



SAINT LUCIA

CHAPTER 9.02

ELECTRICITY SUPPLY 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—

ELECTRICITY SUPPLY ACT

Act 10 of 1994.. in force Schedule 1: 1 September 1991

Remainder: 22 August 1994 (S.I.45/1994)

Amended by 3 of 1996 in force 1 September 1995

Amended by 26 of 2001 in force 10 November 2001

Amended by 12 of 2006 in force 22 March 2006

Amended by 13 of 2006 in force 27 March 2006

ELECTRICITY REGULATIONS – Section 64

Statutory Instrument 26/1971 in force 1 March 1972

Amended by S.I. 28/1986 in force 1 April 1986

Amended by S.I. 2/1988 in force 23 January 1988

Amended by S.I. 3/1995 in force 14 January 1995

ELECTRICITY SUPPLY ORDER – Section 30(3)

Statutory Instrument 57/2008 in force 9 June 2008

CHAPTER 9.02

ELECTRICITY SUPPLY ACT

ARRANGEMENT OF SECTIONS

Section	
PART 1	7
PRELIMINARY	7
1. Short title.....	7
2. Interpretation.....	7
PART 2	10
LICENCE TO GENERATE ELECTRICITY	10
3. Grant of licence.....	10
4. Grant of sub-licences.....	10
5. Power to revoke licence.....	10
6. Purchase price to be paid by Government on revocation of licence.....	11
7. Determination of fair market value.....	12
PART 3	12
POWERS LIABILITIES AND EXEMPTIONS OF COMPANY	12
8. Powers of Company.....	12
9. Duty free importation of goods and treatment of losses.....	14
10. Exemption from stamp duty.....	15
11. Imposition of fee on fuel purchased.....	15
12. Consolidated.....	15
13. Returns.....	15
14. Interpretation.....	16
15. Acquisition of land required by the Company.....	16
16. Transfer of land acquired.....	16
17. Company may enter lands.....	16
18. Power of entry for ascertaining electricity consumed.....	17
19. Company may run lines etc. on roads without charges.....	18
20. Electric lines not distrainable.....	19
21. Damage caused by lopping trees.....	19
22. Payment of compensation.....	19
23. Company may harness water.....	20

PART 4	20
GENERATION AND SUPPLY OF ELECTRICITY AND CHARGES THEREFOR	20
24. Interpretation for Part 4	20
25. Exclusive right to generate electricity	23
26. Voltage of electricity supply	23
27. Maintenance of adequate generating capacity	24
28. Charge for electricity supply	24
29. Allowable rate of return and rate adjustment	25
30. Interim return and rate adjustment	25
31. Effect of non-submission of interim return	26
32. Submission of audited accounts to Minister	27
33. Consequence of certificate of non-compliance	27
34. Rate adjustment	28
35. Review of basic energy rates	28
36. Power of Minister to amend Schedule 1	30
37. Certification Committee	30
38. Review Board	30
39. Independent accountants	31
40. Electricity supplied to Government	31
41. Rural electrification and street lightning	31
42. Company's liability for failure to supply electricity	32
43. Deposits and contributions	32
44. Meters	33
45. Non-payment of electricity charges	33
PART 5	34
ABRITRATION	34
46. Non-application of Part 5	34
47. Disputes to be determined by arbitration	34
48. Appointment of arbitrator	35
49. Vacancy of arbitrator to be supplied	35
50. Appointment of umpire	36
51. Circumstances of single arbitrator	36
52. Refusal of arbitrator to act	37
53. Refusal to make award	37
54. Power to call for books	37
55. ARbitrator and umpire to take oath	37
56. Costs of arbitration	38
57. Correction of slips in award etc	38
58. Awards to be final	38
59. Enforcement of awards	38
PART 6	38
GENERAL	38
60. Powers of Chief Electrical Engineer	38
61. Offence of obstructing Company	39
62. Stealing electricity	39
63. Criminal liability for damage and prima facie evidence thereof	39
64. Regulations	40
65. Penalty for breach of Regulations	41
66. General Penalty	41

Revision Date: 31 Dec 2008

67. Amendments to Schedules41
68. Savings42

SCHEDULE 1 43

SCHEDULE 2 44

SCHEDULE 3 45

SCHEDULE 4 49

CHAPTER 9.02

ELECTRICITY SUPPLY ACT

(Acts 10 of 1994 3 of 1996, 26 of 2001 and 12 of 2006)

AN ACT to retain the grant of an exclusive licence to the Saint Lucia Electricity Services Limited, for the exercise and performance of functions relating to the supply of electricity including the calculation of charges for the supply of electricity, the independent review of such charges and connected matters and for imposition of a fee on fuel purchased for the generation of electricity. (*Amended by Act 3 of 1996*)

Commencement [22 August 1994¹]

PART 1 PRELIMINARY

1. SHORT TITLE

This Act may be cited as the Electricity Supply Act, Cap. 9.02.

2. INTERPRETATION

(1) In this Act—

“**base price**” means—

- (a) in the first instance, the average contract price per imperial gallon for diesel fuel oil delivered to the Company at any of its power stations in Saint Lucia in the 12 months preceding 1 January 2006, to be automatically adjusted on 1 January every year thereafter, on the basis of the average contract price per imperial gallon for diesel fuel oil in the relevant preceding 12 months; or
- (b) in the event that the base price as established under paragraph (a) is higher than the current price for

¹ *Editor’s note: This applies to the whole Act except Schedule 1, which came into force on 1 September 1991.*

diesel fuel oil delivered to the Company at any of its power stations in Saint Lucia then in such circumstances the current price for diesel fuel oil shall be deemed to be the base price;

“**Chief Electrical Engineer**” means the Chief Electrical Engineer, Ministry of Communications, Works and Transport;

“**Chief Engineer**” means the Chief Engineer, Ministry of Communications, Works and Transport;

“**Company**” means Saint Lucia Electricity Services Limited and includes any person duly authorised by the Company to do any act on its behalf;

“**consumer**” means any person, local authority, statutory body or the Government supplied with electricity by the Company;

“**current price**” means the average price payable in cents per imperial gallon for diesel fuel oil delivered to the Company at any of its power stations in Saint Lucia in the calendar month immediately preceding the calendar month in which meters are read, plus the amount of any levy or other impost on such price, together with such levies, imposts, and other charges associated with derivative financial instruments employed by the Company in the acquisition of diesel fuel oil excluding any penalties and similar charges imposed by the counterparty financial institution involved in the derivative financial instruments in the event of early termination of such derivative financial instruments by the Company;

“**debt**” means the aggregate of all obligations of the Company for the payment or repayment of money having original repayment terms of one year or longer and including, without limitation, any bank debt;

“**electricity**” includes electric voltage, electric current, electric energy and any like agency;

“**electric line**” means any wire or conductor used or to be used for the purpose of conveying, transmitting, or distributing electricity, together with any casing, coating, covering, tube, pole, stay-wire, bracket, pipe or insulator enclosing,

surrounding or supporting the same or any part thereof and any transformer, switch-gear or other works or apparatus connected therewith for the purpose of conveying, transmitting or distributing electricity or transforming its voltage and together also with any building or structure required to accommodate any such transformer, switch-gear or other works or apparatus;

“**land**” includes any land under whatever tenure held and any easement, servitude, right or privilege in or over land;

“**local authority**” means any authority having municipal or administrative jurisdiction over and within any area in Saint Lucia;

“**Minister**” means the Minister responsible for communications, works and transport;

“**month**” means calendar month;

“**person**” includes any body of persons, any corporation and any Government;

“**road**” means any road or street or part thereof and includes all bridges, culverts, embankments, approaches, drains, verges, pavements, kerbs, footpaths, parapets and other works or things, forming part of any road or street;

“**tree**” means a tree, bush or shrub;

“**undertaking**” means the Company’s electricity operations within Saint Lucia;

“**unit**” means one kilowatt-hour, as registered on a meter provided by the Company.

- (2) Where the word “must” is used in relation to any obligation, requirement, duty or other like matter under this Act, that obligation, requirement, duty or like matter is mandatory.
- (3) The term “average contract price per imperial gallon” used in the definition of “base price” is calculated by dividing the aggregate invoiced amount in the relevant preceding 12 months, by the aggregate quantity of imperial gallons delivered for that same period.

