

I ASSENT

[L.S.]

PEARLETTE LOUISY,
Governor-General.

30th January, 2006.

SAINT LUCIA

No. 12 of 2006

AN ACT to amend the Electricity Supply Act 1994, No. 10 of 1994.

[22nd March, 2006]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the authority of the same, as follows :

Short title

1. This Act may be cited as the Electricity Supply (Amendment) Act 2006.

Interpretation

2. In This Act “principal Act” means the Electricity Supply Act, No.10 of 1994.

Amendment of section 2

3. Section 2 of the principal Act is amended by —

(a) deleting the definition “base price” and substituting the following:

““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 twelve months preceding the first day of January 2006, to be automatically adjusted on the first day of January every year thereafter, on the basis of the average contract price per imperial gallon for diesel fuel oil in the relevant preceding twelve months; or

(b) in the event that the base price as established pursuant to paragraph (a) is higher than the current price for 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;”;

(b) deleting the definition of “current price” and substituting the following:

““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 counter-party financial institution involved in the derivative financial instruments in the event of early termination of such derivative financial instruments by the Company;”;

(c) inserting the following new subsection as subsection (3):

“(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 twelve months, by the aggregate quantity of imperial gallons delivered for that same period.” .

Amendment of section 20

4. Section 20 of the principal Act is amended by —

(a) inserting the following definitions in the correct alphabetical sequence:

““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;

“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 the THIRD SCHEDULE, divided by the average amount of contributed capital calculated in accordance with Part B of the THIRD SCHEDULE and expressed as a percentage;”;

(b) deleting the definition of “allowable rate of return” and by substituting the following:

““allowable rate of return” means an annual return on average contributed capital based upon a spread of two percentage points and seven 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 ten percentage points;”;

(c) deleting the definition of “deficit rate of return” and by substituting the following :

““deficit rate return” means 10 percentage points less the actual amount of any return on average contributed capital less than ten percentage points, and shall be treated in accordance with the provisions of section 26 (4) (a);”;

(d) deleting the definition of “excess rate of return” and by substituting following:

““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 seven percentage points and shall be treated in accordance with the provisions of section 26 (3) (a);”;

(e) deleting the definition of “final rate of return” and by substituting the following:

““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 the THIRD SCHEDULE and submitted to the Minister in accordance with section 28 or section 29, as the case may be;”;

(f) deleting the definition of “interim rate of return” and by substituting the following:

““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 the THIRD SCHEDULE;”;

(g) deleting the definitions of “average amount of equity”, “average debt”, “average interest rate”, “equity” and “total basic revenues”; and

(h) deleting subsection (2) and by substituting the following new subsections:

“(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 ten 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 twelve calendar months immediately preceding the first day of 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 twelve calendar months period.”.

Amendment of section 25

5. Section 25 of the principal Act is deleted and substituted by the following:

“25. The Company’s allowable rate of return shall be calculated in accordance with Parts A and B of the THIRD SCHEDULE.”.

Amendment of section 26

6. Section 26 of the principal Act is amended by:

- (a) deleting the words “FOURTH SCHEDULE” where they appear in that section and by substituting “the words “THIRD SCHEDULE”;
- (b) inserting the following words between the words “consumed” and “but” appearing in subsection (3):
 - i. “by industrial and hotel consumers; and such decrease shall be calculated in respect of each kilowatt hour as to one half 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; and or
 - ii. by consumers or groups of consumers in need of special protection; and such decrease shall be calculated in respect of each kilowatt hour as to one half of the dollar value of the excess rate of return applied proportionately on the basis of the total kilowatt hour consumed by such consumer in the preceding calendar year.”;
- (c) inserting the following words between the words “consumed” and “;but” appearing in subsection (4):

“; 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.”;

- (d) deleting the words “FIFTH SCHEDULE” where they appear in subsection (5) and by substituting “the words “FOURTH SCHEDULE”.

Amendment of section 28

7. Section 28 of the principal Act is amended by deleting the words “FOURTH SCHEDULE” where they appear in the section and by substituting the words “THIRD SCHEDULE”.

Amendment of section 31

8. Section 31 of the principal Act is amended by —

- (a) deleting subsection (1) and by substituting the following:
“(1) Subject to subsection (5), the Review Board shall –
- (a) biennially –
 - (i) monitor the Company’s performance against mutually agreed targets and benchmarking standards;
 - (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 five years, review the basic energy rates that are calculated in accordance with this Act and charged by the Company.”;
- (b) inserting “(c)” after the words “subsection (1)” appearing in the chapeau of subsection (2);
- (c) deleting subsection (3) and by substituting the following:

“(3) The Review Board must complete a report of a review undertaken pursuant to subsection (1) within sixty days from the date of commencement of the review and submit the report to the Minister within fourteen days of the completion of the report.”; and

(d) deleting subsection (4) and by substituting the following:

“(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.”.

Amendment of section 35

9. Section 35 of the principal Act is amended by deleting the words “FOURTH SCHEDULE” where they appear in that section and by substituting the words “THIRD SCHEDULE”.

Amendment to First Schedule

10. Part A of the FIRST SCHEDULE to the principal Act is deleted and substituted by the following:

“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”.

Deletion of Third Schedule

11. The THIRD SCHEDULE to the principal Act is deleted.

Amendment of Fourth Schedule

12. The FOURTH SCHEDULE to the principal Act is –

- (a) renumbered as the THIRD SCHEDULE;
- (b) amended by deleting the words “in excess of 15%” appearing in paragraph 2(h) of item A;
- (c) amended by deleting items B and C and by replacing them with the following:

“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 two”;

- (d) deleting the words “Fourth” in the heading of the guidelines to that Schedule and by substituting the word “Third” ;
- (e) deleting paragraph E of the guidelines to that Schedule and by substituting the following:

“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) deleting paragraph F of the guidelines to that Schedule and by substituting the following:

“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) inserting the following as paragraph G of the guidelines to that Schedule:

“G. All contributions made to, and all expenses incurred in establishing and maintaining, a captive insurance fund for the company’s benefit.”.

Substitution of Fifth Schedule

13. The FIFTH SCHEDULE is deleted and substituted by the following new FOURTH SCHEDULE:

"FOURTH SCHEDULE

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 Increase in Basic Energy Rates

- | | | |
|-----|-------------------------|-----|
| (a) | Value of deficit return | (1) |
|-----|-------------------------|-----|

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- (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).”.

Passed in the House of Assembly this 20th day of December, 2005.

J. BADEN ALLAIN,
Speaker of the House of Assembly.

Passed in the Senate this 22nd day of December, 2005.

HILFORD DETERVILLE,
President of the Senate.