

CHAPTER 222

WATER INDUSTRY AUTHORITY (TARIFFS) BY-LAWS

ARRANGEMENT OF BY-LAWS

1. Short title.
2. Interpretation.
3. Applicability and scope.
4. Methodology.
5. Requirement of public notice.
6. Schedule for proceeding.
7. Filing of information.
8. Filing of information with PUC.
9. Cost of independent experts.
10. Cost of licensee.
11. Powers of PUC.
12. Confidential information.
13. Full Tariff review.
14. Fixation and adjustment of tariffs.

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15. Notice of Full Tariff Review Proceeding.
16. Publication of notice.
17. Meeting of the PUC.
18. Comments of interested parties.
19. Decision of the PUC.
20. Comments on PUC's decision.
21. Final decision of the PUC.
22. Objections to PUC's decision.
23. Report of expert.
24. Comments on report.
25. PUC's decision on report.
26. Previous Schedules to remain in effect pending final decision.
27. Annual review.
28. Filing tariff application.
29. Contents of application.
30. Determination of the PUC.
31. Comments on PUC's decision.

- 32. Final decision of the PUC.
- 33. Objections to the PUC's decision.
- 34. Report of independent expert.
- 35. Final decision.
- 36. Adjustment to tariff.
- 37. New property developments.
- 38. Tariffs during transitional period.
- 39. Penalties.
- 40. Commencement.

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SCHEDULE I

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SCHEDULE II

CHAPTER 222

67 of 2002.
Act 1 of 2002.

WATER INDUSTRY (TARIFFS) BY-LAWS
(Section 87)

[1st June, 2002.]

PART I
INTERPRETATION AND APPLICATION

- Short title. 1. These By-laws may be cited as the
- WATER INDUSTRY (TARIFFS) BY-LAWS.**
- Interpretation. 2. In these By-laws, unless the context otherwise requires:
- CAP. 222. “Act” means the Water Industry Act;
- “Annual Tariff Period” means each of the twelve month tariff period within a Full Tariff Period or Transitional Period;
- “Business Plan” means the business plan proposed by a licensee and approved by the PUC for the Transitional Period or for each Full Tariff Period;
- “Change in Law” means the introduction, amendment, modification or repeal, or change in the interpretation, in whole or in part, of laws, regulations, By-laws or any other legally binding requirement of Belize that has an impact on a licensee;
- “Dividends” means the amount paid to shareholders as their reward for holding their equity share investment in a licensee company after deducting all tax liabilities in Belize whether paid or payable;

“PUC” means the Public Utilities Commission established under the Public Utilities Commission Act;

CAP. 223.

“Consumer Price Index of the United States of America” means the index published from time to time by the United States Bureau of Labour Statistics called “Consumer Price Index - All Urban Consumers”, or such index that is generally recognised as replacing said index;

“customer” means any person receiving services or entitled to receive services by a licensee;

“Equity Contribution” means the par value of the cumulative equity share capital of the licensee, issued and fully paid;

“Exceptional Circumstance” means any act, event or circumstance beyond the reasonable control of a licensee, which has a material effect on the financial position of the licensee including, but not limited to:

- (a) hurricane, cyclone, tornado, earthquake or other natural disaster or weather conditions,
- (b) civil disobedience, riot, strike, demonstration, commotion, or other similar events,
- (c) change in the exchange rate of the Belize dollar as against the US dollar,
- (d) change in law,
- (e) expropriation,
- (f) change in the rates of taxation, fees, licences or permits or the imposition of new taxes, fees, licences or permits (direct and indirect) in the water

and sewerage sector in Belize,

(g) change in the quality of service standards,

(h) any other unforeseen circumstances;

“Exchange Rate” means the rate of exchange prescribed by law or published by the Central Bank of Belize;

“First Full Tariff Period” means the first of a successive period of five years commencing on the 1st April, 2004;

“Full Tariff Period” means each successive period of five years commencing on the 1st April, 2004;

