

SAINT LUCIA

No. 10 of 1994

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I ASSENT

[L.S.]

STANISLAUS JAMES,
Governor-General.

3rd August, 1994

SAINT LUCIA

No. 10 of 1994

AN ACT to retain the grant of an exclusive licence to the St. 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 matters connected therewith.

[On Proclamation]

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:

PART I

PRELIMINARY

Short title.

1. This Act may be cited as the Electricity Supply Act, 1994.

Interpretation.

2.—(1) In this Act —

- “ base price ” means the contract price of \$.2977 per imperial gallon for diesel fuel oil, as prescribed by the Electricity Supply Ordinance, 1964, delivered to the Company at any of its power stations in Saint Lucia during February, 1974;
- “ 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;
- “ the Company ” means St. 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 the calendar month immediately preceding the calendar month in which meters are read;
- “ 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 of 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.

PART II

LICENCE TO GENERATE ELECTRICITY

3.—(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 eighty years with effect from 1st July, 1965. Grant of licence.

(2) For the avoidance of doubt, it is hereby declared that the licence granted to the Company under the Electricity Supply Ordinance, 1964 shall continue in force in accordance with the terms and conditions of that licence. No. 27 of 1964.

4. 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 Grant of Sub-licences.

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”.

Power to revoke
licence.

5.—(1) The licence issued pursuant to section 3 may be revoked by the Cabinet on the last day of the first fifty-five years of the licence; but no purported revocation of the licence pursuant to this section shall be effective unless the Cabinet has given the Company not less than twenty-four 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 for the time being in the beneficial ownership of the Government.

Purchase price to be
paid by
Government on
revocation of
licence.

6.—(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 pursuant to 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 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 from time to time.

7.—(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.

Determination of fair market value.

(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 III

POWERS AND EXEMPTIONS OF COMPANY

Powers of
Company.

8.—(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 fifteen days of such notice, gives written

notice to the Company of his 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 fifteen 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 notwithstanding that 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 property or move completely from his 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 seven hundred and fifty dollars 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 property for the supply of electricity to his 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

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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 1971.

No. 8 of 1971.

Duty free importation of goods and treatment of losses.

9.—(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) Notwithstanding 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.

Exemption from stamp duty.

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

Acquisition of land required by the Company Cap. 109.

11. The Government shall, whenever requested by the Company so to do, acquire under the Land Acquisition Ordinance or any other Ordinance 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.

Transfer of land acquired.

12. 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.

Company may enter lands.

13.—(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 one hundred 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 fifteen days' notice in writing given to the owner or occupier thereof or posted up conspicuous thereon.

(2) If such owner or occupier, within seven days from the service or posting up of such a notice, gives written notice of his 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 fifteen 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 three days, inform the owner or occupier of the land in question (either by service of a written notice on him 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 may deem necessary, the Minister may make such order as he deems fit.

(7) Every such order may, by leave of the Supreme Court, be enforced in the same manner as an injunction granted by the Supreme Court.

Power of entry for
ascertaining
electricity
consumed.

14.—(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.

Company may run
lines etc. on roads
without charges.

15.—(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 three months after it is made good and for such further period (if any) not exceeding twelve months as the sub-soil of the road at that place continues to subside.

16. 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.

Electric lines not
distrainable.

17. 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, 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.

Damage caused by
lopping trees.

18.—(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 property in consequence of the exercise of such powers by the Company.

Payment of
compensation.

(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 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.

Company may
harness water.

19. 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 from time to time reserve for public electricity supply purposes.

PART IV

GENERATION AND SUPPLY OF ELECTRICITY AND CHARGES THEREFOR

Interpretation for
Part IV.

