



Government of Bermuda
Ministry of Environment, Planning and Infrastructure Strategy
OFFICE OF THE MINISTER

9th May 2012

Mr. Andrew Parsons
President
Bermuda Electric Light Company Ltd.
P.O. Box HM 1026
Hamilton HM DX

Dear Mr. Parsons,

Re: In the matter of an Appeal to the Minister by the Bermuda Electric Company Limited (“BELCO”), Pursuant to Section 14 of the Energy Act 2009 Against the Decision of the Energy Commission made on 17 February 2012 in regard to BELCO’s Rate Variation Application of 26 October 2011 (“the Appeal”)

Introduction

1. This is an Appeal to the Minister of Environment, Planning and Infrastructure Strategy (“the Minister”), dated the 13 March 2012, against the decision of the Energy Commission (“the Commission”) made on 17 February 2012 in regards to BELCO’s Rate Variation Application of 26 October 2011 (“the Decision”) pursuant to section 14 of the Energy Act 2009 (“the Act”).
2. The Commission received 11 objections to BELCO’s Rate Variation Application of 26 October 2011. BELCO provided the Commission with a response to these objections and in addition responded to comments posted on BERNEWS and the Royal Gazette on-line blogs.

Background

3. The relief which BELCO seeks is to set aside the Commission’s Decision and directives and to approve the rates as set out in Schedule 1 of BELCO’s Executive Summary to their Appeal as at 1 January 2012.
4. The Commission’s directives, as outlined in their Decision, are as follows:
 - i. That BELCO is to commence with meter readings starting on 1 March 2012 and 1 January 2013 rates as outlined in the approved schedule of rates.

ii. That BELCO approved schedule of rates are as follows in the table below:

EC Approved BELCO Rates		2011	2012	2013
Charge	Unit			
Schedule A - Residential				
Facilities Charge	per month	\$ 30.00	\$ 30.00	\$ 33.00
Energy Charges	per kWh			
0 - 250 kWh First Block		\$ 0.1575	\$ 0.1575	\$ 0.1575
251 - 700 kWh Second Block		\$ 0.2400	\$ 0.2400	\$ 0.2400
700+ kWh Tail Block		\$ 0.2285	\$ 0.2804	\$ 0.2972
Min Bill		\$ 40.00	\$ -	\$ -
Schedule B - Small Commercial				
Facilities Charge	per month	\$ 30.00	\$ 30.00	\$ 33.00
	per month	\$ 36.00	\$ 36.00	\$ 39.00
Energy Charges	per kWh			
0 - 1000kWh First Block		\$ 0.3372	\$ 0.3372	\$ 0.2295
1001-5000kWh Second Block		\$ 0.2500	\$ 0.2500	\$ 0.2517
5001+ kWh Tail Block		\$ 0.2228	\$ 0.2228	\$ 0.2800
Min Bill			\$ -	\$ -
Schedule C - Demand Service				
Facilities Charge	per month	\$ 100.00	\$ 100.00	\$ 100.00
Demand Charges	per KW			
A) 1st 50KW		\$ 8.83	\$ 8.83	\$ 9.14
remaining KW		\$ 8.16	\$ 8.16	\$ 8.45
B) 1st 50KW		\$ 9.00	\$ 9.00	\$ 9.32
remaining KW		\$ 9.59	\$ 9.59	\$ 9.93
C) 1st 50KW		\$ 9.53	\$ 9.53	\$ 9.86
remaining KW		\$ 10.09	\$ 10.09	\$ 10.44
Energy Charges	per kWh			
1st 200x Dmd		\$ 0.2236	\$ 0.2236	\$ 0.2314
2nd 200x Dmd		\$ 0.1443	\$ 0.1443	\$ 0.1494
remaining KW		\$ 0.1170	\$ 0.1170	\$ 0.1211

iii. The Commission further directs that BELCO shall change its residential billing format, both electronic and paper based bills, no later than 1 May 2012 to also show as separate line items the following:-

Facilities Fee		\$ XXX.XX
First 250 kWh of usage at	\$ 0.XXXX per kWh =	\$ XXX.XX
Next 250 kWh to 700 kWh of usage at	\$ 0.XXXX per kWh =	\$ XXX.XX
Over 700 kWh of usage at	\$ 0.XXXX per kWh =	\$ XXX.XX
Total Energy Use		\$ XXX.XX
Fuel Adjustment Charge	\$ XX.XX per kWh =	\$ XXX.XX
Total Billing Amount		\$ XXX.XX

iv. As the Commission can only act on submissions placed before it, the directive reflects only those rate codes that were submitted. All other rate codes will remain with their current billing factors. This applies to Class "H" rate codes 4323 and 4423, Church rate code 4309, Street Lighting rate code 4202 and all other rate codes and classes not specifically addressed in the BELCO Summary of proposed rates.