“Full Tariff Review Proceeding” means the review proceedings prior to each Full Tariff Period during which the PUC reviews, amends and approves the Business Plan proposed by the licensee and sets out Tariffs for the Full Tariff Period;

“Initial Equity Contribution” means the par value of the cumulative equity share capital of the licensee, issued and fully paid, as at the Initial Equity Contribution Date converted from Belizean dollars to United States dollars at the prevailing rate of exchange on the Initial Equity Contribution Date;

“Initial Equity Contribution Date” means the date on which the first transfer of majority ownership of the licensee from the Government of Belize to another investor or investors took place;

“interested party” means any person, customer or entity having an interest or concern in the outcome of an application or proceeding before the PUC;

“Interim Review Proceeding” means the review proceedings carried out by the PUC on its own initiative or at the request of the licensee on the sufficiency

of Tariffs and based on the occurrence of an exceptional circumstance during the Transitional Period or a Full Tariff Period;

“Licence” means a licence issued to a licensee by the PUC under section 15 of the Act;

“licensee” means any legal person or entity licensed by the PUC under section 15 of the Act to produce, generate, store, transmit, sell, deliver, or supply water and sewerage services to or for the public;

“Net Present Value” means the value obtained by discounting cash outflows and inflows attributable to a capital projector equity investment by a chosen discount rate;

“New Property Development” means all those property developments not already within the scope of the capital expansion program in the relevant Business Plan or funded by the Water Industry (Infrastructure Charges) Order and approved by the PUC for the provision of water and sewerage services by the licensee, on the terms and conditions set out in Schedule II;

Schedule II.

“Regulated Rate of Return” means the rate of return as set out in Schedule I;

Schedule I.

“Regulatory Model” means the model of the licensee’s business used by the PUC as the methodology for calculating Tariffs during Review Proceedings under these By-laws;

“Residual Value” means the value of the licensee company at the end of the initial licence period and shall be equivalent to the Initial Equity Contribution plus any additional equity capital subscribed for by shareholders, which are not entitled to alternate forms of return or interest, plus any shortfall in the value of the actual dividend payment over the initial, licence period as would be necessary, to ensure that the shareholders receive the entire Regulated Rate of Return;

“Review Proceedings” mean either an Annual Review Proceeding or a Full

- Tariff Review Proceeding;
- Schedules. “Schedules” means the Schedules to these By-laws;
- “Tariffs” includes regulated rates, fees and charges;
- “Tariff Basket” means all of the individual Tariffs that can be levied by a licensee for the various services that it provides to all types of customers and which when aggregated and applied to the quantum of the particular services being provided produces the total operating revenues of the licensee;
- “Transitional Period” means the period from March 23, 2001 to March 31, 2004.
- Applicability and scope. 3. These By-laws shall govern the Tariffs which may be charged by a licensee for the supply of water and sewerage services to consumers in Belize, and the mechanisms, formulas, and procedures whereby such Tariffs shall be calculated and determined for all purposes.

PART II
RATEMAKING PRINCIPLES

- Methodology. 4. (1) The methodology for the calculation of the water and sewerage Tariffs shall be that of the Regulatory Model as amended by the PUC from time to time.
- (2) The PUC shall determine Tariffs for a Full Tariff Period in a Full Tariff Review Proceedings as described in Part III and based on-
- (a) a Business Plan submitted by the licensee and approved by the PUC; and
- Schedule I. (b) the Regulated Rate of Return in Schedule I.

(3) The Tariffs determined through the Regulatory Model may be adjusted between Full Tariff Review Periods during an Interim Review Proceeding as provided for in Part IV of these By-laws.

(4) Subject to these By-laws, a licensee shall not charge a customer less than the applicable Tariffs determined in accordance with these By-laws without the prior approval of the PUC provided on a case-by-case basis or for a general category of customers or in specified circumstances.

5. For the purposes of these By-laws, where a licensee is required to give public notice, the licensee shall-

Requirement of public notice.

