices towards its competition or from the abuse of its dominant position.
4. there will be a rational and efficient use of the resources involved and the services supplied;
5. there will be consistent balance between service supply and demand;
6. there will be universal service; and
7. that there will be constant improvements in productivity and efficiency, without affecting the continuity and quality of service delivery.



## **WATER AND SEWERAGE (SERVICE LEVY) ORDER – SECTION 85**

**(Statutory Instrument 102/2008)**

Commencement [19 November 2008]

### **1. CITATION**

This Order may be cited as the Water and Sewerage (Service Levy) Order.

### **2. INTERPRETATION**

In this Order “Act” means the Water and Sewerage Act, Cap. 9.03.

### **3. WATER AND SEWERAGE SERVICE LEVY**

The levy payable by a customer in each month’s water invoice from a service licensee for water and sewerage service in accordance with section 85 of the Act shall be calculated by the Commission, using its budget as prepared pursuant to section 55 of the Act as a percentage not exceeding 2% of the total revenue of the service licensee during the previous calendar year.

### **4. SERVICE LICENSEE INTEREST**

The annual interest rate payable by a service licensee who fails to pay levies collected in the manner required by section 85 of the Act is equal to the service licensee’s allowable return on equity as determined by the Commission plus 3%.



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## **WATER AND SEWERAGE (CODE OF CONDUCT) REGULATIONS – SECTION 38 AND 97**

(Statutory Instrument 103/2008)

Commencement [19 November 2008]

### **1. CITATION**

These Regulations may be cited as the Water and Sewerage (Code of Conduct) Regulations.

### **2. CODE OF CONDUCT**

The Code of Conduct set out in the Schedule shall, in addition to the provisions of the Water and Sewerage Act, regulate the conduct of the Board and staff of the Commission.

## **SCHEDULE**

(Regulation 2)

### **1. CONDUCT OF BOARD AND STAFF OF COMMISSION**

- (1) A member of the Board or staff of the Commission shall conduct himself or herself in such a manner as to promote public confidence in the integrity and impartiality of the Commission.
- (2) A member of the Board or staff of the Commission who fails to comply with the requirements of this Code of Conduct may be subjected to disciplinary or removal proceedings.

### **2. FINANCIAL INTERESTS**

- (1) A member of the Board or staff of the Commission with decision influencing responsibilities shall not own any financial interest of any sort in any licensee or permit holder regulated by the Commission or applicant.

- (2) A member of the Board or staff of the Commission must disclose to the Commission and to the public, any financial interest in any entity that is not a licensee potentially affected by a decision of the Commission.

### **3. GIFTS OR FAVOURS**

- (1) A member of the Board or staff of the Commission shall not accept any favour or item of value or offer of favours or items of value from a licensee, or, permit holder applicant or from any person with interest in a matter before the Board.
- (2) A member of the Board or staff of the Commission who receives a favour or item of value must report receipt of the favour or item of value to the Board within or not later than 90 days after receipt of the favour or item of value in writing .

### **4. TIES TO LICENSEES**

If an immediate family member of a member of the Board or staff of the Commission is employed by a licensee, or a permit holder, or an applicant, or owns a financial interest in a licensee, permit holder, or applicant, the relevant facts shall be disclosed to the Commission and to the public and the member of the Board or staff member shall not take part in the matter affecting that licensee, permit holder or applicant.

### **5. RECOMMENDATIONS OF EMPLOYMENT**

A member of the Board or staff member of the Commission shall not recommend a person for employment either directly or as a consultant by a licensee, permit holder or applicant.

### **6. EX PARTE CONTACTS**

A member of the Board or staff member of the Commission shall not discuss a pending licence or tariff recommendation with the applicant outside of the procedures by the Commission and if such discussion occurs, it must be reported to the Board in writing and made public.

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## **WATER AND SEWERAGE (GENERAL PROVISIONS) REGULATIONS**

### **ARRANGEMENT OF REGULATIONS**

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## WATER AND SEWERAGE (GENERAL PROVISIONS) REGULATIONS – SECTION 97

(Statutory Instrument 104/2008)

Commencement [19 November 2008]

### 1. CITATION

These Regulations may be cited as the Water and Sewerage (General Provisions) Regulations.

### 2. INTERPRETATION

In these Regulations —

“**Act**” means the Water and Sewerage Act;

“**Chairperson**” means the Chairperson of the Commission appointed pursuant to section 36 of the Act;

“**Commission**” has the same meaning as in the Act;

“**member**” means a member of the Board of the Commission appointed pursuant to section 36 of the Act.

*Commission*

### 3. TENURE OF BOARD MEMBERS

- (1) The first members of the Board of the Commission shall hold office for 3 years, 4 years, 5 years, 6 years and 7 years respectively.
- (2) The term of the Chairperson shall be at least 5 years.
- (3) A Board member appointed subsequently to the first appointments shall hold office for 5 years, except if appointed to fill a vacancy, in which case he or she shall hold office for the unexpired term.

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#### **4. REMUNERATION AND RETAINER**

- (1) A member of the Board is entitled to remuneration of \$300 per meeting at which the member is present.
- (2) The Chairperson is entitled to a monthly retainer of \$1500.

#### **5. COMMISSION STAFF**

The Commission may appoint staff who shall work under the supervision and direction of the Executive Director including any one or more of the following —

- (a) a manager whose responsibilities include managing consultants in the preparation of tariff decisions and the preparation of recommendations to the Minister as to service standards and other regulations to be issued under the Act;
- (b) one or more employees whose duties include handling customer concerns and overseeing processes for public and media involvement in the activities of the Commission;
- (c) a legal officer or advisor whose duties include legal advice to the Commission and legal review of Commission decisions and recommendations;
- (d) an administrative assistant, who shall perform administrative duties.

#### **6. CONSULTANTS**

- (1) The Commission may contract consultants to provide assistance that it may require for the proper carrying out of its functions.
- (2) In the case of a consultancy in excess of \$25,000 the Commission shall seek offers from at least 3 consultants qualified to perform the work and shall choose among the respondents according to criteria announced at the time of the request for proposals.
- (3) The scoring shall be made public at the time that the winning bid is announced.