(Amended by Act 3 of 1996 and 12 of 2006)

PART 2

LICENCE TO GENERATE ELECTRICITY

3. GRANT OF LICENCE

- (1) Subject to this Act, the Company shall have a sole and exclusive licence to generate, transmit, distribute and sell electricity in Saint Lucia for a period of 80 years with effect from 1 July 1965.
- (2) For the avoidance of doubt, it is hereby declared that the licence granted to the Company under the Electricity Supply Act, 1964 shall continue in force in accordance with the terms and conditions of that licence.

4. GRANT OF SUB-LICENCES

The Company may, with the approval of the Cabinet, authorise in writing any person, local authority or Government Department during the whole or any part of the period of the licence to generate, transmit, distribute and sell electricity upon the terms and conditions and within the area specified in such authority, and any person so authorised shall hereinafter be referred to as “a sub-licensee”.

5. POWER TO REVOKE LICENCE

- (1) The licence issued under section 3 may be revoked by the Cabinet on the last day of the first 55 years of the licence; but no purported revocation of the licence under this section shall be effective unless the Cabinet has given the Company not less than 24 months previous written notice of such revocation.
- (2) If the Cabinet revokes the licence, the Government shall upon such revocation of the licence purchase from the respective registered holders thereof at the price and in the manner specified in section 6, all shares issued and all debt incurred, by the Company which are then held, otherwise than by the Government or any company, the entire issued ordinary share capital of which is in the beneficial ownership of the Government.

[The next page is page 10A]

6. PURCHASE PRICE TO BE PAID BY GOVERNMENT ON REVOCATION OF LICENCE

- (1) The Government shall pay to the respective registered debt holders of the Company, which the Government is obliged to purchase in accordance with section 5, a purchase price equal to the outstanding amount of the principal moneys represented by the debt held by them respectively at the date of the revocation of the licence together with all unpaid interest which has accrued up to such date on such moneys.
- (2) The Government shall pay to the respective registered holders of all preference shares issued by the Company, which the Government is obliged to purchase in accordance with section 5, the fair market value of such shares as determined in accordance with section 7 at the date of the revocation of the licence together with a sum of money equal to the amount of the arrears (if any) of any fixed cumulative dividend (if any) on the preference shares held by them respectively such dividend (whether earned or declared or not) being calculated down to the revocation of the licence.
- (3) If under section 5 the Cabinet revokes the licence, the Government shall pay to the respective registered holders of all ordinary shares in the capital of the Company, which the Government is obliged to purchase in accordance with that

[The next page is page 11]

section a purchase price equal to the fair market value of such shares as determined in accordance with section 7.

- (4) Any purchase price payable by the Government in accordance with section 5 and this section for any shares or debt of the Company shall be paid on the date of revocation of the licence and any unpaid portion of the purchase price shall bear interest, from such date of revocation until payment, at a rate equal to the highest rate of interest payable under any debt incurred by the Company and outstanding on such date; and such unpaid portion of any debt shall have a fixed charge security interest of first rank and unpaid amounts for shares of second rank, on all the assets of the Company.
- (5) If the Government shall serve upon the Company a valid notice revoking the licence, the Company shall not thereafter, except with the previous written consent of the Government, issue any share or incur any debt.
- (6) For the purposes of this section—

“**ordinary share**” means the securities representing an interest in the equity capital of the Company giving to the holders of such securities the right to vote as shareholders of the Company, the right to receive dividends when declared by the Company and the right to participate in the distribution of the assets of the Company in case of liquidation; but such rights are held without preference with respect to the other securities of the Company unless expressly mentioned;

“**preference shares**” means the securities representing an interest in the equity capital of the Company giving to the holders of such securities different rights from those held by the owners of ordinary shares, concerning the right to vote as a shareholder, receive dividends and participate in the distribution of the Company’s assets in case of liquidation;

“**shares**” means ordinary shares and preference shares that may be issued by the Company .

7. DETERMINATION OF FAIR MARKET VALUE

- (1) Where the licence of the Company is revoked any debt holder or shareholder may, after notifying the Cabinet in writing, request an independent and qualified valuer to determine the fair market value of the debt or shares of the Company.
- (2) The valuer must prepare and submit a report on the value of the shares or debt and submit copies of the same to the debt holder or shareholder, as the case may be, the Company and the Cabinet.
- (3) A report for the purposes of subsection (1) must be in respect of either debt or shares.
- (4) The expenses incurred in the determination of the fair market value of the shares or debt of the Company must be met by the Government.
- (5) For the purposes of section 6 and this section “fair market value” means the face value of all outstanding debt and the value of the shares of the Company in an open and unrestricted market immediately prior to the date of the revocation of the licence and determined without reference to any minority interests that may exist or any controlling shareholders so as to provide a comprehensive value and with reference to the capitalization of future earnings of the Company on a going concern basis or with reference to the individual net fair values of the Company’s assets or liabilities.

PART 3 POWERS LIABILITIES AND EXEMPTIONS OF COMPANY

8. POWERS OF COMPANY

- (1) Where in the exercise of its powers under this Act the Company finds it necessary to enter upon any land or property in accordance with the provisions of this section, the Company shall so locate all poles, lines, apparatus or equipment as not in any way to obstruct or hinder the use or development of such land or property.
- (2) Subject to subsection (3), the Company may—

- (a) erect or fix in, on, under or over any land, any pipes, electrical lines or other works or apparatus used or to be used in the installation or operation of the undertaking;
 - (b) alter, substitute, repair or remove any such pipes, electrical lines, works or other apparatus when so erected or fixed at any time when, in the opinion of the Company, such undertakings are necessary or desirable.
- (3) In the exercise of its power under subsection (2)(a), the Company must first serve written notice of its intention on the owner or occupier of any private land or property if the name and address of such owner or occupier can reasonably be ascertained and if the name and address of such owner or occupier cannot reasonably be ascertained the Company must post such notice in a conspicuous place on the land or property in question, and if such owner or occupier, within 15 days of such notice, gives written notice to the Company of his or her objection thereto, the matter must be referred by the Company to the Minister; and the Company may not enter upon private land or property in question if the Minister, within 15 days of being notified by the Company of any such objection so directs.
- (4) The Company may, for the purpose of erecting, fixing, altering, substituting, repairing or removing any such pipes, electrical lines or other apparatus, enter upon any land and may—
 - (a) clear such land;
 - (b) dig the soil and remove the surface of such land;
 - (c) temporarily close or obstruct such land; and
 - (d) generally do all acts and things necessary for such purpose.
- (5) Where there is a change of ownership of any land or property, then although the Company has complied with subsection (3), the new owner has the right to request the Company through the Development Control Authority, to relocate on another part of his or her property or move completely from his or her property any or all of the Company's poles or lines, and the Company shall accede to any such request if the Authority confirms that any such poles or lines occupy the only available area of the said property where any structure may be built or extended.

- (6) Where the cost of relocation or removal exceeds \$750 such owner shall pay such proportion of the excess as may be determined by the Company as fair and reasonable.
- (7) The Company shall do as little damage as possible in carrying out any of the works permitted by this section.
- (8) Subject to this Act, the Company may on application grant a consumer or intended consumer permission to erect or cause to be erected poles, lines, apparatus and other equipment on his or her property for the supply of electricity to his or her property; but such operation must be supervised by the Company and the consumer or intended consumer will be required to pay a reasonable fee for such supervision.
- (9) The Company may on application grant to an electrical contractor approved by the Company and by Government permission to construct lines for the transmission of electricity anywhere in the State; and such contractor shall comply with the requirements of the regulations made under this Act and any other conditions which may be specified by the Company.
- (10) For the purposes of this section, "Development Control Authority" means the Development Control Authority established by section 3 of the Land Development (Interim Control) Act.

9. DUTY FREE IMPORTATION OF GOODS AND TREATMENT OF LOSSES

- (1) During the continuance of the licence, all plant, machinery, equipment, meters, instruments, vehicles and materials imported by the Company for the purpose of the Company's business of generating, transmitting, distributing or supplying electricity are exempt from all customs, and other import duties, landing tax and trade tax; but such exemption does not apply to any plant, machinery, equipment, meters, instruments, vehicles or materials imported by the Company for resale or hire or for the private use of any of the Company's employees.
- (2) Despite any law to the contrary, it is hereby declared that for the purpose of computing the Company's liability to income tax or any other tax based on income all losses incurred by the Company at any time may be carried forward indefinitely for

the purpose of being set off against the profits of the Company arising in any subsequent year or years.