20.—(1) In this Part —

“ allowable rate of return ” means the addition of the weighted average percentage cost of equity and the weighted average percentage cost of debt where —

(a) weighting attributable to equity multiplied by the target rate of return is equal to weighted average percentage cost of equity, and

(b) weighting attributable to debt multiplied by the average interest rate is equal to weighted average percentage cost of debt;

“ average amount of equity ” means the equity at the commencement of the financial year under review added to the equity at the end of such financial year divided by two;

“ average debt ” means, subject to subsection (2), the total debt outstanding plus any preference shares at the commencement of the financial year under review added to the debt outstanding plus any preference shares at the end of such financial year divided by two;

“ average interest rate ” means the total interest expense for the relevant financial year plus amortization of any guarantee fees in respect of debt or other loan charges, divided by the average debt;

“ 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 35;

“ certificate of non-compliance ” means a document issued by the independent firm of accountants appointed in accordance with section 35;

- “ Certification Committee ” means a committee appointed in accordance with section 33;
- “ deficit rate of return ” means the allowable rate of return less the interim rate of return as determined in accordance with the formula prescribed in the FOURTH SCHEDULE;
- “ equity ” means the aggregate of —
- (a) the amount of 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) the amount standing to the credit of reserves of the Company (including without limitation any share premium account, consumer contributions, capital redemption reserve funds and any credit balance on profit and loss account) and any other sum which by standard accounting practice generally accepted in Saint Lucia is treated as part of equity (but excluding for these purposes, the amount paid up, or credited as paid up, on any preference shares); but after deducting from such aggregate any unrealized exchange gains on debt or after adding any unrealized exchange losses on debt that may exist from time to time as at the end of the financial year in question;
- “ excess rate of return ” means the interim rate of return as determined by the application of the formula prescribed in the FOURTH SCHEDULE, less the allowable rate of return;
- “ final rate of return ” means the operating income of the Company in any financial year divided by the rate base and expressed as a percentage as calculated in accordance with the FOURTH SCHEDULE as certified and submitted to the Minister in accordance with section 28 or 29, as the case may be;
- “ final return ” means the document prepared in accordance with the FOURTH SCHEDULE and submitted to the Minister in accordance with section 28;
- “ 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 operating income of the Company in any financial year divided by the rate base

and expressed as a percentage as calculated in accordance with the FOURTH SCHEDULE;

“ interim return ” means the document prepared in accordance with the FOURTH SCHEDULE and submitted to the Minister in accordance with section 26;

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

“ Minister ” means the Minister of Finance;

“ Review Board ” means the Board appointed in accordance with section 34;

“ total basic revenues ” means basic energy rates for a year multiplied by the total kilowatt hour sales for that year.

(2) For the purposes of this Part, each component of average debt shall be stated at the rate of exchange at the beginning and end of each such financial year, respectively.

Exclusive right to generate electricity.

21.—(1) Subject to subsection (2), during the continuance of the licence no person except the Company shall generate, transmit (save for his own consumption and use), distribute or sell electricity within Saint Lucia provided that a sub-licensee may, during the period stated in the written authority granted to him 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 twelve 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 five thousand dollars or to imprisonment with or without hard labour for a period not exceeding six months, and in addition thereto he may be ordered by any Court having summary jurisdiction to dismantle his equipment at his own expense within such time as such court may prescribe and if he 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.

22.—(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. Voltage of electricity supply.

(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 own transformers to any voltage for the time being approved by the Chief Electrical Engineer.

23.—(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 two largest generating units are unavailable for generating electricity. Maintenance of adequate generating capacity.

(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.

24.—(1) Subject to this section, the Company shall charge for electricity supplied in accordance with the rates prescribed in the FIRST SCHEDULE. Charge for electricity supply. First Schedule.

(2) The Company shall submit to the Minister, in respect of its financial year ended 31st December, 1993, the documents specified in section 26 (1) within twenty-eight days after the commencement of this Act and the documents specified in section 28 (1) within ninety days of such commencement; and the requirements of section 26 and 28 shall apply to such documents.

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(3) The charges prescribed in Part B of the FIRST SCHEDULE shall remain in effect.