#### **7. PUBLIC CONSULTATION**

- (1) The Commission shall engage in public consultation before making a decision.

- (2) Subject to sub regulation (3), the Commission shall decide the manner and time frame for public consultation.
- (3) The Commission shall allow a party, who has a particular interest other than the general public interest, sufficient involvement to enable the party to protect its interest.
- (4) Notwithstanding sub-section (2), the Board members and any persons authorised by it have the right to ask questions of a party involved in Commission proceedings.

## **8. PURPOSE OF PROCEEDINGS**

The primary purpose of all Commission proceedings and hearings is to provide the Commission with the information necessary to reach a fair decision and the Commission shall organise its proceedings to that end.

## **9. PUBLIC ACCESS TO INFORMATION**

- (1) The Commission shall give the public access to information in its possession unless the Commission considers that such access should be precluded on grounds of personal privacy, pending litigation, national security or commercial sensitivity.
- (2) The Commission, licensees and permit holders shall maintain a web site designed to keep the public apprised on questions of substantial public significance.
- (3) The Commission shall also maintain and disseminate brochures on the rights of water customers, methods of water conservation, and all other matters of substantial public concern.
- (4) Board members shall take an active role in meeting with the public to hear public concerns, and to explain Commission decisions and policies.

## **10. FORM OF COMMISSION DECISIONS**

The Commission's decisions shall be in writing and publicly available and shall contain a statement of the Commission's reasoning.



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## 11. CITIZENSHIP ADVISORY COUNCILS

The Commission, licensee and permit holders may each create citizen advisory councils, comprising groups of citizens who are interested in assisting in ensuring an effective water sector and good water services

### *Form and content of applications and orders*

## 12. FORM OF SERVICE LICENCE APPLICATION

- (1) An application for a service licence pursuant to section 6 of the Act shall contain the following information —
  - (a) a complete description of the service to be rendered;
  - (b) a complete description of the proposed service territory including, if the licence is to be exclusive, the precise geographic boundaries;
  - (c) proof of the competency of the licensee to render the service adequately and in an environmentally acceptable manner;
  - (d) proof that the licensee is financially qualified to render the service;
  - (e) a complete set of proposed tariffs, and a description of the method by which the tariff was calculated;
  - (f) plans and schedules for investments to improve service, including pressure stability, service extension, loss reduction, metering and water conservation;
  - (g) proof that any other necessary permits have been obtained or are likely to be obtained;
  - (h) a complete description of the prospective licensee, including all corporate affiliates, all other countries in which that company or corporate affiliate renders water service and a copy of annual reports prepared by the prospective licensee or corporate affiliate;
  - (i) the identities and resumes of the individuals proposed to act as chief executive officer, chief operational officer, and chief financial officer;
  - (j) additional information that the Minister or the Commission may request.

- (2) Upon receipt of an application that conforms with the requirements in sub regulation (1), the Commission shall provide public notice of it, together with a description of the process by which members of the public may inform themselves as to the application and may make their views known to the Commission.
- (3) In evaluating the licence application, the Commission shall take into account and make specific findings as to the experience of the applicant in operating water systems in the Caribbean region and elsewhere, including whether the applicant has been successful in improving service, in connecting new customers, in increasing efficiency (including loss reduction), and in improving customer satisfaction and the applicant's record of environmental compliance and so as to provide potable water shall also be the subject of specific findings.
- (4) The Board shall also evaluate the specific technical and managerial experience of individuals identified to manage licensees' operations in Saint Lucia and this evaluation shall include their performance with regard to the criteria set out in sub regulation (3).

### **13. FORM OF COMMISSION ORDERS**

- (1) The Commission shall include in its orders the decision reached and an explanation of the reasons for the decisions and the Commission may also refer to prior Commission and Ministerial decisions where applicable.
- (2) The Commission shall make the Order available to the public and to the media.

### **14. FORM OF APPLICATION FOR HEARING**

An application for a hearing under section 64(2) of the Act shall be in writing and shall state the date of the original application and the reasons, if known to the applicant, why no recommendation and or decision has been rendered and the Commission shall give public notice of the requested hearing.

### **15. WAIVER OF REGULATIONS**

- (1) Upon a finding that good cause exists, the Minister or the Commission that has promulgated any requirement or procedure pursuant to this section, may waive or modify the application of that regulation and

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the waiver shall be limited in time and scope to the minimum necessary to meet the good cause that has been found.

- (2) The Commission or Minister as the case may be shall, before the waiver takes effect, publish on its website and in at least 2 newspapers in general and at least weekly circulation in Saint Lucia —
  - (a) the waiver granted;
  - (b) the reason for giving the waiver;
  - (c) the scope and duration of the waiver; and
  - (d) a justification of why the waiver was the best way to achieve the objective sought.

## **16. PROCEDURE FOR HANDLING COMPLAINTS**

- (1) The Commission shall attend to customers in a prompt and courteous manner and a response to a communication in writing by a customer is prompt if done within 48 hours.
- (2) The Commission shall keep a record of all customer contacts and shall separate the record in the following categories —
  - (a) information seeking;
  - (b) service related;
  - (c) metre accuracy;
  - (d) service connection;
  - (e) disconnection; or
  - (f) miscellaneous.
- (3) The record shall include the name and address of the complainant, the date and time received, a summary of the specifics of the contact, and the name of the official handling the contact.
- (4) A complaint lodged under any category other than ‘information seeking’ shall not be processed unless the customer has first raised the complaint with the licensee, and has been unable to resolve it.
- (5) The official handling the complaint shall make every effort to resolve it informally, but should also advise customers of their rights pertaining to the type of complaint filed.

- (6) If informal resolution is not possible, the official handling the complaint shall use such fact finding methods as are appropriate to the matter in dispute and should prepare a written decision to be issued by the Board.
- (7) A complete record of complaints and decisions should be kept and reported to the Board at regular intervals.