- v. The Commission directs BELCO to submit by May 1, 2012 rates for customer classes,
 - a. Churches and special interest groups
 - b. 'H' Demand
 - c. Street Lighting
 - d. All other classes outlined in their Monthly Rates schedule which was made effective January 1, 2010
 which were not specifically included in the tariff filing of 26th Oct, 2011.
 - vi. That BELCO cap its actual net income for 2012 to a maximum of BD \$ 13 Million and to a maximum of \$ 14 Million for 2013.
 - vii. The Commission further directs that BELCO may not discount or give a non-approved rate to any of its customers without the express approval of the Commission.
 - viii. The Commission further directs that BELCO complete a feasibility study on TOU and present its findings to the Commission no later than 31 May 2012 and that no pilot project may be embarked upon without the Commission's approval
5. In support of their Appeal, BELCO's key points are highlighted in their Executive Summary in the Appeal.
 6. BELCO has three principal grounds of appeal. They are as follows:
 - i) That the Commission erred in the exercise of its discretion under section 13 of the Act by reaching a wholly unreasonable decision that imperils the energy security of Bermuda;
 - ii) That the Commission exceeded its jurisdiction under the Act; and
 - iii) That the Commission made findings that were either not based on evidence before it (or based on a wholly mistaken view of the evidence) or were based on information that it did not disclose to BELCO.
 7. In reply to BELCO's Appeal, the Commission submitted to the Minister its comments in a letter dated 25 April 2012.
 8. I also have regard to the Energy Act 2009 which states as follows:

Notice of intention to vary price or charge

12 (1) *No specified business shall vary the price or charge for a specified commodity or any published schedule of prices or charges for that commodity unless notice in writing of the intention to vary the price or charge, and the amount of the variation, has been given to the Commission.*

(2) *Any variation in installation charges, labour charges for repairs or other charges made in connection with the installation or use of any apparatus used for the supply of or necessary for the beneficial enjoyment of a specified commodity, or of the delivery charges for such commodity, shall be deemed not to be a variation of the price or charge of such commodity for the purposes of subsection (1).*

(3) *When notice of intention to vary prices or charges to which subsection (1) applies has been given to the Commission, those prices or charges shall not be varied otherwise than—*

(a) in the event of the Commission giving a direction under section 13 within a period of sixty days beginning with the date on which that notice of intention was given, or such longer period as the Minister may allow, to the extent and in the amount that may be permitted by the direction; and

(b) in any other case, until after the expiration of the period of sixty days, or such longer period as the Minister may allow, referred to in paragraph (a).

Direction by Commission

13 (1) On receipt of a notice given under section 12, the Commission may, after making any inquiry in the matter that they may think fit for the purpose of ascertaining that the variation is just and reasonable, give any one or more of the following directions, namely a direction:-

- (a) approving the variation;
- (b) disallowing the variation either wholly or in part;
- (c) specifying the date when the variation is to take effect; or
- (d) otherwise setting out terms and conditions upon which the variation may be made.

(2) In the exercise of its discretion under subsection (1), the Commission shall have regard to—

- (a) the cost to the specified business of the specified commodity;
- (b) the needs of the specified business for adequate working capital and reasonable reserves;
- (c) the need to afford investors a reasonable rate of return on their investment;
- (d) the public interest; and
- (e) any other matters which, to the Commission, appear relevant.

(3) The burden of proof to show that any variation in the price or charge of a specified commodity is just and reasonable is upon the specified business that seeks the variation.

(4) The Commission shall, not later than three working days after the date on which it gives a direction, provide to the specified business concerned the Commission's reasons for giving the direction

Appeal to Minister

14 (1) A specified business which is aggrieved by a direction of the Commission under section 13 may, within twenty-one days of being notified of the direction, or such longer period as the Minister may allow, by notice in writing appeal to the Minister.

(2) On an appeal under this section the Minister may vary any direction of the Commission and any variation shall take effect on a date to be determined by the Minister, but until such variation takes effect the direction of the Commission shall continue to have effect.

(3) Notwithstanding subsection (2), the Minister may suspend the implementation of a direction of the Commission that is the subject of an appeal pending the outcome of the appeal.

(4) The Minister shall make a decision on an appeal as soon as possible after the hearing of an appeal but in any event no later than 60 days after receipt of the notice of appeal.

9. I take note of the following assertions made in BELCO's Appeal:

- i) Contrary to sections 13(2)(b) and (d) of the Act, the Commission erred in the exercise of its discretion by failing to properly identify and give effect to the greatest public interest and expectation, namely to protect and upgrade Bermuda's power supply to ensure no risk of failure;
- ii) The Commission acted contrary to the public interest and their duty under section 13(2)(d) of the Act by risking Bermuda's energy security in favour of a dangerous gamble of "bleeding" the generators;
- iii) Contrary to section 13(2)(d) of the Act, the Commission erred in the exercise of its discretion by failing to take into account the public interest in concluding (without any expert evidence) that BELCO's strategic margin of safety is potentially in excess of Bermuda's real needs. The Commission further erred in law in basing a decision on a subject matter (strategic margin of safety) which was never debated or challenged;
- iv) Contrary to section 13(2)(d) of the Act, the Commission erred in the exercise of its discretion by failing to take account and give due weight to the fact that infrastructure improvements

have been largely on hold since 2005 and that there is now an urgent need to replace generators;