- (a) place a copy of the notice in a publicly accessible part of its principal place of business in such manner that it is readily available for inspection free of charge by members of the general public during normal business hours;
- (b) publish the notice or, with the consent of the PUC, a summary thereof, in two national newspapers published and circulating in Belize; and
- (c) send a copy of the notice or such part or parts thereof as are appropriate to any person who may request such a copy, provided that the PUC shall allow the licensee to levy a reasonable charge to cover the cost of such provision.

6. Throughout a Review Proceeding, the PUC and the licensee shall maintain an up-to-date schedule for the proceedings in a publicly accessible part of their principal office in such manner and in such place that it is readily available for inspection free of charge by members of the general public during normal business hours.

Schedule for proceeding.

- Filing of information.
7. (1) Where a licensee or an interested party lodges information comments or information with the PUC, to the extent that such comments or information include statements or information purported to be factual, they shall be accompanied by a sworn affidavit by the person making the submission or, in the case of a legal entity, by an officer of that entity.
- (2) The affidavit shall state that the factual statements or information provided are true to the best of the deponent's knowledge and belief.
- Filing of information with PUC.
8. (1) During a Review Proceeding, three copies of any application report, comments or information provided by a licensee or an interested party to the PUC shall be filed in the PUC's office.
- (2) A copy of any such documents submitted by an interested party shall be provided to the licensee at its principal office of business.
- (3) The PUC shall provide a copy of any proposal, report or decision made by it to the licensee at its principal office, upon the issuance of same.
- (4) A copy of every document submitted by the licensee, or an interested party, or issued by the PUC, shall be promptly made available to the public at the office of the PUC as well as at the principal office of the licensee, and members of the public shall be allowed to obtain copies of the documents at either of these locations at their own expense.
- Cost of independent experts.
9. The costs of independent experts engaged by the PUC in the course of Review Proceedings, in accordance with By-laws 22 and 31, shall be borne by the licensee, subject to reimbursement through the Tariffs established in such Proceedings.
- Cost of licensee.
10. A licensee or any interested party participating in a proceeding before the PUC shall bear its own costs, unless the PUC makes an order to the contrary.

11. (1) During all proceedings and hearings, the PUC shall have the right and responsibility to control such proceedings and hearings to ensure that they are effective, efficient and provide participants a fair opportunity to be heard. Powers of PUC.

(2) The PUC shall have full power and authority to take cognisance of and accept as fact any statement contained in any affidavit or documentation filed or submitted by a licensee in respect of the proceedings insofar as such statement is not disputed by any person.

(3) Nothing herein shall be construed as preventing the PUC from calling the maker of any affidavit or any other person to appear before the PUC for oral testimony in such proceedings.

12. (1) A licensee and any interested parties may request confidential treatment for any commercially sensitive information submitted in a Review Proceeding. Confidential information.

(2) When filing information it deems to be confidential, the licensee or an interested party shall submit a petition for confidential treatment including the justification for such treatment, and shall clearly identify the information it deems to be confidential.

(3) Only such information as is commercially sensitive shall be marked as confidential and, where only a portion of a document includes confidential information, an expurgated copy shall be filed with the full document.

(4) Confidential information shall be treated confidentially unless, within five days of receipt of the petition for confidential treatment, the PUC finds that the information is not commercially sensitive and so notifies the person who submitted the information in writing in which case, the person who submitted the information may withdraw the information forthwith instead of having it disclosed; and the information so withdrawn may not be considered by the PUC in making a determination or a decision.

- (5) The following shall apply to confidential information:
- (a) the information shall not be released to any party other than the PUC; and
 - (b) the PUC shall return all but one copy of the confidential information submitted during the course of a proceeding to the person who submitted it and the copy that is retained shall be kept by the PUC in a confidential file which shall not be made available to the general public.

(6) Every person who fails or refuses to comply with the treatment of confidential information as provided in these By-laws, and deemed confidential by the PUC under paragraph (4) above, shall be guilty of an offence and liable on summary conviction to the penalty specified in By-law 39 below unless he adduces evidence to show that he took all necessary and proper means in his power to secure the confidentiality of such information.