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## WATER AND SEWERAGE (APPEALS TRIBUNAL) REGULATIONS

### ARRANGEMENT OF REGULATIONS

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## **WATER AND SEWERAGE (APPEALS TRIBUNAL) REGULATIONS – SECTION 97**

(Statutory Instrument 105/2008)

Commencement [19 November 2008]

### **PART 1 PRELIMINARY**

#### **1. CITATION**

These Regulations may be cited as the Water and Sewerage (Appeals Tribunal) Regulations.

#### **2. INTERPRETATION**

In these Regulations —

“**Act**” means the Water and Sewerage Act;

“**appellant**” means a service licensee or an intervening party who participated extensively or sought to participate, in the proceeding leading to the decision being appealed;

“**Tribunal**” means the Appeals Tribunal appointed pursuant to section 96 of the Act.

### **PART 2 CONSTITUTION AND POWERS**

#### **3. CONSTITUTION**

(1) Subject to subsection (2), the Tribunal shall comprise not less than 3 nor more than 5 members, appointed by the Judicial and Legal Services Commission after consultation with Cabinet.



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- (2) The Tribunal shall have at least one member who is an expert in water sector operations, one who is an expert in economic regulations and one who is an expert in regulatory law.
- (3) One member of the Tribunal shall be from Saint Lucia, and one member may be from the same country as the licensee, or permit holder or any significant shareholder in the licensee or permit holder.

#### **4. TENURE**

Subject to regulation 5, a member of the Tribunal shall hold office for a term of 5 years, but shall be eligible for reappointment.

#### **5. REMOVAL AND RESIGNATION**

- (1) A member of the Tribunal may be removed from office by the Judicial and Legal Services Commission after consultation with Cabinet and the Commission on the grounds of —
  - (a) failure to execute his or her functions as a member by reason of infirmity or mental illness;
  - (b) misconduct;
  - (c) failure to execute his or her functions as a member without reasonable excuse; and
  - (d) being placed, by conduct or otherwise, in a position that is incompatible with the due execution of his or her office.
- (2) A member of the Tribunal may at any time resign from office by instrument in writing addressed to the Judicial and Legal Services Commission, transmitted through the Chairperson, and such resignation shall take effect as from the date of receipt of the instrument by the Judicial and Legal Services Commission.

#### **6. INQUIRY**

- (1) The Commission shall cause a commission of inquiry to be appointed under the Commissions of Inquiry Act, Cap. 17.03 where it considers that an inquiry should be held to determine whether a member of the Tribunal should be subject to disciplinary or remedial measures on any of the grounds specified in regulation 5.

- (2) The Commissioner of the inquiry shall send his or her report to the Judicial and Legal Services Commission, Cabinet and the Commission.
- (3) On receipt of a report under subregulation (2), the Judicial and Legal Services Commission may, after consultation with Cabinet and the Commission, remove a member of the Tribunal or take any other remedial measure recommended by the Commissioner of the inquiry.

## **7. CONTINUATION OF PROCEEDINGS AFTER TERMINATION**

- (1) A person who resigns or ceases to hold office as a member may, if authorised to do so by the Judicial and Legal Services Commission after consultation with Cabinet and the Commission, continue to inquire into, hear and determine a proceeding to which that person was assigned while that person was a member.
- (2) Where a person continues to be a member in accordance with subregulation (1), he or she shall continue to be a member on the terms and conditions that the Judicial and Legal Services Commission, after consultation with Cabinet and the Commission, considers appropriate.

## **8. ABSENCE OR INCAPACITY**

- (1) If a member of the Tribunal is absent or unable to perform the functions of his or her office, or if there is a vacancy in the Tribunal, the Judicial and Legal Services Commission may, after consultation with Cabinet and the Commission, appoint another person to act temporarily in place of the member.
- (2) An appointment made pursuant to sub regulation (1) shall be in accordance with the constitution of the Commission stipulated in regulation 3.

## **9. PUBLICATION OF CHANGES IN MEMBERSHIP**

Cabinet shall publish in the *Gazette* the appointment of any member of the Tribunal and the termination of office of person as a member, whether by death, resignation, removal, effluxion of time or otherwise.

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## **10. SECRETARY**

- (1) The Tribunal shall appoint a Secretary.
- (2) The Secretary shall keep a written record of all proceedings of the Tribunal, which shall be confirmed by the Chairperson.

## **11. REMUNERATION**

A member of the Tribunal is entitled to be paid remuneration per sitting based on the rate of an international legal consultant performing similar duties.

## **12. SITTINGS AND QUORUM**

- (1) The Tribunal shall sit in Saint Lucia at the times necessary or expedient for the discharge of its functions.
- (2) Subject to sub regulation (3), 3 members of the Tribunal constitute a quorum.
- (3) A member of the Tribunal shall, as soon as is practicable, inform the Chairperson of any matter in which he or she has, either directly or indirectly, personally or by his or her spouse, partner, business associate or company, any pecuniary or business interest and that member shall take no part, directly or indirectly, in any hearing, deliberation or decision by the Tribunal on that matter.

## **13. POWERS OF TRIBUNAL**

- (1) The Tribunal has, with respect to the appearance, swearing and examination of witnesses, the production and inspection of documents, the enforcement of orders and other matters -necessary or proper for the due exercise of their jurisdiction, all the powers, rights and privileges that are vested in a superior court of record and, without limiting the generality of the foregoing, the Tribunal may —
  - (a) issue a summons requiring a person to –
    - (i) appear at the time and place stated in the summons to testify to all matters within the person's knowledge relative to any subject matter before the Appeal Tribunal; and

- (ii) bring and produce any document, book or paper including electronic media in the person's possession or under the person's control relative to that subject matter;
  - (b) administer oaths and examine any person on oath; and
  - (c) during the hearing, receive evidence that they consider;
  - (d) relevant and trustworthy and are not bound by any legal or technical rules of evidence
- (2) Subject to the provisions of these Regulations, the Tribunal shall have the power to regulate its own proceedings.
- (3) The Tribunal shall not conduct a detailed economic or technical review of a decision unless it first finds that there is reasonable probability that the decision being appealed is erroneous.
- (4) The Tribunal may choose to conduct a detailed review of economic, financial or technical component of a decision before arriving at a final decision.