10. EXEMPTION FROM STAMP DUTY

During the continuance of the licence the Company is exempt from payment of all stamp duty including stamp duty on arbitration awards.

11. IMPOSITION OF FEE ON FUEL PURCHASED

- (1) A fee is hereby levied on all fuel purchased by the company from Hess Oil (Saint Lucia) Limited at the rate of 20 cents per imperial gallon or part thereof.
- (2) The fee levied by subsection (1) shall be collected by Hess Oil (Saint Lucia) Limited on behalf of the Government of Saint Lucia and shall be paid over in accordance with section 12.

(Inserted by Act 3 of 1999)

12. CONSOLIDATED

- (1) The fee levied by section 11(1) and collected by Hess Oil (Saint Lucia) Limited during a particular month shall be paid over before the twenty-first day of the month following which the fee was collected.
- (2) Despite anything contained in this Act, or in any other enactment or rule of law, for the purposes of the collection of the fee levied by section 11, any unpaid fee shall be deemed to be a debt owed to Hess Oil (Saint Lucia) Limited; but nothing contained in this subsection affects the obligation imposed on Hess Oil (Saint Lucia) Limited by subsection (1).

(Inserted by Act 3 of 1996)

13. RETURNS

Hess Oil (Saint Lucia) Limited shall, at the time of the payment of the fees in to the Consolidated Fund, submit to the Accountant General such returns and other documentation with respect to the collection of the fees, in such form as the Minister for Finance determines.

(Inserted by Act 3 of 1996)

14. INTERPRETATION

For the purposes of sections 11, 12 and 13 Hess Oil (Saint Lucia) Limited includes its successor or any other person who supplies fuel to the company. *(Inserted by Act 3 of 1996)*

15. ACQUISITION OF LAND REQUIRED BY THE COMPANY

The Government shall, whenever requested by the Company so to do, acquire under the Land Acquisition Act or any other Act amending or replacing the same, any land reasonably required by the Company for the purpose of its business of generating, transmitting, distributing or supplying electricity in Saint Lucia, and shall transfer the freehold thereof to the Company at the actual cost of acquisition.

16. TRANSFER OF LAND ACQUIRED

The Government shall, whenever requested by the Company so to do, transfer to the Company the freehold title of any Crown Land reasonably required by the Company for the purposes of the Company's business at a price equal to the value of such land on the open market or at such lesser price as the Government may in its sole discretion determine.

17. COMPANY MAY ENTER LANDS

- (1) In the course of construction and for the more effective working of the undertaking, the Company may enter upon and remove from any public or private land, any tree or any branch, bough or other part of a tree growing on such land within 100 feet of any electric line and which may tend to interfere with, endanger or otherwise prejudicially affect the working of the undertaking; but the Company may not, except with the consent of the owner or occupier of such land, enter upon any private land under this section until after the expiration of 15 days' notice in writing given to the owner or occupier thereof or posted up conspicuous thereon.
- (2) If such owner or occupier, within 7 days from the service or posting up of such a notice, gives written notice of his or her objection thereto, the matter must be referred by the Company to the Minister, and the Company may not enter upon the private land in question unless the Minister, within 15 days of

being notified by the Company of any such objection as aforesaid, so directs.

- (3) Where any condition exists which is dangerous or is interrupting or threatens to interrupt, the supply of electricity in Saint Lucia or any part thereof, the Company may immediately enter upon any private land without the consent of the owner or occupier thereof and take whatever action is necessary to establish safe conditions or to ensure the continuity of the supply of electricity.
- (4) Where the Company takes action under subsection (3) the Company must within 3 days, inform the owner or occupier of the land in question (either by service of a written notice on him or her or by posting up conspicuously a notice on such land) of the action taken.
- (5) Except with the written consent of the Company, no person may erect any building or structure in such a position or manner as may interfere with the supply of electricity through any overhead electric line which belongs to the Company; if after any such overhead line has been constructed, any person erects any building or structure which interferes with or which may interfere with the proper working of such line, the Company may request the owner or occupier of the building or structure in question to remove or adjust the same as may be necessary.
- (6) If such owner or occupier fails to comply with such request, the Company may apply to the Minister for the removal or adjustment of the building or structure in question and, after making any such enquiry as he or she may deem necessary, the Minister may make such order as he or she deems fit.
- (7) Every such order may, by leave of the High Court, be enforced in the same manner as an injunction granted by the High Court.

18. POWER OF ENTRY FOR ASCERTAINING ELECTRICITY CONSUMED

- (1) The Company may at all reasonable times enter upon any land or premises to which electricity is or has been supplied by the Company for the purpose of inspecting, testing or maintaining the electric lines, meters, accumulators, fittings and other works and apparatus thereon belonging to the Company, or of ascertaining the quantity of electricity consumed or supplied in

or to such premises or, where a supply of electricity is no longer required or where the Company is entitled to take away and cut off the supply of electricity from any such land or premises, for the purpose of removing any electric lines, meters, accumulators, fittings, or other works or apparatus belonging to the Company.

- (2) The Company must repair all damage caused by any such entry, inspection, maintenance or removal and provided further that should anyone wilfully or maliciously place or erect anything which impedes or hinders the easy entry, inspection, maintenance or removal by the Company of its property the Company may remove the impediment or hindrance in question at the cost of the occupier of the land or premises in question and the Company is not liable for any damage caused thereby.

19. COMPANY MAY RUN LINES ETC. ON ROADS WITHOUT CHARGES

- (1) Subject to the Company making good to the reasonable satisfaction of the Chief Engineer, all damage occasioned thereby, the Company may erect, place or replace pipes and electric lines along or under or over any road in Saint Lucia without payment of any way-leave, rent, fee or other charge, to remove or repair any such pipe or electric line and for the purpose of erecting, placing, replacing, removing or repairing the same, to break and excavate any such road.
- (2) Whenever the Company breaks up or excavates any road, it must with all convenient speed complete the work for the purpose for which the road was broken up or excavated.
- (3) Subject to subsection (4), where a road has been broken up or excavated, the Company must make the same good to the reasonable satisfaction of the Chief Engineer and must carry away the rubbish occasioned thereby.
- (4) Until the road has been made good, the Company shall fence the road where it has been broken up or excavated and maintain during the hours of darkness a light sufficient to warn persons using the road of the danger constituted by the breaking up or excavation.
- (5) Where a road has been broken up or excavated by the Company, the Company must keep the same in good repair for

3 months after it is made good and for such further period (if any) not exceeding 12 months as the subsoil of the road at that place continues to subside.

20. ELECTRIC LINES NOT DISTRAINABLE

Where any electric lines, meters, accumulators, fittings, or other works or apparatus belonging to the Company are placed for the purpose of supplying or measuring electricity in or upon any land or premises not being in the possession of the Company, such electrical lines, meters, accumulators, fittings or other works or apparatus cannot be subject to distress or to the landlord's remedy for rent of the land or premises where the same may be, nor can the same be liable to be taken in execution under any process of a Court of Justice, or under any proceeding in bankruptcy or insolvency.

21. DAMAGE CAUSED BY LOPPING TREES

Any person who on any private land fells, lops or trims any tree thereby causing damage to any electric line or other works or apparatus which forms part of the undertaking commits an offence and in addition to any penalty that may be imposed on him or her, is liable to pay the expenses or remedying the damage so caused; but whenever the Company is requested by any owner of land so to do may fell, lop or trim any tree on such owner's land which is threatening to damage any such electric line or other works or apparatus.

22. PAYMENT OF COMPENSATION

- (1) In the exercise of any powers conferred by this Act, the Company shall cause as little inconvenience and damage to other persons as is reasonably practicable and the Company is liable to pay compensation to any person who suffers damage to his or her property in consequence of the exercise of such powers by the Company.
- (2) The amount of such compensation must, failing agreement, be determined by arbitration.
- (3) If by reason of the presence of any pipe or electric line belonging to the Company which is alongside or under or over any road any person is injured or suffers damage to his or her

property, the Company shall save harmless and keep indemnified, in respect of such injury or damage, the person or local or other authority by whom such road is repairable.