Second Schedule

(4) Nothing in this section affects the entitlement of the Company to levy a fuel cost adjustment in accordance with the SECOND SCHEDULE.

Allowable rate of return and rate adjustment.

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

Interim return and rate adjustment.

26.—(1) Subject to subsection (7), within twenty-eight 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 the FOURTH SCHEDULE —

Fourth Schedule.

- (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 the FOURTH SCHEDULE;

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.

Third Schedule.

(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 the THIRD SCHEDULE 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 rate as prescribed in Part A of the FIRST SCHEDULE in respect of each kilowatt hour consumed; but any such decrease is independent of any adjustment with respect to fuel cost made in accordance with the SECOND SCHEDULE.

First Schedule.

Second Schedule.

(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 the THIRD SCHEDULE 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; but any such increase is independent of any adjustment with respect to fuel cost made in accordance with the SECOND SCHEDULE.

Third Schedule.

Second Schedule.

(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 the FIFTH SCHEDULE.

Fifth Schedule.

(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 the FOURTH SCHEDULE, the FOURTH SCHEDULE prevails.

Fourth Schedule.

27. Where —

- (a) the interim return is not submitted to the Minister within the time specified in section 26 (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;

Effect of non-submission of interim return.

then any decrease under section 26 (3) or increase under section 26 (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.

28.—(1) The Company shall, not later than ninety days after the end of each financial year, submit to the Minister the following:

Submission of audited accounts etc. to Minister.

- (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 the FOURTH SCHEDULE and which

Fourth Schedule.

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 the FOURTH SCHEDULE, and in the case of a certificate of non-compliance the reasons for such non-compliance.

Fourth Schedule.

Consequence of certificate of non-compliance.

29.—(1) Where a certificate of non-compliance is delivered to the Company, the Company and an independent accountant must each, within fourteen 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 two 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 thirty days of such receipt, as to the revised basic energy rates which rates must be implemented by the Company within fourteen 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.

Rate adjustment.

Second Schedule.

30.—(1) The basic energy rate levied by the Company with respect to each kilowatt hour consumed, independent of any adjustment made for fuel cost pursuant to the SECOND SCHEDULE, 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 29 (3); but in the absence of any requirement for any such adjustment, the basic energy rates chargeable by the Company pursuant to 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 fourteen 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 26(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 26 and this section.

31.—(1) Subject to subsection (5), the Review Board shall 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. Review of basic energy rates.

(2) A review or the purposes of subsection (1) —

- (a) must determine the accuracy or otherwise of the application of the basic energy rate calculation for the five 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 ninety 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 the report referred to in subsections (1) and (2) within sixty days from the date of commencement of the review and submit that report to the Minister within fourteen days of such completion.

(4) Nothing in this section permits the Review Board to review or propose any change to —

- (a) the adjustment of basic energy rates on an annual basis; and
- (b) the Company's target rate of return that —
 - (i) compensates the Company's creditors under their respective loan agreements,
 - (ii) provides a market rate of return on equity sufficient to be able to attract adequate levels of financing as may be required by the Company from time to time.

(5) For the purposes of subsection (1) the five year period must be reckoned from the commencement of this Act.

Power of Minister to
amend First
Schedule.
First Schedule.

32.—(1) The Minister may, after consultation with the Company with respect to the report submitted by the Review Board, by Order, amend the FIRST SCHEDULE.

(2) The Company shall give effect to an order made by the Minister pursuant to subsection (1).

Certification
Committee.

33.—(1) For the purposes of this Part there shall be a Certification Committee which shall consist of three 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 Chairman, 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 two years and shall be entitled to such allowances or gratuities as determined by the Minister.

Review Board.

34.—(1) For the purposes of this Part there shall be a Review Board which shall consist of three 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 Chairman, 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 five years and shall be entitled to such allowances or gratuities on such basis, as determined by the Minister.

Independent
accountants.

35.—(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 the FOURTH SCHEDULE as required by section 28.

Fourth Schedule.