#### **14. EXPERT ADVICE**

The Tribunal may retain the services of legal, economic, financial or technical consultants to advise it on any matter relating to the discharge of its functions.

#### **15. CONFIDENTIALITY**

- (1) A member of the Tribunal shall at all times preserve and aid in preserving confidentiality with regard to all matters coming to his or her knowledge in the performance of his or her duties.
- (2) Except for the performance of his or her duties or under legal obligation, no member, of the Tribunal shall communicate any confidential matter to any person or, unless under legal obligation, grant to any person access to any records in the possession, custody or control of the Tribunal.

#### **16. VALIDITY OF PROCEEDINGS**

The validity of any proceedings of the Tribunal shall not be affected by any vacancy in its membership or by any defect in the appointment of any of its members.

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## PART 3

### APPEAL PROCEDURE

#### 17. APPLICATION FOR APPEAL

- (1) An appellant may appeal in writing to the Tribunal.
- (2) The application for appeal shall be signed by the appellant and “copies of the application for appeal shall be submitted to the Secretary.
- (3) An application for appeal shall be dated as of the day on which it is signed and shall state —
  - (a) the name of the appellant;
  - (b) the appellant’s office, if any;
  - (c) the date of the decision from which the appellant desires to appeal;
  - (d) the person or authority from whose decision the appellant desires to appeal;
  - (e) the date on which the appellant received application for the decision he or she desires to appeal;
  - (f) the decision which the appellant seeks from the Tribunal;
  - (g) an address to which any notice or other document may be sent to the appellant from the Tribunal; and
  - (h) the reasons in detail for the appeal and materials in support of the petition.
- (4) The secretary shall publish in the *Gazette* an address where an application for appeal may be given under these Regulations.
- (5) An application for appeal shall be given to the secretary either personally or by sending it by registered mail to the address published under sub regulation (4).

## **18. TRANSMISSION OF THE APPEAL DOCUMENTS**

The secretary shall send one copy of the application for appeal and any other document that is relevant to the appeal to each of the following persons —

- (a) the members of the Tribunal,
- (b) the person whose decision is being appealed; and
- (c) any other person who was a party to the proceedings in which the decision was taken.

## **19. HEARING**

- (1) At least 7 days before the date fixed for the hearing of an appeal, the secretary to the Tribunal shall advise the parties by notice in writing of the date, and the place at which the appeal has been set down for hearing.
- (2) At a hearing by the Tribunal the parties are entitled to appear in person or by a representative.
- (3) Subject to sub regulation (4), the hearing of the Tribunal shall be public.
- (4) The Tribunal may, on application, take any measures or make any order that the Tribunal considers necessary to ensure the confidentiality of the proceedings if it is satisfied that financial or personal or other matters may be disclosed and are of such a nature that the desirability of avoiding public disclosure of those matters in the interest of any person affected or in the public interest, outweighs the desirability of adhering to the principle that the inquiry be conducted in public.

## **20. DECISIONS**

- (1) After considering the evidence and any representations made on behalf of any party to the proceedings, the Tribunal may affirm, set aside or vary, the decision appealed, make any other decision which the person could have made or direct the person to retake the decision after taking into consideration the conclusion of the Tribunal on any point.
- (2) The Tribunal shall publish the decision within a period of 9 days of the appeal, or such extended period that the parties decide by mutual agreement.

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- (3) The decisions of the Tribunal is by a majority of votes of those members present and voting and, in addition to an original vote, the Chairperson has a second or casting vote in any case in which the voting is equal.
- (4) The decisions of the Tribunal shall be authenticated by the signature of the Chairperson and the secretary.

## **21. COSTS**

The Tribunal may assess its costs of processing an appeal against the losing party if it concludes that unreasonable conduct by that party contributed to the costs of the appeal and if the Tribunal makes no such award, the costs of the Tribunal shall be paid from the Water and Sewerage Fund established under section 53 of the Act.

## **22. DECISION FINAL**

The Tribunal has exclusive jurisdiction to hear and determine all questions of fact or law in relation to any matter over which it is given jurisdiction and, subject to judicial review, decisions of the Tribunal are final and shall not be appealed.

# **PART 4 ENFORCEMENT AND OFFENCES**

## **23. FILING OF ORDER**

- (1) The Tribunal may file in the High Court for immediate registration a copy of the order, exclusive of any reasons for it, but the order shall not be filed until at least 30 days after the day on which the order was made has elapsed, or the day provided in the order for compliance with it, whichever is the later.
- (2) On filing in the High Court, an order shall be registered in that Court and, when registered, it shall have the same force and effect, and all proceedings may be taken, as if the order were a judgement obtained in that Court.

**24. OFFENCE**

- (1) A person shall not obstruct the Tribunal or a person acting on behalf or under its direction in the performance of its functions under this Act.
- (2) A person who contravenes this section commits an offence and is liable on summary conviction to a fine of \$5000.00 or imprisonment for a term not exceeding 3 months.

**25. PERJURY**

- (1) A person is liable to be prosecuted for perjury under the Criminal Code for a false statement made to the Tribunal.
- (2) For the purpose of this regulation and the Criminal Code the Tribunal is a Court within the meaning of the Criminal Code.



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## **WATER AND SEWERAGE (TARIFF) REGULATIONS**

### **ARRANGEMENT OF REGULATIONS**

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## WATER AND SEWERAGE (TARIFF) REGULATIONS – SECTION 97

(Statutory Instrument 106/2008)

Commencement [19 November 2008]

### PART 1 PRELIMINARY

#### 1. CITATION

These Regulations may be cited as the Water and Sewerage (Tariff) Regulations.