23. COMPANY MAY HARNESS WATER

Subject to Government approval, the Company, may without making payment therefor, harness water power throughout Saint Lucia at such sites (whether on Crown or private land) as the Government may reserve for public electricity supply purposes.

PART 4 GENERATION AND SUPPLY OF ELECTRICITY AND CHARGES THEREFOR

24. INTERPRETATION FOR PART 4

(1) In this Part—

“**allowable rate of return**” means an annual return on average contributed capital based upon a spread of 2 percentage points and 7 percentage points above the cost of the most recent Government of Saint Lucia long term bonds issued on the RGSM, with the proviso that the minimum rate of return on average contributed capital so calculated shall be 10 percentage points;

“**basic energy rate**” means the charge per kilowatt hour, as prescribed by or calculated, in accordance with this Act, billed for electricity supplied excluding the fuel surcharge;

“**certificate of compliance**” means a document issued by the independent firm of accountants appointed in accordance with section 39;

“**certificate of non-compliance**” means a document issued by the independent firm of accountants appointed in accordance with section 39;

“**Certification Committee**” means a committee appointed in accordance with section 37;

“**deficit rate return**” means 10 percentage points less the actual amount of any return on average contributed capital less than 10 percentage points, and shall be treated in accordance with the provisions of section 30(4)(a);

“**excess rate of return**” means the actual return on average contributed capital minus the aggregate of the cost of the most recent Government of Saint Lucia long term bonds issued on the RGSM plus 7 percentage points and shall be treated in accordance with the provisions of section 30(3)(a);

“**final rate of return**” means the after-tax net income of the Company in any financial year divided by the average contributed capital and expressed as a percentage as calculated in accordance with Schedule 3 and submitted to the Minister in accordance with section 32 or section 33, as the case may be;

“**final return**” means the document prepared in accordance with Schedule 4 and submitted to the Minister in accordance with section 32;

“**high tension supply**” means a supply of electricity provided at nominally 11,000 volts line to line and at nominally 6300 volts line to ground with a minimum demand of 500 kVA;

“**interim rate of return**” means the after-tax net income of the Company in any financial year divided by the average contributed capital and expressed as a percentage as calculated in accordance with Schedule 3;

“**interim return**” means the document prepared in accordance with Schedule 4 and submitted to the Minister in accordance with section 30;

“**low tension supply**” means a supply of electricity provided at 240 volt single phase, 415 volts 3 phase, with a permitted variance of 4% above such voltage and 8% below such voltage;

“**Minister**” means the Minister of finance;

“**return on average contributed capital**” means the after-tax net income of the Company in any financial year calculated in accordance with Part A of Schedule 3,

divided by the average amount of contributed capital calculated in accordance with Part B of Schedule 3 and expressed as a percentage;

“Review Board” means the Board appointed in accordance with section 38;

“RGSM” means the Regional Government Securities Market which was established by the Eastern Caribbean Central Bank to meet the financing needs of Member Governments of the Eastern Caribbean Currency Union, to strengthen the primary market for bonds and treasury bills, and to promote the development of a secondary market for those securities.

- (2) The term **“the cost of the most recent Government of Saint Lucia long term bonds issued on the RGSM”** used in the definition of “allowable rate of return” means an interest rate derived on an arms length basis in an open and unrestricted manner, for borrowings with a minimum tenor of 10 years and for the avoidance of doubt, bonds raised under an underwriting or any such arrangement which may influence the interest rate or guarantee to the Government of Saint Lucia that any unsold residue of an issue will be taken up shall be ignored for the purposes of this calculation.
- (3) For the purposes of subsection (2), “interest rate” means the highest actual rate at which Government of Saint Lucia long term bonds were issued on the RGSM in the 12 calendar months immediately preceding 1 January in each year and in the absence of any such issues, the interest rate shall be determined by the average yield of Government of Saint Lucia long term bonds traded on the secondary market on the RGSM in the equivalent 12 calendar months period.

(Amended by Act 26 of 2001 and 12 of 2006)

[The next page is page 23]

25. EXCLUSIVE RIGHT TO GENERATE ELECTRICITY

- (1) Subject to subsection (2), during the continuance of the licence a person except the Company shall not generate, transmit (save for his or her own consumption and use), distribute or sell electricity within Saint Lucia. However, a sub-licensee may, during the period stated in the written authority granted to him or her by the Company, generate, transmit, distribute and sell electricity upon the terms and conditions within the area specified in such authority.
- (2) The Government may grant to the Company or to another corporation a licence to generate electricity by utilising the fumaroles at Soufriere; but the Government may not grant any such licence to another corporation without giving the Company not less than 12 months' previous notice in writing of its intention to do so; and on the condition that any electricity so generated and not required for that other corporation's own use will be sold to the Company.
- (3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$5,000 or to imprisonment with or without hard labour for a period not exceeding 6 months, and in addition thereto he or she may be ordered by any court having summary jurisdiction to dismantle his or her equipment at his or her own expense within such time as such court may prescribe and if he or she fails to obey the order of such court within the prescribed time such court shall order the equipment to be dismantled by the Company and shall order such person to pay the Company its reasonable charges for dismantling such equipment.

26. VOLTAGE OF ELECTRICITY SUPPLY

- (1) The voltage of electricity supplied for domestic or lighting purposes shall be 240 volts and this shall be maintained by the Company within plus 4% and minus 8% (measured at the consumers' terminals) of such voltage.
- (2) The frequency of electricity supplied for any purpose shall be 50 cycles per second and this shall be maintained within plus and minus 3% of such frequency.
- (3) Subject to subsection (4), the system of distribution of electricity shall be 3 phase 4 wire for 415 volts between lines

and 240 volts between line and neutral, single phase 3 wire for 480 volts between lines and 240 volts between lines and neutral, the neutral in each case being earthed, or single phase 2 wire for 240 volts between lines with one line earth and designated “the neutral”, all or any of such systems to be used, the choice in any particular case being by the Company according to load conditions and the most economical method of supply.

- (4) A consumer may by agreement with the Company be supplied with electricity at a voltage in excess of 480 volts and step this down in his or her own transformers to any voltage approved by the Chief Electrical Engineer.

27. MAINTENANCE OF ADEQUATE GENERATING CAPACITY

- (1) The Company shall use reasonable efforts to ensure that sufficient generating capacity is maintained at all its power stations in order that peak demand may be met, assuming that the 2 largest generating units are unavailable for generating electricity.
- (2) For the purposes of this section, “peak demand” means the highest demand for electrical energy in any continuous half-hour period in any given year.

28. CHARGE FOR ELECTRICITY SUPPLY

- (1) Subject to this section, the Company shall charge for electricity supplied in accordance with the rates prescribed in Schedule 1.
- (2) The Company shall submit to the Minister, in respect of its financial year ended 31 December 1993, the documents specified in section 30(1) within 28 days after the commencement of this Act and the documents specified in section 32(1) within 90 days of such commencement; and the requirements of sections 30 and 32 shall apply to such documents.
- (3) The charges prescribed in Part B of Schedule 1 shall remain in effect.
- (4) This section does not affect the entitlement of the Company to levy a fuel cost adjustment in accordance with Schedule 2.

29. ALLOWABLE RATE OF RETURN AND RATE ADJUSTMENT

The Company's allowable rate of return shall be calculated in accordance with Parts A and B of Schedule 3. (*Amended by Act 12 of 2006*)

30. INTERIM RETURN AND RATE ADJUSTMENT

- (1) Subject to subsection (7), within 28 days after the end of each of its financial years, the Company shall submit to the Minister an interim return in the form prescribed in Schedule 3—
 - (a) containing the relevant information in relation to the operations of the Company during the particular year; and
 - (b) stating that the interim rate of return for that year were calculated in accordance with Schedule 3;

together with the Company's unaudited internal management accounts for the financial year with respect to which the interim return is made.