36.—(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 for the time being supplied with electricity by the Company.

Electricity supplied to Government.

(2) The Company may charge the Government for all electricity so supplied at the rates for the time being 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 from time to time allow.

(3) This section does not apply to electricity supplied or to be supplied for the purpose of street lighting.

37.—(1) The Government may require the Company to implement rural electrification programmes from time to time 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.

Rural electrification and street lighting.

(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 from time to time allow.

38. 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.

Company's liability for failure to supply electricity.

Deposits and
contributions.

39.—(1) The Company may require any consumer to deposit with the Company by way of security for sums from time to time due by such consumer to the Company for electricity supplied such sums of money as may from time to time be fixed by the Company.

(2) Any sums of money fixed under subsection (1) may not exceed the charge for an estimated two 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 to be determined from time to time by agreement between the Company and the Government; but such rate must not be less than the rate under section 41 (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 one hundred feet in length from the nearest point of connection.

(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 one hundred feet in length from the nearest point of connection to his property excluding distance traversed across any road.

(5) Notwithstanding 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 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 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 contribution.

40.—(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. Meters.

(2) If the result of the test shows that the meter is registering more than three 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 was required to pay by the Company.

(3) The Chief Electrical Engineer shall supervise any test carried out pursuant to 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 six 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.

41.—(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 the FIRST SCHEDULE are paid. Non-payment of
electricity charges.

First Schedule.

(2) The Company may not discontinue the supply of electricity to any consumer unless —

- (a) the consumer is given not less than fifteen 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 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 twenty-four 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 five successive years a consumer has not suffered disconnection of his supply of electricity for failure to pay his proper charges, the Company must, upon written application, accompanied by his 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) Nothing contained in this subsection affects 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 V

ARBITRATION

Non-application of Part V.

42. Part V of this Act shall not apply to any issue, cause or matter arising under Part IV of this Act.

Disputes to be determined by arbitration.

43.—(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.

Appointment of arbitrator.

44.—(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 fourteen 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 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.

45. 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 place; and if after a period of seven days after notice in writing from the other party for that purpose he fails to do so, the remaining or other arbitrator must act as sole arbitrator and his award is binding on both parties as if he 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 death or disability.

Vacancy of
arbitrator to be
supplied.

46.—(1) Where two 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 under this Act; and if such umpire dies or becomes incapable of acting or refuses to act, they shall forthwith after such death or incapacity or refusal appoint another umpire in his place, and the decision of every such umpire on the matters so referred to him is final.

Appointment of
umpire.

(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 for the time being 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 Supreme Court.

Circumstances of single arbitrator.

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

Refusal of arbitrator to act.

48. Where two arbitrators are appointed under section **44** and either of them, in writing, refuses or for seven days neglects to act, the other of them shall act as sole arbitrator and his award is binding on both parties as if he had been appointed sole arbitrator by consent.

Refusal to make award.

49. Where two arbitrators are appointed, and either of them refuses or neglects to act, or fails to make their award within twenty-one 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.

Power to call for books.

50. 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 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.

Arbitrator and umpire to take oath.

51.—(1) Before any arbitrator or umpire enters into the consideration of any matters referred to him, he 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, 1994.

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 commits a misdemeanour.

52. 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 Supreme Court. Costs of arbitration.

53.—(1) Every arbitrator and umpire shall have power to correct in any award made by him any clerical mistake or error arising from any accidental slip or omission. Correction of slips in award etc.

(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 to each of the parties to such arbitration.

54. 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. Awards to be final.

55. Every award made in the course of any arbitration may, by leave of the Supreme 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. Enforcement of awards.

PART VI

GENERAL

56.—(1) The Chief Electrical Engineer shall enforce any Regulations under this Act and he 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. Powers of Chief Electrical Engineer.

(2) The Chief Electrical Engineer may direct the Company not to supply electricity to any installation, apparatus or works which he deems unsafe or which, in his 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.

Offence of obstructing Company.