#### 2. INTERPRETATION

In these Regulations —

“**Act**” means the Water and Sewerage Act, Cap. 9.03;

“**allowed real revenue**” means the total revenue that the service licensee is allowed to earn from tariffs, determined by the method outlined in paragraph 2 of Schedule 3;

“**allowable rate of return**” means the rate of return the service licensee may earn on its investment, as defined in paragraph 1.2 of Schedule 3;

“**appeals tribunal**” has the same meaning as in the Act;

“**capital expenditure**” means expenditure on new assets, including rehabilitation and replacement of existing assets, improvements to meet new regulatory requirements, and new infrastructure;

“**Commission**” has the same meaning as in the Act;

“**depreciation**” means annual accounting charge for wear, tear and obsolescence of fixed assets, calculated in accordance with paragraph 1.3 of Schedule 3;

“**dispute**” means a disagreement between a service licensee and the Commission;

- “**cost**” means the increase in cost from producing one output or serving one group of customers in addition to another such that a service licensee, producing two services A and B, the incremental cost of B is the additional cost of producing B, given that the firm is already producing A;
- “**K factor**” means an adjustment factor, aimed at keeping tariffs in line with the cost of service as efficiency increases and investment grows, and smoothing tariff changes over time and is determined according to the process outlined in paragraph 2 of Schedule 3;
- “**legacy asset value**” means the value of legacy assets owned by the service licensee at the time of privatization as agreed between the Government and the Transaction Advisor at the time of sale, and stipulated before the bids are received;
- “**net present value**” means the discounted value of the expected benefits of a project, less the discounted value of the expected costs, calculated as specified in paragraph 2 of Schedule 3;
- “**operating and maintenance expenditure**” means expenditure incurred through operations and maintenance activities in providing the services, calculated as outlined in paragraph 1.4 of Schedule 3;
- “**reasonable cost of service**” means the total cost the utility would incur in providing the required services efficiently and is made up of the components defined in paragraph 1 of Schedule 3;
- “**regulatory asset value**” means the value of assets utilized by the service licensee in providing the service, calculated as specified in paragraph 1.1 of Schedule 3; “**rate of return**” means the annual growth in the service licensee’s profits, expressed as a percentage of the original investment in the service licensee, calculated as specified in paragraph 1.2 of Schedule 3;
- “**rising block tariffs**” means some water is available at low unit prices, and additional water at progressively higher prices that are not subsidized;
- “**service**” has the same meaning as in the Act;
- “**standalone cost**” means the hypothetical cost of producing each output or serving each customer independently such that a service licensee producing two services A and B, the standalone cost of A is the cost that the firm would incur producing A, but not B;

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“**tariff revenue**” means the revenue earned by a service licensee from tariffs;

“**tariff review period**” means the period for which a new tariff is set following a triennial or an extraordinary tariff review;

“**used and useful**” means that an asset is considered used and useful when it is currently used to provide service, is not oversized or clearly inefficient, and is currently contributing to the provision of the service;

“**working capital**” means the difference between current assets and current liabilities.

### 3. WATER AND SEWERAGE RATES

For water and sewerage services supplied under its service licence, a service licensee shall charge the rates prescribed in Schedule 1 as adjusted, when required in accordance with Parts 1, 2 and 3 of these Regulations.

## PART 2 INDEXATION

### 4. INDEXATION ADJUSTMENT

- (1) A service licensee is entitled to adjust its water and sewerage rates annually in accordance with the indexation formula in Schedule 2 to compensate it for the impact of inflation on costs and to allow for efficiency gains and capital investment.
- (2) Indices specified in Schedule 2 are to be the latest index available at the time of the review.
- (3) The indexation formula shall be applied equally to all service licensees' tariff classes.

### 5. INDEXATION PROCEDURE

- (1) Two months prior to the start of each year, the service licensee shall apply the indexation formula to tariffs, and notify the Commission of the proposed new tariffs, the corresponding indices and the effective date.

- (2) The Commission may amend the proposed new tariffs if it considers that an error has been made in calculating the tariffs.
- (3) Where the commission accepts the tariffs submitted in accordance with this regulation, it shall publish the new tariffs, the corresponding indices and the effective date in the Gazette and 2 newspapers in weekly circulation in Saint Lucia, at least one month prior to the effective date.
- (4) The service licensee shall implement the new tariffs no earlier than the effective date.
- (5) The service licensee may object to the new tariffs if it believes that the Commission has erred and in the event of an objection, the Commission and the service licensee shall resolve the dispute in accordance with the appeals process outlined under the Act.
- (6) In the event of a dispute that extends beyond the effective date of the new tariffs, the service licensee's tariff shall be implemented until the dispute is resolved and if the decision is given against the service licensee, it shall immediately reduce tariffs to the agreed level and issue a customer refund.

## **6. AMENDMENT OF INDEXATION FORMULA**

- (1) Subject to subregulation (3) pursuant to a triennial tariff review referred to in regulation 7, the Commission may amend Schedule 2 to change the indexation formula if it considers that the existing formula is no longer an accurate reflection of a service licensee's input costs.
- (2) The input indices shall be regularly published or easily observable.
- (3) The new indexation formula shall be a better reflection of changes in cost than the existing formula.

## **PART 3**

### **TRIENNIAL TARIFF REVIEW**

## **7. TRIENNIAL TARIFF REVIEW ADJUSTMENT**

In a triennial tariff review, the Commission shall set tariffs using the triennial tariff adjustment procedure in Schedule 3 so that —

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- (a) the net present value of the tariff revenue earned by the service licensee over the following three years is equal to the net present value of its efficiently incurred costs plus a fair and reasonable return on capital over the same period of time, in accordance with the following —

$$\text{NPV (C)} = \text{NPV (R)}$$

Where:

NPV means net present value

C = reasonable cost of service for the tariff review period

R = Total revenue earned by the service licensee from supplying services over the tariff review period; and

- (b) tariff increases are smoothed by applying a K Factor.