- (2) Where the interim return is not submitted to the Minister within the time specified in subsection (1), or if the Company, before the interim return is submitted, demands payment for electricity supplied for any purpose in the then current financial year, the Company shall charge for electricity supplied at the basic energy rate in force at the end of the financial year immediately preceding the then current financial year.
- (3) Where the interim rate of return for any financial year exceeds that permitted under the allowable rate of return calculated in accordance with Part A of Schedule 3 then in respect of that financial year, the Company shall in respect of the month in which the relevant interim return is submitted and in respect of subsequent months, decrease the basic energy rates as prescribed in Part A of Schedule 3 in respect of each kilowatt hour consumed by industrial and hotel consumers; and such decrease shall be calculated in respect of each kilowatt hour as to $\frac{1}{2}$ of the dollar value of the excess rate of return applied proportionately on the basis of the total kilowatt hours consumed by such industrial and hotel consumers in the preceding calendar year; provided that the Minister may by order published in the Gazette determine that the decrease in basic energy rates may also be applied to consumers or groups of consumers in need of special protection in which case the

calculation of the individual amounts shall be in accordance with the form prescribed in PART B of Schedule 4; but any such decrease in either of the 2 calculations is independent of any adjustment with respect to fuel costs made in accordance with Schedule 2.

- (4) Where the interim rate of return for any financial year is less than the allowable rate of return calculated in accordance with the Part A of Schedule 3 then with respect to that financial year, the Company, shall in respect of the month in which the relevant interim return is submitted and in respect of subsequent months, increase the basic energy rates chargeable for each kilowatt hour consumed and such increase shall be calculated in respect of each kilowatt hour as to the full dollar value of the deficit rate of return applied to the total kilowatt hours sold in the preceding calendar year; but any such increase is independent of any adjustment with respect to fuel cost made in accordance with Schedule 2.
- (5) The decrease and increase in basic energy rates referred to in subsections (3) and (4) respectively must be effected in accordance with the formulae prescribed in Schedule 4.
- (6) Any decrease under subsection (3) or increase under subsection (4) becomes effective in relation to any bill issued in respect of the month in which the relevant interim return is submitted and in respect of subsequent months.
- (7) Where there is a conflict between this section and the prescriptions of Schedule 3, Schedule 3 prevails.

(Amended by Act 12 of 2006 and 13 of 2006)

31. EFFECT OF NON-SUBMISSION OF INTERIM RETURN

Where—

- (a) the interim return is not submitted to the Minister within the time specified in section 30(1); or
- (b) the Company, before the interim return is submitted demands payment for electricity supplied for any purpose in the then current financial year; and
- (c) the Company charges for electricity supplied at the basic energy rates in force at the end of the financial year immediately preceding the then financial year;

then any decrease under section 30(3) or increase under section 30(4) is effective from the beginning of the then current financial year; but any such decrease or increase must be distributed and allocated equally on a monthly basis over the remaining months in the then current financial year.

32. SUBMISSION OF AUDITED ACCOUNTS TO MINISTER

- (1) The Company shall, not later than 90 days after the end of each financial year, submit to the Minister the following:
 - (a) a full set of audited accounts for that financial year comprising a profit and loss account, balance sheet plus accompanying notes and other statements duly approved by the Company's directors and reported on by the Company's auditors;
 - (b) a final return in the same form as that prescribed for the interim return in Schedule 3 and which must be compiled with reference to the Company's audited accounts;
 - (c) a certificate of compliance or a certificate of non-compliance issued by an independent firm of accountants.
- (2) A certificate of compliance or a certificate of non-compliance issued by the firm of accountants referred to in subsection (1) must state whether or not the accountants are able to certify that the final return was in compliance with the prescriptions of Schedule 3, and in the case of a certificate of non-compliance the reasons for such non-compliance.

(Amended by Act 12 of 2006)

33. CONSEQUENCE OF CERTIFICATE OF NON-COMPLIANCE

- (1) Where a certificate of non-compliance is delivered to the Company, the Company and an independent accountant must each, within 14 days of such receipt, complete and submit a separate report setting out the reasons for the issuance of the certificate.
- (2) The reports submitted for the purposes of subsection (1) must be delivered to the Certification Committee within 2 days of their completion.

- (3) Subject to subsection (4), the Certification Committee upon receipt of the reports referred to in subsection (2) must review the reports and make a final determination, within 30 days of such receipt, as to the revised basic energy rates which rates must be implemented by the Company within 14 days of the receipt of the determination.
- (4) The basic energy rates established on the basis of the interim return must remain in effect pending the determination on the certificate of non-compliance by the Certification Committee.

34. RATE ADJUSTMENT

- (1) The basic energy rate levied by the Company with respect to each kilowatt hour consumed, independent of any adjustment made for fuel cost under Schedule 2, must be adjusted to reflect any differences between the interim return and the final return or, as the case may be, any basic energy rates determined under section 33(3); but in the absence of any requirement for any such adjustment, the basic energy rates chargeable by the Company under the interim return must remain in effect.
- (2) Where any adjustments are required, such adjustments become effective in relation to any bill issued by the Company after the end of the month in which the relevant final return is submitted or, as the case may be, within 14 days of the determination by the Certification Committee; and any such adjustment, if required, must be distributed and allocated equally on a monthly basis over the remaining months in the then current financial year.
- (3) Basic energy rates adjusted in accordance with sections 30(3) and (4) and which may be further adjusted in accordance with subsection (1) must remain in force until an adjustment is made in accordance with section 30 and this section.

35. REVIEW OF BASIC ENERGY RATES

- (1) Subject to subsection (5), the Review Board shall—
 - (a) biennially—
 - (i) monitor the Company's performance against mutually agreed targets and benchmarking standards,

Revision Date: 31 Dec 2008

- (ii) review the company's development plans, expansion programmes, and fuel cost efficiency;
 - (b) triennially—
 - (i) mutually agree and set technical, operational, efficiency standards and benchmarks for a three year period for the company to meet in annual phases,
 - (ii) review and report on the efficiency of asset utilization and optimization, and the appropriateness and implications of the rate structures;
 - (c) subject to subsection (2) not more than once at the end of every 5 years, review the basic energy rates that are calculated in accordance with this Act and charged by the Company.
- (2) A review for the purposes of subsection (1)(c)—
 - (a) must determine the accuracy or otherwise of the application of the basic energy rate calculation for the 5 year period ending immediately prior to the commencement of the review;
 - (b) must determine the fairness and suitability, extent and timing of this Part;
 - (c) must commence within 90 days after the end of the last financial year of such period in respect of which the review is to be conducted.
- (3) The Review Board must complete a report of a review undertaken under subsection (1) within 60 days from the date of commencement of the review and submit the report to the Minister within 14 days of the completion of the report.
- (4) Nothing in this section permits the Review Board to review or propose any change to the adjustment of the basic energy rate on an annual basis.
- (5) For the purposes of subsection (1) the 5 year period must be reckoned from the commencement of this Act.

(Amended by Act 12 of 2006)

36. POWER OF MINISTER TO AMEND SCHEDULE 1

- (1) The Minister may, after consultation with the Company with respect to the report submitted by the Review Board, by order, amend Schedule 1.
- (2) The Company shall give effect to an order made by the Minister under subsection (1).

37. CERTIFICATION COMMITTEE

- (1) For the purposes of this Part there shall be a Certification Committee which shall consist of 3 persons whose appointments must be made in accordance with subsection (2).
- (2) The members of the Certification Committee shall be appointed as follows:
 - (a) the first member by the Minister,
 - (b) the second member by the Company, and
 - (c) the third member, who shall be the chairperson, as agreed on by the members appointed under paragraphs (a) and (b).
- (3) The members of the Certification Committee shall hold office for a period of 2 years and shall be entitled to such allowances or gratuities as determined by the Minister.

38. REVIEW BOARD

- (1) For the purposes of this Part there shall be a Review Board which shall consist of 3 persons whose appointments must be made in accordance with subsection (2).
- (2) The members of the Review Board shall be appointed as follows:
 - (a) the first member by the Minister;
 - (b) the second member by the Company; and
 - (c) the third member, who shall be the chairperson, as agreed on by the members appointed under paragraphs (a) and (b).

- (3) The members of the Review Board shall hold office for a period of 5 years and shall be entitled to such allowances or gratuities on such basis, as determined by the Minister.