- v) Contrary to section 13(2)(d) of the Act, the Commission erred in the exercise of its discretion by failing to take into account that not only is the construction of the North Power Station and the installation of the new generators a necessity but this project has the added public benefit of putting people back to work and creating a sense of optimism;
 - vi) Contrary to section 13(2)(d) of the Act, the Commission erred in the exercise of its discretion by failing to take into account that BELCO has a proven track record of not resorting to rate increases unless necessary.
 - vii) In applying sections 13(2)(a),(b) and (d) of the Act, the Commission ought to have given weight to the following: there was no public evidence or public outcry to support the view that the general public was opposed to a rate increase, would have trouble absorbing the increase or did not understand and support the purpose of the increase;
 - viii) In applying sections 13(2)(a),(b) and (d) of the Act, the Commission ought to have given consideration to the fact that the public has been kept informed that this renewal of infrastructure has to be done;
 - ix) In considering sections 13(2) (b) and (d) of the Act, the Commission erred in the exercise of its discretion by failing to take into account that the proposed rate structure would actually result in a lower monthly electricity bill for the average consumer, would end the current situation whereby residential consumers subsidized businesses and institutions and would promote conservation;
 - x) Contrary to sections 13(2)(b) and (c) of the Act, the Commission erred in the exercise of its discretion by failing to properly assess the needs of BELCO for adequate working capital and reasonable reserves and the need to afford investors a reasonable rate of return on their investment;
 - xi) The Commission erred in law by misapplying section 13(2)(b) of the Act by believing that this section gave them the power to cap BELCO's income. In imposing an income cap the Commission also failed in its duty to have regard to investor expectations, sections 13(2)(a) and (c) and the public interest, section 13(2)(d). [Direction 6 is *ultra vires*]; and
 - xii) Contrary to sections 13(2)(a),(b) and (c) of the Act, given the magnitude of BELCO's operations both in terms of plant size and costs, the Commission erred in the exercise of its discretion by failing to act in the public interest by rendering a decision that is entirely inconsistent with the need for forward planning, access to capital and the ability to keep to a reasonable timetable in a predictable manner.
10. I find BELCO's submissions to be well thought-out and prepared. However, BELCO's submissions give the impression that BELCO is unable to undertake any infrastructure improvements due to the fact that the full tariff requested was not approved. I am aware from the information provided in BELCO's Appeal that the difference between the rate as approved by the Commission and the rate requested by BELCO is as follows:

	<u>2012</u>	<u>2013</u>
Sales Revenues (after early payment discount)		
At current rates	142,251,935	142,008,169
Requested	148,742,724	154,528,721
Allowed	144,493,425	148,772,268
Difference	(4,249,300)	(5,756,453)
Rate of Return		
Target rate of return	4.81%	5.02%
Approved rate of return	3.78%	3.73%
Difference	-1.02%	-1.29%

11. I do not accept that the Commission's approved rates are unreasonable. Neither do I see how the difference in what was requested by BELCO and what was approved by the Commission would prevent BELCO from financing the borrowing costs of building the North Power Plant or would give no comfort to international lenders. If I am wrong and this is in fact the case, I would have thought that BELCO would have secured documentation from their international lenders attesting to this.
12. In addition, I do not believe that the Commission: failed to properly assess the needs of BELCO for adequate working capital and reasonable reserves and the need to afford investors a reasonable rate of return on their investment; or failed to act in the public interest by rendering a decision that is entirely inconsistent with the need for forward planning, access to capital and the ability to keep to a reasonable timetable in a predictable manner. The Commission examined BELCO's capital needs and took into account the public interest when making their Decision. This is evident when reading the Commission's Decision, which highlighted that the Commission even went as far as having face-to-face meetings with BELCO's cost of service and rate consultants, Messrs. O'Sheasy and Chapman of Christensen Associates. These meetings included an explanation and overview of BELCO's cost of service study and rate design process.

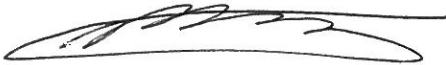
Decision

After reviewing BELCO's 2011 Rate Application, the 11 individual objections to BELCO's 2011 Rate Increase Filing, BELCO's Appeal Submissions and the Commission's submissions, as Minister responsible for Energy, pursuant to section 14 of the Act, I hereby give my decision as follows:

- 13.
- I uphold the Commission's Directive number 1;

- I uphold the Commission's Directive number 2;
- I uphold the Commission's Directive number 3 which shall take effect no later than 1 August 2012;
- I uphold the Commission's Directive number 4;
- I uphold the Commission's Directive number 5 which shall be submitted no later than 1 August 2012;
- I quash the Commission's Directive number 6 as it is not essential;
- I uphold the Commission's Directive number 7 (for the avoidance of doubt Directive 7 means that BELCO must have received express approval from the Commission before providing discounts to any customer or to any specific category of customer); and
- I quash the Commission's Directive number 8 [a feasibility study on Time of Use].

Sincerely,



The Hon. Marc A.R. Bean, JP, MP
Minister of Environment, Planning and Infrastructure Strategy

MARB/at