PART III
FULL TARIFF REVIEW PROCEEDINGS

Full Tariff
review.

13. (1) During a Full Tariff Review Proceeding, the Business Plan shall be reviewed, amended (if necessary), and approved by the PUC who shall determine the applicable Tariffs for the non five-year tariff period (the Full Tariff Period).

(2) During the first Full Tariff Review Proceeding, the PUC shall approve the first Business Plan and determine the Tariffs for the first Full Tariff Period.

(3) Subsequent Full Tariff Periods shall commence and terminate, respectively, on the fifth anniversary of the commencement and termination of the previous Full Tariff Period.

14. (1) The Business Plan and the Tariffs for the Full Tariff Period shall be based on and be in harmony with the Regulatory Model and the Regulated Rate of Return which will include forecast of the cost of providing water supply and sewerage services in Belize.

Fixation and adjustment of tariffs.

(2) The Tariffs shall be adjusted during the Full Tariff Review Proceeding to recover revenues from the licensee or rebate to the licensee over the Full Tariff Period, accordingly as the licensee's revenues are in excess of or less than revenues required to give effect to the Regulated Rate of Return over the license period.

15. (1) At least five months prior to the commencement of a Full Tariff Period, a licensee, after consultation with the PUC, shall give public notice, in accordance with by-law 5 above, of the commencement of a Full Tariff Review Proceeding.

Notice of Full Tariff Review Proceeding.

(2) Such notice shall contain the following:

- (i) the purpose and nature of a Full Tariff Review Proceeding;
- (ii) a summary of the issues that will be addressed;
- (iii) the process for the Full Tariff Review Proceeding and the opportunities available for public comment and participation;
- (iv) indication of the time, date and place for the initial scheduling meeting; and
- (v) a statement that members of the public can obtain up-to-date information on the schedule of the case at the office of the PUC as well as at the licensee's principal place of business.

Publication of notice.	16. On the date of publication of the public notice described in byelaw 15 above, (and for the purposes hereof the date of publication shall be the date of posting of the notice at the licensee's office in accordance with byelaw 5(a) above) the licensee shall submit a proposed Business Plan for the next tariff period.
Meeting of the PUC.	17. Within ten days after the date of publication of the notice described in byelaw 15, the PUC shall hold a meeting at the time and place set forth in the notice. At every such meeting, the licensee shall, and interested parties may, participate, and the PUC shall establish the schedule for the proceedings in accordance with the time limits set forth herein.
Comments of interested parties.	18. Within thirty days of the licensee's submission, the interested parties may submit written comments and information on the licensee's proposals.
Decision of the PUC.	19. Within fifteen days of the submission of comments above, the PUC shall deliver an initial written decision on whether and in what manner the Schedules and Tariffs will be amended for the next Tariff period, together with the reasons for such decision.
Comments on PUC's decision.	20. Within fifteen days after the initial decision of the PUC above, the licensee and any interested party representing users of at least 10% of the annual quantity of water supplied by the licensee in the preceding year, may submit written comments on the decision.
Final decision of the PUC.	21. Where there is no objection to the PUC's initial decision by the licensee or an interested party representing users of at least 10% of the annual amount of water supplied by the licensee in the preceding year, the PUC shall deliver a final decision adopting its initial decision.
Objections to PUC's decision. Schedules.	22. (1) Where the licensee or an interested party representing users of at least 10% of the annual water supplied by the licensee in the preceding year objects in writing to the initial decision of the PUC, the PUC shall within 15 days of such objection, select an independent expert to review the Schedules

and Tariffs.

(2) Such independent expert shall have adequate qualifications and shall have no financial or other interest in the outcome of the proceedings.

(3) For the purposes of this byelaw, an expert shall not be deemed to have an interest in the outcome of the proceeding merely on account of the fact that he is a customer of the licensee, or has a financial interest: in an entity that is a customer of the licensee, unless

(a) the water supplied by the licensee constitutes more than 5% of the annual expenses of such entity; or

(b) the services supplied to the licensee constitutes more than 5% of the annual revenue of such entity.