39. INDEPENDENT ACCOUNTANTS

- (1) For the purposes of this Part and subject to subsection (2), the Company shall, after consultation with the Minister, appoint an independent firm of accountants, other than the Company's auditors, for the purpose of reviewing the final return prior to the submission of such returns to the Minister.
- (2) The firm of accountants to be appointed under subsection (1) must be registered with the Institute of Chartered Accountants of Saint Lucia.
- (3) The accountants so appointed must issue to the Company a certificate of compliance or a certificate of non-compliance with Schedule 3 as required by section 32.

(Amended by Act 12 of 2006)

40. ELECTRICITY SUPPLIED TO GOVERNMENT

- (1) Whenever required so to do, the Company, shall enter into a contract for the supply of electricity to the Government for the Government's own use and consumption in any district supplied with electricity by the Company.
- (2) The Company may charge the Government for all electricity so supplied at the rates determined in accordance with this Act after deducting from such charges a discount at the rate of 10 per cent or at such higher rate as the Company may allow.
- (3) This section does not apply to electricity supplied or to be supplied for the purpose of street lighting.

41. RURAL ELECTRIFICATION AND STREET LIGHTNING

- (1) The Government may require the Company to implement rural electrification programmes and the Company shall accede to any such requirement, on terms and conditions agreeable to both Government and the Company which shall include the provision of funds by the Government for this purpose.

- (2) The Company may charge the Government for all electricity supplied at the rates as determined in accordance with this Act after deducting from such charges a discount at the rate of 10 per cent or at such higher rate as the Company may allow.

42. COMPANY'S LIABILITY FOR FAILURE TO SUPPLY ELECTRICITY

Where a certificate approving the supply of electricity is issued in accordance with the regulations made under this Act to an intended consumer and such consumer pays to the Company not later than one month before the date of the expiry of the certificate such deposit or contribution as may be required by the Company and the Company fails, within one month from the date of payment, to supply electricity to such consumer and does not give to the Chief Electrical Engineer a satisfactory explanation for its failure so to do, the Company is liable to pay the fee in respect of a fresh certificate approving the supply of electricity.

43. DEPOSITS AND CONTRIBUTIONS

- (1) The Company may require any consumer to deposit with the Company by way of security for sums due by such consumer to the Company for electricity supplied such sums of money as may be fixed by the Company.
- (2) Any sums of money fixed under subsection (1) may not exceed the charge for an estimated 2 months supply of electricity and shall be placed to the credit of a deposit account in the consumer's name in the books of the Company and the deposit shall bear interest at a rate determined by agreement between the Company and the Government; but such rate must not be less than the rate under section 45(4).
- (3) The Company may not require any monies to be paid in the form of a contribution or by way of a bond or security by an intended domestic consumer towards the cost of construction and erection of service lines to any property where such service lines do not exceed 100 feet in length from the nearest point of connection.

[The next page is page 32A]

- (4) The Company may require a consumer or intended consumer to pay a contribution determined by the Company in accordance with this section towards the cost of the erection and construction of service lines in excess of 100 feet in length from the nearest point of connection to his or her property excluding distance traversed across any road.
- (5) Despite any payments made in accordance with subsection (4) and anything contained in this Act whereby a consumer lawfully erects and constructs transmission and supply lines on his or her property and pays a contribution in accordance with this section for the erection and construction thereof, such transmission and supply lines shall be the property of the Company which shall be responsible for their proper maintenance, repair and safe condition.
- (6) Where a consumer, hereinafter referred to as the first consumer, requests transmission and supply lines to be erected and constructed, whether or not on his or her own property, and makes a contribution in accordance with this section towards the erection or construction thereof, such lines may be used by the Company for the purpose of supplying other consumers or intended consumers; but such use must not prejudicially affect the supply of electricity to the first consumer.
- (7) Every such other consumer or intended consumer so connected must pay to the Company on demand, such sum as may be determined by the Company to be a fair and just proportion of the contribution paid by the first consumer, and the Company must promptly pay to the first consumer such part thereof as may be determined by the Company to be a fair and just proportion of his or her contribution.

[The next page is page 33]

44. METERS

- (1) When requested by the consumer, and after payment of such fee as may be determined by the Company, the Company must test the meter registering the electricity supplied to such consumer against a standard meter, and supply the consumer with a certificate showing the result of test.
- (2) If the result of the test shows that the meter is registering more than 3 per cent above or below the registration of the standard meter, the Company must replace the meter in question and refund to such consumer the fee that he or she was required to pay by the Company.
- (3) The Chief Electrical Engineer shall supervise any test carried out under subsection (2).
- (4) Where a meter through no fault of the consumer fails to record within the margin of error allowed by subsection (2), the consumption of electricity by a consumer, the Company must, upon the written request of the consumer, examine the accounts of such consumer and from such examination compute the average monthly sum charged to that consumer over the 6 months immediately preceding the meter failure, or from the date of connection, whichever period is the shorter, and the Company may charge or credit as the case may be, the account of such consumer at a rate not exceeding such average monthly charge.

45. NON-PAYMENT OF ELECTRICITY CHARGES

- (1) Subject to this section, where a consumer defaults with respect to a payment due to the Company for electricity supplied, the Company may disconnect the supply of electricity to such consumer until such time as such payment and reconnection fee prescribed in Part B of Schedule 1 are paid.
- (2) The Company may not discontinue the supply of electricity to any consumer unless—
 - (a) the consumer is given not less than 15 days previous written notice by the Company of its intention to do so; and

- (b) the consumer has not during the period of notice required under paragraph (a) paid all sums due by him or her to the Company.
- (3) Where the Company in accordance with subsection (1) discontinues the supply of electricity to a consumer the Company must reconnect the supply of electricity to the consumer within 24 hours after the arrears, and reconnection fee and any required deposit have been paid to the Company; but where the day for such reconnection falls on a Sunday or a public holiday, such reconnection must be effected on the next working day thereafter.
- (4) Where over a period of 5 successive years a consumer has not suffered disconnection of his or her supply of electricity for failure to pay his or her proper charges, the Company must, upon written application, accompanied by his or her deposit receipt, by such consumer, pay to the consumer such interest as the deposit paid to the Company by such consumer would have earned over the period aforesaid if such deposit had been placed on a savings account in a commercial bank in Saint Lucia.
- (5) This subsection does not affect the right of the deposit to continue to bear interest in accordance with this Act and the consumer to payment thereof in accordance with this subsection.

PART 5 ARBITRATION

46. NON-APPLICATION OF PART 5

Part 5 of this Act shall not apply to any issue, cause or matter arising under Part 4 of this Act.

47. DISPUTES TO BE DETERMINED BY ARBITRATION

- (1) When any disagreement relating to any matter touching or concerning anything under this Act arises between the Company on the one hand and the Government or any local authority on the other hand, such disagreement shall be determined by arbitration.

- (2) Where there is a dispute between a shareholder and the Company or between a debt holder and the Company, such a dispute may be determined by arbitration.

48. APPOINTMENT OF ARBITRATOR

- (1) When any disagreement is required to be determined by arbitration then, unless both parties to the disagreement concur in the appointment of a single arbitrator, each party on the request of the other party shall nominate and appoint an arbitrator to whom such disagreement shall be referred.
- (2) The appointment of an arbitrator—
 - (a) by the Government, must be made under the hand of the Secretary to the Cabinet;
 - (b) by a local authority, must be made under the hand of the Clerk to such local authority; and
 - (c) by the Company or debt holder must be made under the hand of a director or other officer of the Company.
- (3) Every such appointment shall be delivered to the arbitrator so appointed and shall be deemed a submission to arbitration by the party delivering the same.
- (4) After any appointments specified in subsection (2) is made neither party to the disagreement may revoke such appointment without the consent of the other; and if after a period of 14 days after a request in writing (in which must be stated the matter so required to be referred to arbitration) is served by one party on the other party to appoint an arbitrator and the last mentioned party fails to appoint such arbitrator, then upon such failure the party making such request and having himself or herself appointed an arbitrator may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matter to which the disagreement relates and in such case the award or determination of such single arbitrator is final.