## 8. TRIENNIAL TARIFF REVIEW PROCEDURES

- (1) Four months prior to the commencement of a triennial tariff review period, a service licensee shall submit to the Commission its proposed tariff rates, estimated revenue requirement, and sufficient supporting information to enable the Commission to verify that the proposed tariff rates reflect reasonably incurred costs of service and a reasonable return on capital.
- (2) Supporting information shall include —
- (a) a business plan with planned investment and financial forecasts for at least the following 9 years,
  - (b) a demand forecast for at least the following nine years,
  - (c) changes to the depreciation schedule, as specified in paragraph 1.3 of Schedule 3,
  - (d) audited accounts referred to in regulation 9.

## 9. ACCOUNTING INFORMATION

- (1) For the purpose of the triennial review, a service licensee shall prepare audited accounts in accordance with International Financial Reporting Standards, or any other standards specified by the

Commission but the Commission may alternatively specify additional schedules to fulfil specific requirements, once it does not override the International Financial Reporting Standards.

- (2) The service licensee shall appoint an external auditor to audit the accounts and shall ensure that the auditor submits the following to the Commission —
- (a) a note indicating that the auditor acknowledges the intended use of the accounts by the Commission;
  - (b) a report, in respect of each of the accounting statements submitted, stating whether in the Auditor's opinion, —
    - (i) the service licensee has kept proper accounting records, in a form that enables identification of the revenues, costs, assets and liabilities of providing the services, and
    - (ii) the set of accounting statements submitted represents a true and fair view of the revenues, costs, assets and liabilities of the service the licensee incurred in providing the services.

## 10. REVIEWING FORECAST CAPITAL EXPENDITURE

The Commission shall carry out the following steps in reviewing the service licensee's capital expenditure requirements —

- (a) review the service licensee's demand forecast and service standards to define the service capabilities required of the network;
- (b) assess the condition of the infrastructure, including its adequacy for service and how well it has been maintained;
- (c) benchmark asset utilization and maintenance levels against best practices;
- (d) identify the required system upgrades, by comparing the service licensee's actual service capabilities and the required service capabilities;
- (e) review the efficiency of the proposed capital expenditure programme to ensure that the projects are the least cost solution, technically sound, and reflect reasonable post estimates; and
- (f) subject to regulation 12, make any necessary adjustments to the forecast capital expenditure.



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## **11. ADJUSTMENTS TO ACTUAL INVESTMENT**

- (1) The Commission shall make adjustments to actual investment, adjusting the opening assets value on the basis of actual assets that are considered used and useful but if an asset is not considered used and useful, the Commission will exclude it from the asset value.
- (2) Investments are to be automatically included in the Commission's calculation if they are —
  - (a) subject to a plan already approved by the Commission; and
  - (b) procured on a competitive basis.

## **12. ADJUSTMENTS TO FORECAST INVESTMENT**

- (1) The Commission shall make adjustments to forecast investment after considering all forecast capital expenditure costs that are reasonably forecasted to be incurred by the service licensee in providing services to consumers.
- (2) The service licensee shall provide the Commission with information on its investment plans, projected capital expenditure for the tariff review period, and such other information as the Commission reasonably requests.
- (3) Approval of investment plans and projected cash flows by the Commission shall be in respect of a period of at least 9 years.
- (4) In the event that a dispute arises between a service licensee and the Commission on the allowable investment, the appeals process outlined under the Act applies.

## **13. REVIEWING DEPRECIATION**

- (1) The Commission will consider all depreciation costs that are reasonably incurred by the service licensee while providing services to consumers.
- (2) The service licensee shall submit an initial depreciation schedule to the Commission for approval along with the first triennial tariff review application and for future reviews, the Commission shall approve changes to the depreciation schedule only.

**14. REVIEWING OPERATIONS AND MAINTENANCE EXPENSES**

- (1) The Commission shall review the service licensee's forecast and historic operating and maintenance costs, as well as its forecast demand to ensure that this represents an accurate view of the state of the business and that the costs are reasonable.
- (2) The Commission shall determine the efficiency of the operating and maintenance costs using any combination of the following methods —
  - (a) compare the forecast operating and maintenance costs with historical costs and forecast performance;
  - (b) review a statement of justification for the forecast operating and maintenance costs submitted by the service licensee;
  - (c) benchmark operating and maintenance costs and performance on key service indicators against other utilities of a similar nature, operating in similar conditions;
  - (d) review the service licensee's performance on key performance indicators and against agreed service or efficiency targets;
  - (e) request an independent technical audit to assess service levels and associated costs.

**15. ADJUSTMENT TO ALLOWABLE OPERATING AND MAINTENANCE EXPENDITURE**

- (1) The Commission shall adjust the forecast operating and maintenance expenditure accordingly if the Commission finds that the service license is inefficient.
- (2) The Commission may make the adjustment based on immediate achievement of efficient cost levels or based on improved efficiency levels over a period of time that the Commission specifies, whichever the Commission considers reasonable.
- (3) In the event that a dispute arises between the service licensee and the Commission on the allowable operating and maintenance expenditure, the appeals process outlined in the Act applies.

**16. ADDITIONAL PARAMETERS FOR SETTING OF TARIFFS**

In addition to the principles set out in section 78 of the Act, the tariffs shall accord with the following:

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- (a) the tariff may contain different tariff classes;
- (b) each customer within a tariff class should be charged the same tariff;
- (c) a customer is not to be charged more than the standalone cost, or less than the incremental cost of providing service;
- (d) all customers in the same class shall be charged the same tariff unless different costs apply to certain customers within this class; and
- (e) rising block tariffs are permitted if applied equally to all customers in the same class.

## **17. PUBLISHING THE RESULTS OF THE REVIEW**

- (1) The Commission shall review the tariff review application and publish its results not later than 60 days before the end of the triennial period for a triennial tariff review.
- (2) In default of publication within this period, the new tariffs in the application are deemed effective.
- (3) The Commission shall publish its report stipulating the new tariff in the Gazette and in at least 2 newspapers in general weekly circulation in Saint Lucia.
- (4) If the service licensee's proposal is rejected by the Commission, the service licensee may submit a revised proposal within 14 days of notification of the rejection.
- (5) If the service licensee does not submit a revised proposal, the tariff already agreed for the existing period shall continue to apply.
- (6) In the event that a dispute arises between the service licensee and the Commission, both parties shall make an effort to resolve this through mutual consultation and negotiation.
- (7) Any disputes that cannot be resolved through mutual consultation and negotiation shall be referred to the Appeals Tribunal.