(4) Where the licensee objects in writing to the selection of the independent expert proposed by the PUC, and where after consultation, the PUC and the licensee still do not agree on the selection of the independent expert, then an expert will be appointed by the International Chamber of Commerce on the application of the PUC within 14 days of the receipt of the licensee's objection.

23. (1) Within thirty days of his appointment, the independent expert shall issue a written report on the advisability of amending the Schedules and Tariffs and setting forth the proposed amendments, if any.

Report of
experts.
Schedules

(2) The expert shall give due consideration to the interim decision of the PUC and the objections, comments and information submitted by the licensee and interested parties, and shall submit his report to the PUC and the licensee which shall be made available to the public in accordance with by-law 12 of these By-laws.

Comments on report.	24. Within twenty days of issuance of the report under by-law 23 above, the licensee and any interested party representing customers of the licensee that together consumed at least 10% of the water sold by the licensee during the preceding year may, submit comments on the report, and where such comments challenge the conclusions of the report, the PUC shall within 15 days afford the licensee and such interested parties an opportunity to be heard.
PUC's decision on report. Schedules.	25. (1) No later than fifty days after the receipt of the independent expert's report above, the PUC shall deliver a final decision on any amendment to be made to the Schedules and Tariffs, and such amended Schedules and Tariffs shall remain in effect for the next Full Tariff Period. (2) The PUC's decision shall incorporate the expert's determination of any element of the Business Plan.
Previous Schedules to remain in effect pending final decision.	26. The Schedules and Tariffs in effect during the previous Full Tariff Period shall remain in effect pending the final determination by the PUC in accordance with by-law 25 above.
<u>PART IV</u> <u>ANNUAL REVIEW PROCEEDINGS</u>	
Annual review.	27. The PUC shall, on the request of the licensee or of its own volition, and on the basis of Exceptional Circumstances, hold an Annual Review Proceeding to ensure that the Tariffs to be charged by the licensee during the Annual Tariff Period accurately reflect and give effect to the approved Business Plan and the Regulated Rate of Return.
Filing tariff application.	28. At least ninety (90) days prior to the commencement of an Annual Tariff Period, the licensee may file a tariff application under by-law 27 of these By-laws.

29. The application shall highlight the Exceptional Circumstances, document the departure from the Business Plan as approved in the Full Tariff Proceedings, and include all relevant historical data and forecasts of future costs and other relevant information in support of the proposed revision. Contents of application.
30. (1) Within thirty days of the receipt of the documents referred to in By-laws 28 and 29 above, the PUC shall determine whether the application has any merit and issue an initial written decision approving or disapproving the proposal of the licensee, together with the reasons for such decision. Determination of the PUC.
- (2) Within 15 days of making its initial decision, the PUC shall publish its written decision in two national newspapers published and circulating in Belize.
31. Within fifteen days after the initial decision of the PUC above, the licensee and/or an interested party representing users of at least 10% of the annual quantity of water supplied by the licensee in the preceding year, may submit written comments on the decision. Comments on PUC's decision.
32. Where there is no objection to the PUC's initial decision by the licensee or an interested party representing users of at least 10% of the annual amount of water supplied by the licensee in the preceding year, the PUC shall deliver a final decision adopting its initial decision. Final decision of the PUC.
33. (1) Where the licensee or an interested party representing users of at least 10% of the annual water supplied by the licensee in the preceding year objects in writing to the initial decision of the PUC, the PUC shall within 15 days of such objection, select an independent expert to review the PUC's decision along with the licensee proposal. Objections to the PUC's decision.
- (2) Such independent expert shall have adequate qualifications and shall have no financial or other interest as set out in byelaw 22 of these By-laws.

(3) Where the licensee objects in writing to the selection of the independent expert proposed by the PUC, and where after consultation the PUC and the licensee still do not agree on the selection of the independent expert, then an expert will be appointed by the International Chamber of Commerce on the application of the PUC within 14 days of the receipt of the licensee's objection.