49. VACANCY OF ARBITRATOR TO BE SUPPLIED

If before the matter so referred is determined any arbitrator appointed by either party dies or becomes incapable of acting, the party by

whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his or her place; and if after a period of 7 days after notice in writing from the other party for that purpose he or she fails to do so, the remaining or other arbitrator must act as sole arbitrator and his or her award is binding on both parties as if he or she had been appointed sole arbitrator by consent; every arbitrator substituted has the same power and authorities as were vested in the former arbitrator at the time of his or her death or disability.

50. APPOINTMENT OF UMPIRE

- (1) Where 2 arbitrators are appointed, such arbitrators must before they enter upon any matter referred to them nominate and appoint, by writing under their hands, an umpire to decide any matter on which they differ, or which is referred to him or her under this Act; and if such umpire dies or becomes incapable of acting or refuses to act, they shall after such death or incapacity or refusal appoint another umpire in his or her place, and the decision of every such umpire on the matters so referred to him or her is final.
- (2) If the arbitrators cannot agree upon the umpire to be appointed or substituted by them for the purpose of subsection (1) of this section such umpire shall be appointed or (as the case may be) substituted in writing, in the case of any disagreement to which the Government is a party, under the hand of the President of the Institution of Electrical Engineers (of the United Kingdom) and, in the case of any disagreement to which the Government is not a party under the hand of the Registrar of the High Court.

51. CIRCUMSTANCES OF SINGLE ARBITRATOR

Where a single appointed arbitrator dies or becomes incapable of acting or refuses to act before he or she makes his or her award, any disagreement referred to him or her shall be determined by arbitration under this Act in the same manner as if such arbitrator had not been appointed.

52. REFUSAL OF ARBITRATOR TO ACT

Where 2 arbitrators are appointed under section 48 and either of them, in writing, refuses or for 7 days neglects to act, the other of them shall act as sole arbitrator and his or her award is binding on both parties as if he or she had been appointed sole arbitrator by consent.

53. REFUSAL TO MAKE AWARD

Where 2 arbitrators are appointed, and either of them refuses or neglects to act, or fails to make their award within 21 days after the day on which the last of such arbitrators is appointed, or within such extended time as appointed for that purpose by both such arbitrators under their hands, the matters referred to them shall be determined by the umpire to be appointed.

54. POWER TO CALL FOR BOOKS

The arbitrators, or their umpire, may call for the production of any documents in the possession or power of either party which they or he or she may think necessary for determining the question in dispute and may examine the parties or their witnesses on oath, and administer any oath necessary for that purpose.

55. ARBITRATOR AND UMPIRE TO TAKE OATH

(1) Before any arbitrator or umpire enters into the consideration of any matters referred to him or her, he or she must in the presence of a person legally authorised to administer oaths, take and subscribe the following oath:

I, A.B., do solemnly swear that I will faithfully and honestly and to the best of my skill and ability hear and determine the matters referred to me under the provisions of the Electricity Supply Act.

A.B.

Taken and subscribed in the presence of

C.D.

(2) Such affidavit shall be annexed to the award when made; and if any arbitrator or umpire, having made such oath, shall wilfully act contrary thereto, he or she commits a misdemeanour.

56. COSTS OF ARBITRATION

All the costs of and incidental to any arbitration (which costs shall be settled by the arbitrators or umpire to whom the disagreement in question has been referred) must be borne by the parties in such proportions as such arbitrators or umpire determine; but in arriving at their decision on costs such arbitrators or umpire shall apply the same principles as are applicable to suits heard and determined by the High Court.

57. CORRECTION OF SLIPS IN AWARD ETC

- (1) Every arbitrator and umpire shall have power to correct in any award made by him or her any clerical mistake or error arising from any accidental slip or omission.
- (2) A copy of every award made in the course of any arbitration shall be certified as a true copy by the arbitrator or umpire making the award and shall be delivered by him or her to each of the parties to such arbitration.

58. AWARDS TO BE FINAL

Every award made in the course of any arbitration shall be final and binding on the parties to such arbitration and the persons claiming under them respectively.

59. ENFORCEMENT OF AWARDS

Every award made in the course of any arbitration may, by leave of the High Court, be enforced in the same manner as a judgement or order to the same effect, and where leave is so given, judgment may be entered in terms of the award.

**PART 6
GENERAL****60. POWERS OF CHIEF ELECTRICAL ENGINEER**

- (1) The Chief Electrical Engineer shall enforce any regulations under this Act and he or she may at all reasonable times enter, for the purpose of inspecting or testing any electric line or any

electrical apparatus or works, upon any land or premises to which electricity is supplied or upon which electricity is generated, transmitted or distributed.

- (2) The Chief Electrical Engineer may direct the Company not to supply electricity to any installation, apparatus or works which he or she deems unsafe or which, in his or her opinion, fails to comply in any respect with such regulations.
- (3) The Company may require the Chief Electrical Engineer to inspect and test any installation, apparatus or works which the Company has reason to believe is unsafe or fails to comply with such regulations.

61. OFFENCE OF OBSTRUCTING COMPANY

Any person who without due cause obstructs or attempts to obstruct the Company in the performance of any of the powers conferred on it by this Act commits an offence and is liable on summary conviction to a fine not exceeding \$1,000, or to imprisonment with or without hard labour for a period not exceeding 6 months.

62. STEALING ELECTRICITY

If any person without legal right, the proof of which shall be upon him or her, abstracts or causes to be abstracted, or diverts or causes to be diverted, any electricity, or consumes or uses any such electricity, knowing the same to have been wrongfully or unlawfully abstracted or diverted, such person commits an offence and is liable on summary conviction to a fine not exceeding \$5,000 or to imprisonment with or without hard labour for a period not exceeding 12 months.

63. CRIMINAL LIABILITY FOR DAMAGE AND PRIMA FACIE EVIDENCE THEREOF

- (1) If any person without legal right, the proof of which shall be upon him or her, wilfully disconnects, damages or removes or suffers to be disconnected, damaged or removed any electric line, meter, switch, fuse or other works or apparatus belonging to the Company, or alters the index of any meter belonging to the Company or otherwise prevents any such meter from correctly registering any quantity of electricity supplied by the Company, such person commits an offence and for every

offence he or she is liable on summary conviction to a fine not exceeding \$500 for the first offence and a fine not exceeding \$1,000 for any such subsequent offence, and without prejudice to the foregoing, the Company may recover from such person the amount of any damage by it sustained and may also (despite any agreement or contract previously existing) discontinue any supply of electricity to such person.

- (2) If upon any premises or land in the occupation of a consumer there is connected to any electric line or meter any wire or device capable of wrongfully abstracting, diverting, consuming or using electricity or of preventing any meter from correctly registering any quantity of electricity supplied by the Company, the existence of such wire or device shall be accepted by a Court as *prima facie* evidence that such consumer has without legal right abstracted or diverted electricity, or (as the case may be) has without legal right prevented a meter from duly registering any quantity of electricity supplied by the Company.

64. REGULATIONS

- (1) The Minister may, after consultation with the Company and a body representing consumers, make regulations—
- (a) for the protection of consumers and of the public generally against personal injury or damage to property arising from the generation, supply or use of electricity;
 - (b) to provide for enquiries to be held in connection with any accident which is or may be attributed to an escape of electricity or to the state of conduct or any part of the undertaking;
 - (c) conferring or imposing upon any sub-licensee, powers, privileges, obligations and restrictions similar to those imposed or conferred upon the Company by this Act;
 - (d) for the purpose of preventing or minimising radio interference or electrical interference arising from the generation, transmission, distribution or use of electricity;
 - (e) prescribing the qualifications of electrical engineers, chargemen, wiremen and contractors;
 - (f) for the examination, licensing and registration of electrical engineers, chargemen, wiremen, and contractors

and for the grant of certificates of competency and of registration;

- (g) prescribing the forms of certificates of competency and registration for electrical engineers, chargemen, wiremen and contractors;
 - (h) prescribing the fees to be charged in respect of the examination of electrical engineers, chargemen, wiremen and contractors;
 - (g) prescribing the forms of certification of inspection to be issued by Chief Electrical Inspectors, the fees to be charged for inspections to be made by such inspectors and the persons by whom such fees shall be paid.
- (2) All such regulations shall be published in the Gazette and shall have the force and effect of law.