## PART 4

### EXTRAORDINARY TARIFF REVIEW

#### 18. EXTRAORDINARY TARIFF REVIEW

If an extraordinary event occurs, extraordinary tariff review will compensate —

- (a) the service licensee with a tariff increase, for any losses in revenue or increases in the cost of providing service;
- (b) customers with a tariff decrease, for increases in revenue, or decreases in the cost of providing service.

#### 19. EXTRAORDINARY TARIFF REVIEW PROCESS

- (1) The service licensee may, at any time, request the Commission to consider circumstances that the service licensee believes constitute grounds for an extraordinary tariff review by submitting information on the following —
  - (a) the event giving rise to the extraordinary tariff review;
  - (b) the valuation of the impact of the events on the service licensee's historical and future cash flows; and
  - (c) the calculation of the magnitude of the extraordinary tariff review requested.
- (2) The Commission may also, at any time, notify the service licensee of circumstances that the Commission believes constitutes grounds for an extraordinary tariff review and shall notify the service licensee of the extraordinary event, and request that the service licensee submit the information in subregulation (1).
- (3) The Commission shall determine whether an extraordinary event has occurred or will occur, by taking into account all information available at the time, and by making reasonable projections of all factors relevant to the service licensee's future cash flow and the Commission may employ the services of technical or other experts in making this determination.
- (4) The Commission shall —
  - (a) calculate the change in the service licensee's cash flows as a result of the extraordinary event;

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- (b) identify the annual changes (increases or decreases) in operating and maintenance costs and capital expenditure over the remainder of the triennial period;
  - (c) add or subtract these costs from the reasonable cost of service calculation for the remainder of the triennial period, and adjust the allowed real revenue requirement and tariff scheme accordingly;
  - (d) take into account in calculating the service licensee's allowed real revenue at the next triennial tariff adjustment if all additional costs extend beyond the end of the triennial period.
- (5) If the service licensee objects to the Commission's determination, it may refer the matter to the Appeals Tribunal.

## **20. PUBLICATION OF RESULTS**

The Commission shall publish its determination stipulating the revised tariff scheme in the Gazette and in at least 2 newspapers in general weekly circulation in Saint Lucia.

# **SCHEDULE 1**

(Regulation 3)

## **WATER AND SEWERAGE RATES**

### **WATER RATES**

- Domestic
  - The first 3,000 gallons @ \$7.35 per 1,000 gallons
  - In excess of 3,000 gallons @ \$15.00 per 1,000 gallons
- Commercial/Industry • \$20.00 per 1,000 gallons
- Hotel • \$22.00 per 1,000 gallons
- Government • \$14.00 per 1,000 gallons
- Ships • \$ 40.00 per 1,000 gallons

**SEWERAGE RATES**

- Domestic • The first 3,000 gallons @ \$5.45 per 1,000 gallons • In excess of 3,000 gallons @ \$10.35 per 1,000 gallons
- Commercial/ Industry • \$13.70 per 1,000 gallons
- Hotel • \$14 60 per 1,000 gallons
- Government • \$8.50 per 1,000 gallons

**CONNECTION FEE** • Variable, based on site conditions with respect to existing servicenetworks and schemes.

**SCHEDULE 2**

(Regulation 4)

**INDEXATION FORMULA**

The indexation formula is:

$$T_t = T_{(t-1)} * [1 + (0.4 L + 0.3 E + 0.2 I + 0.1 CPI) + K]$$

Where:

T = Tariff

t = Year in which the adjustments will be implemented (current year),

t- 1 = Year prior to the year in which the adjustments will be implemented

L = Wage Index, measured by the wage rate for the lowest grade of worker at Cable & Wireless

ÄL = Change in wage index, as calculated by:  $L_t - L_{(t-1)} / L_{(t-1)}$

E = Tariff for high voltage electricity supply (per kWh)

ÄE = Change in electricity tariffs, as calculated by:  $(E_t - E_{(t-1)}) / E_{(t-1)}$

I = Industrial index weighting for Maintenance costs as measured by changes to the following categories in the US Department of Labor Producer Price Index (This index does not take into account currency fluctuations and so shall be adjusted during a triennial tariff review to provide for exchange rate fluctuation if the currency in Saint Lucia is no longer pegged to the US Dollar):

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Abbr. Industry Product Change Calculated by:

Category Category

P Pump and Domestic

$P = (P_t - P_{t-1}) / P_{t-1}$  pumping Water equipment mfg Systems

FM Total fluid Liquid

$FM = (FM_t - FM_{t-1})$  meter and Meters /  $FM_{t-1}$  counting device  
mfg

I = Change in Industrial Index, as calculated by:

$(P + FM) / 2$

CPI = St Lucia Consumer Price Index, as published by the St Lucia Department of  
Statistics

CPI = Change in CPI, as calculated by:

$(CPI_t - CPI_{t-1}) / CPI_{t-1}$

K = K factor. This is to be determined by the Commission during each triennial  
tariff review.