Report of independent expert.

34. (1) Within thirty days of his appointment, the expert shall submit to the licensee and the PUC a written report on the extent to which the licensee's proposals have merit and recommending any necessary revisions to the Tariffs.

(2) The expert shall give due consideration, the initial decision of the PUC and, the objections, comments and information submitted by the licensee and interested parties, and, shall submit his report to the PUC; who shall provide a copy of the report to, the licensee. The report shall be made available, to the public in accordance with by-law 12 of these By-laws.

Final decision.

35. Within fifteen days after receipt of the report of the independent expert, the PUC shall issue a final decision, incorporating the expert's determination of any element of the licensee's proposal.

Adjustment to tariff.

36. Any adjustments to Tariffs approved by the PUC shall become effective in relation to any customer charges for the period commencing on the first day of, the Annual Tariff Period, irrespective of the date of the final decision of the PUC, and the licensee shall rebate or recover any difference in the Tariffs in subsequent customer bills in accordance with the directions of the PUC.

PART V GENERAL

New property developments.

37. Schedule 2 shall have effect with regard to new property developments.

Tariffs during transitional period.

38. (1) Notwithstanding any other provision of these By-laws, the Tariffs to be charged during the transitional period shall be those specified in

the following Orders:-

- (a) Water Industry (Rates) Order;
- (b) Water Industry (Rates), (San Pedro) Order;
- (c) Water Industry (Infrastructure Charges) Order.

(2) Where the PUC in the exercise of its discretion considers it appropriate, it may order, that the Tariffs referred in paragraph (1) above shall apply to any subsequent licensee subject to such modifications as the PUC may determine in writing after consultation with such licensee.

39. Any person who contravenes any of these By-laws commits an offence and shall be liable on summary conviction to a penalty not exceeding five thousand dollars or to imprisonment for a term of twelve months, and in the case of a continuing offence to a fine not exceeding one hundred dollars for each day the offence continues after conviction thereof.

Penalties.

40. These By-laws shall come into force on May 31, 2002.

Commencement.

MADE by the Public Utilities Commission, after consultation with the Licensee, this 29th day of May, 2002.

(GILBERT CANTON)
Chairman
(Public Utilities Commission)

APPROVED by the Minister responsible for water and sewerage
this 30th day of May, 2002.

(RALPH H. FONSECA)
*Minister of Budget Management,
Investment and Public Utilities,
Minister responsible for water and sewerage*

SCHEDULE I

[By-law 4]

(Regulated Rate of Return)

The principles of affordability, revenue adequacy, fairness and simplicity shall be applied to, the determination of Tariffs and the establishment of the tariff basket for the provision of water and sewerage services.

A. Licensee: Belize Water Services Limited

The Regulated Rate of Return for the licensee, Belize Water Services Ltd., its successors and assigns, is established at twelve percent (12%) and is inextricably linked to the implementation of the Business Plans approved by the PUC in Review Proceedings. The Regulated Rate of Return is to be achieved over the total life of the licence, being twenty-five (25) years commencing on March 23, 2001, and is calculated by the receipt of dividends by the licensee's shareholders and any Residual Value paid or payable to the said licensee's shareholders at the end of the licence period by the Government of Belize.

B. Licensee: Other

[Not Applicable]

SCHEDULE 2

[By-law 37]

(New Property Developments)

For new property developments that are not within the scope and normal progression of the licensee's own capital expansion program as presented and approved in the Business Plan and not funded through Statutory Instrument No. 42 of 2001 on Infrastructure Charges, the licensee will determine the cost of the network required by the project and the associated revenue streams and perform a Net Present Value (NPV) Calculation using a discount rate of 18%. Based on this analysis, the developer will be required to pay the NPV deficit to make the project a worthwhile investment for the licensee to put in the network and provide the services. Network costs include the site network and the cost to connect to the nearest existing main water or sewerage system. Alternatively, the developer may decide to use his own resources to put in the required network but under the design and supervision of the licensee who will thereafter assume and operate the system.