65. PENALTY FOR BREACH OF REGULATIONS

Any Regulations made under section 64 may impose penalties for any failure or omission to observe or comply with such Regulations, such penalties shall not exceed \$5,000 for each offence, and a further penalty of \$500 for each day or part thereof on which the offence continues after a conviction.

66. GENERAL PENALTY

Any person who commits an offence under this Act for which no special penalty is provided by this Act is liable on summary conviction of such offence to a fine not exceeding \$10,000 or to imprisonment with or without hard labour for a term not exceeding one year, or both such fine and imprisonment.

67. AMENDMENTS TO SCHEDULES

The Minister may by order published in the Gazette amend the Schedules. (*Inserted by Act 12 of 2006*)

68. SAVINGS

- (1) Any rights and obligations accruing to the Company under the Electricity Supply Act, 1964 are deemed to continue under this Act.
- (2) Any regulations made under the Electricity Supply Act, 1964 continue in force until new regulations are made under this Act to replace the regulations saved by this section.

SCHEDULE 1

(Section 28(1))

TARIFF**PART A****Basic Energy Rates**

Rates per electrical unit	Domestic	from 1–180 units	\$0.643 per unit
		from 181 units upwards	0.693 per unit
	Commercial	all units (low tension)	0.793 per unit
		Bulk (high tension)	0.753 per unit
	Industrial	all units (low tension)	0.793 per unit
		Bulk (high tension)	0.753 per unit
	Hotels	all units (low tension)	0.793 per unit
		Bulk (high tension)	0.753 per unit

Streetlighting all units 0.788 per unit

PART B**Other Charges**

Minimum monthly charges	Domestic		\$ 5.00 per month
	Commercial	low tension	30.00 per month
		high tension (bulk)	500.00 per month
	Industrial	low tension	100.00 per month
		high tension (bulk)	500.00 per month
	Hotels	low tension	100.00 per month
		high tension (bulk)	500.00 per month
	Reconnection charge		\$22.00

(Amended by Act 12 of 2006)

SCHEDULE 2

(Section 28(4))

Fuel Surcharge Cost Adjustment

The Company shall, in addition to the charges set out in Schedule 1 as amended in accordance with this Act, be entitled to add or shall deduct a fuel surcharge per unit consumed which shall be calculated from the following formula:

The total number of Imperial gallons of diesel fuel used at all the Company's generating stations in Saint Lucia during the calendar month immediately preceding the calendar month during which meters are read:

- (a) multiplied by the current price less the base price in cents;
and
- (b) divided by the total units sold in Saint Lucia during the calendar month immediately preceding the calendar month during which meters are read.

SCHEDULE 3

(Section 30(1) & 32)

Form of Rate of Return – Interim/Final

Particulars in respect of financial year ended

(All amounts to be expressed in Eastern Caribbean currency and given to nearest dollar.)

A.: Calculation of net income, using amounts derived from the financial statements for the year under review, as follows

		EC\$	EC\$
1)	Revenue in respect of		
	(a) Energy sales	1(a)	
	(b) Revenue derived from or connected with any operating expense or asset included in item 2 below (including, without limitation, increase/decrease in provision for unbilled sales)	1(b)	
	(c) Fuel surcharge after deducting excess fuel costs over base cost		
		<u>1(c)</u>	
			1(a)+1(b) +1(c) =I
2)	Operating Costs in respect of		
	(a) Diesel generation	2(a)	
	(b) Transmission and distribution	2(b)	
	(c) Consumer services	2(c)	
	(d) Administrative expenses	2(d)	
	(e) Directors expenses	2(e)	
	(f) Maintenance expenses	2(f)	
	(g) Expenses derived from or connected with any operating income or asset not included in 2(a) to 2(f) above	2(g)	
	(h) Interest on moneys borrowed and all interest on consumer deposits	2(h)	
	(i) Any tax or imposition of any kind imposed by Government or any authority	2(i)	
	Sub-total	<u>2(j)</u>	
	Less: Depreciation charges included in any of 2(a) to (i) above	<u>2(k)</u>	

		$2(j)-2(k) = II$
3)	Sub-total (being I minus II)	III
4)	Total depreciation charges calculated on historical cost basis of the Company's fixed assets, less amortization of consumer contributions	IV
5)	Realised gains or losses incurred on the repayment of foreign currency loan principal	V
6)	Operating Income (being III minus IV plus or minus V)	VI

B. Average Contributed Capital

	Beginning of Year \$		End of Year \$
(a) Amount paid up or credited as paid up on the share capital of the Company excluding the amount paid up or credited as paid up on any preference shares; and			
(b) Credit Balance on Profit & Loss Account			
(c) Deduct any unrealized exchange gain on debt, or add any unrealized exchange losses on debt that may exist from time to time as at the end of the financial year in question			
Total Sum (a) + (b) + (c)	Sum 1		Sum 2

C. Calculation of average contributed capital

Sum 1 plus Sum 2 and dividing the result by 2

D. Calculation of Actual Rate of Return

- | | |
|------------------------------------------------------|----------------------------|
| 12) Interim/Final Rate of Return to 3 decimal places | VI divided by XI =
___% |
|------------------------------------------------------|----------------------------|

I certify to the best of my knowledge these particulars to be correct.

*Chairperson or Managing Director or Company Secretary
St Lucia Electricity Services Limited*

GUIDELINES FOR SCHEDULE 3

The following principles shall apply when preparing Interim and Final Returns in accordance with this Schedule:

- A) No expense shall be taken into account for the purpose of determining the Interim/Final Rate of Return for any financial year unless such expense has been reasonably and necessarily incurred in producing the operating revenues for the said year.
- B) Interest in excess of 15% on moneys borrowed is allowable as an expense, together with all interest paid on consumer deposits.
- C) No amortization or goodwill costs will be allowed as expenses in determining operating income.
- D) The foregoing shall not be interpreted to exclude charitable donations and similar non-essential expenditures if such do not exceed 2% of the total operating costs defined in this Schedule as "II". Guarantee fees payable in connection with debt obligations arising under agreements entered into on and after the date of the coming into operation of this Act shall be excluded from the calculation of operating expenses.
- E) Fixed physical assets shall be valued at the historical or revalued basis as appropriate with International Financial Reporting Standards less consumer contribution and less the amount of accumulated depreciation computed at annual rates designed to depreciate fully the said assets on straight line basis over their respective estimated useful lives.
- F) Depreciation provisions shall be in accordance with International Financial Reporting Standards and shall be

applied on a consistent basis to the historical or revalued values of the fixed physical assets as appropriate.

- G) All contributions made to, and all expenses incurred in establishing and maintaining, a captive insurance fund for the company's benefit.

(Amended by Act 26 of 2001 and Act 12 of 2006)

SCHEDULE 4

(Section 30(5))

Part A	Decrease in Basic Energy Rates	
(a)	Value of excess return X 50%	(1)
(b)	Total kilowatt hour sales for industrial consumers in preceding calendar year	(2)
(c)	Total kilowatt hour sales for hotel consumers in the preceding calendar year	(3)
(d)	Sum of Sum (2) plus sum (3)	(4)
(e)	Decrease in basic energy rates for industrial consumers and hotel consumes in cents per kilowatt hour: Sum (1) divided by Sum (4)	
Part B	Decrease in Basic Energy Rates	
(a)	Value of excess return X 50%	(1)
(b)	Total kilowatt hour sales for industrial consumers in preceding calendar year	(2)
(c)	Total kilowatt hour sales for hotel consumers in the preceding calendar year	(3)
(d)	Total kilowatt hour sales for consumers or group of consumers in need of special protection in the preceding calendar year	(4)
(e)	Sum of Sum (2) plus sum (3) plus Sum (4)	(5)
(f)	Decrease in basic energy rates for industrial consumers, hotel consumers or group of consumers in need of special protection in cents per kilowatt hour: Sum (1) divided by Sum (5)	
Part C	Increase in Basic Energy Rates	
(a)	Value of deficit return	(1)
(b)	Total kilowatt hour sales in preceding calendar year	(2)
(c)	Increase in basic energy rates in cents per kilowatt hour: Sum (1) divided by Sum (2).	

(Substituted by Act 12 of 2006 and amended by Act 13 of 2006)