## SCHEDULE 3

(Regulation 7)

### TRIENNIAL TARIFF ADJUSTMENT

The triennial tariff adjustment procedure comprises 3 steps:

1. Defining the service licensee's reasonable cost of service
2. Determining the allowed real revenue for each year
3. Setting the tariff rates

#### 1. Defining the reasonable cost of service

For each year in the tariff review period, the reasonable cost of service is measured by applying the following formula:

$$C = (RAV \times RoR) + Dep + Opex$$

Where:

C = Reasonable Cost Of Service

RAV = Regulatory Asset Value (1.1)

RoR = Allowable Rate of Return (1.2)

Dep = Depreciation (1.3)

Opex = Operating and Maintenance Expenditure based on Current Prices  
(1.4)

### 1.1 Determining the Regulatory Asset Value

The Regulatory Asset Value is to be determined using the following formula:

\*Regulatory Asset Value = Opening Assets + Forecast Capital Expenditure  
– Forecast Depreciation – Forecast Customer and Government  
Contributions

Opening Assets = Regulatory Asset Value at the start of the Tariff Review  
Period as determined below

Forecast Capital Expenditure = New assets forecast to be created annually,  
after the start of the Tariff Review Period, including rehabilitation and  
maintenance of existing assets and new infrastructure

Forecast Depreciation = Annual amount for depreciation forecast from the  
start of the Tariff Review Period

Forecast Customer and Government Contributions = Assets forecast to be  
paid for by the customers or by Government over the tariff review period  
(e.g. connection assets)

\*All assets that are used in providing the service to customers are to be  
considered service licensee's assets. Assets are to be valued on a historic  
cost basis.

#### Opening Asset Value

The Opening Asset value is to be calculated according to this formula:

Opening Assets =  $OAt-3 + \text{Actual Capital Expenditure} - \text{Actual}$   
 $\text{Depreciation} - \text{Actual Customer and Government Contributions}$

T = Year of the Triennial Tariff Review



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t-3 = Final year in the previous Tariff Review Period

OAt-3 = Opening Assets in the previous Tariff Review Period. If t -3 = 0, then 'Opening Assets' will refer to the Legacy Asset Value of the service licensee at the time of the privatization transaction. This value shall be agreed by the Government and the Transaction Advisor 1=3 Actual new assets created, including rehabilitation Actual Capital Expenditure and maintenance of existing assets and new infrastructure over the past 3 years, adjusted as described in regulation 11;

t=3 Actual annual amount for depreciation recorded Actual Depreciation over the past 3 years 1=3 Actual assets paid for by the customers and Actual Customer and Government by Contributions over the Government Contributions past three years (e.g. connection assets).

## 1.2 Allowable Rate of Return

The service licensee's allowable rate of return shall be calculated according to the following formula:

$$\text{RoR} = \text{Bank Rate} + Q$$

Where:

RoR = Pre-tax Rate of Return

Bank Rate = Average 12 month deposit rate paid by commercial banks in Saint Lucia

Q = Additional return required by investors for an investment with similar risk characteristics, calculated as described below.

Calculating Q

Q is to be calculated at every third triennial tariff review in the following way:

1. In year one, the Transaction Advisor advises on the full post-tax equity return on investment in businesses with commensurate risk levels to the service licensee, an applicable gearing or leverage ratio, and an estimated debt risk premium.

At future triennial tariff reviews, the Commission shall review these estimates if there is sufficient evidence that existing levels are inadequate or excessive.

2. The Commission shall calculate Q according to the following formula:

$$Q = g(1 - t)d + (1 - g)e - \text{Bank Rate}$$

(1- t)

Where:

$g$  = Gearing or leverage ratio defined in step 1

$d$  = Debt risk premium defined in step 1 + the Bank Rate

$e$  = Post-tax equity return defined in step 1

$t$  = St Lucia's corporate tax rate

Bank Rate = Average 12 month deposit rate paid by commercial banks in St Lucia

### 1.3 Depreciation

Assets are to be depreciated on a straight line basis, according to a depreciation schedule.

Depreciation is to be in accordance with generally accepted accounting principles and practices as used by the service licensee for accounting purposes, or as otherwise specified by the Commission.

### 1.4 Allowable Operating and Maintenance Expenditure

Allowable Operating and Maintenance Expenditure will include all operation and maintenance costs that are reasonably incurred by the service licensee in providing services to consumers.

Expenses incurred in building customer awareness about aspects of service provision, including billing and tariff information, information on customer obligations and liabilities, complaints processes and customer rights will be included in operations and maintenance expenditure if reasonable and justified.

Goodwill costs, brand building, sponsorships, and any expenses that are incurred in activities other than providing Services to St Lucian customers will be excluded from the allowable Operating and Maintenance Expenditure.

## 2. Determining the Allowed Real Revenue\*

NPV (C) is to be calculated according to this formula:

$NPV(C) = \sum_{t=0}^n \frac{C_t}{(1+r)^t}$

$C_t$

(1+r)<sup>t</sup> Where:

$t$  = year

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$C_t$  = Reasonable Cost of Service in year  $t$

$r$  = Rate of Return (calculated as specified in section 0)

NPV (R) is to be calculated according to this formula:

$$\sum_{t=1}^3 \frac{RT_t}{(1+r)^t}$$

$$= \frac{NPV(R)}{(1+r)^0}$$

$Y$

$t-1 (1 +$

Where:

$t$  = year

$RT_t$  = Tariffs in year  $t$  (in current prices)

$Q_t$  = Forecast demand in year  $t$

K Factor

The K Factor to be applied to each of the 3 years of the tariff review period, is to be determined as follows:

1. The service licensee's total revenue for each year in the triennial period is to be set so that it equals the reasonable cost of service for the same year.
  2. The tariff is then to be calculated by dividing the total revenue, by the forecast demand for each year.
  3. If the resulting tariff fluctuates significantly from year to year, the changes are to be smoothed out so that NPV(C) is still equal to NPV(R) over the triennial period.
  4. The smoothed change in tariffs over the triennial period is the K factor for each year of the tariff review period.
- \* Ensuring the service licensee's ability to finance investment In setting the allowed revenue, and smoothing changes in tariffs over the triennial period, the Commission shall ensure that given reasonable costs and financing requirements, the service licensee is able to meet reasonable debt covenants, including interest and debt service coverage ratios.

### 3. Setting the tariff rates

The service licensee's tariff review application shall include proposed tariffs for the Commission's approval. The Commission shall review the proposed tariffs taking the following into account: the service licensee's allowed real

revenue, the principles as stated in Part III, Division 5 of the Act and Part 3 of the Regulations.