57. 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 one thousand dollars, or to imprisonment with or without hard labour for a period not exceeding six months.

Stealing electricity.

58. If any person without legal right, the proof of which shall be upon him, 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 five thousand dollars or to imprisonment with or without hard labour for a period not exceeding twelve months.

Criminal liability for damage and *prima facie* evidence thereof.

59.—(1) If any person without legal right, the proof of which shall be upon him, 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 is liable on summary conviction to a fine not exceeding five hundred dollars for the first offence and a fine not exceeding one thousand dollars 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 (notwithstanding 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.

60.—(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;
- (i) prescribing the forms of certification of inspection to be issued by 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.

61. Any Regulations made under section 60 may impose penalties for any failure or omission to observe or comply with such Regulations, such penalties shall not exceed five thousand dollars

Penalty for breach of Regulations.

for each offence, and a further penalty of five hundred dollars for each day or part thereof on which the offence continues after a conviction.

General Penalty. 62. 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 ten thousand dollars or to imprisonment with or without hard labour for a term not exceeding one year, or both such fine and imprisonment.

Repeal and Savings. 63.—(1) The Electricity Supply Ordinance 1964, hereinafter referred to as “ the Ordinance ”, is hereby repealed.

(2) Any rights and obligations accruing to the Company under the Ordinance shall be deemed to continue under this Act.

(3) Any actions, proceedings and any like matter commenced or pending under the Ordinance shall continue under this Act as if they had been commenced under this Act.

(4) Any regulations made under the Ordinance shall continue in force until new regulations are made under this Act to replace the regulations saved by this section.

Commencement. 64.—(1) Subject to subsection (2), this Act shall come into operation on such a date as the Governor-General appoints by proclamation.

First Schedule. (2) The FIRST SCHEDULE shall be deemed to have come into operation on 1st September, 1991.

FIRST SCHEDULE

(Section 24 (1))

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

Rates per electrical unit	Domestic	from 1 - 180 units	\$ 0.25 per unit
		from 181 units upwards	0.30 per unit
	Commercial	all units (low tension)	0.40 per unit
		bulk (high tension)	0.36 per unit
	Industrial	all units (low tension)	0.40 per unit
		bulk (high tension)	0.36 per unit
	Hotels	all units (low tension)	0.40 per unit
		bulk (high tension)	0.36 per unit
Streetlighting all units		0.395 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	

SECOND SCHEDULE

(Section 24 (4))

Fuel Surcharge Cost Adjustment

The Company shall, in addition to the charges set out in the FIRST SCHEDULE 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.

THIRD SCHEDULE

(Section 25)

PART A

Allowable Rate of Return

Allowable Rate of Return as set out in this Act in respect of each financial year of the Company is computed as the addition of the Weighted Average Percentage Cost of Equity and the Weighted Average Percentage Cost of Debt, where :

Weighting Attributable to Equity x Target Rate of Return = Weighted Average Percentage Cost of Equity; and where

Weighting Attributable to Debt x Average Interest Rate = Weighted Average Percentage Cost of Debt

In such calculation, the Average Amount of Equity and the Average Debt added together form the Total Average Debt and Equity where —

$$\begin{array}{rcl} \text{(i) Average Amount of Equity} & = & \text{" i " } \\ \text{Average Debt} & = & \text{" ii " } \\ & & \hline \text{Total Average Debt and Equity} & = & \text{"iii" = i + ii} \end{array}$$

and where —

$$\text{(ii) } \frac{\text{Average Amount of Equity(i)}}{\text{iii}} \times 100 = \% \text{ Weighting Attributable to Equity;}$$

and where —

$$\text{(iii) } \frac{\text{Average Debt(ii)} \times 100}{\text{iii}} = \% \text{ Weighting Attributable to Debt}$$

PART B

Target Rate of Return

The Target Rate of Return is that level of annual rate of return to be attained on the equity of the Company which shall be not less than the average twelve month deposit rate paid by commercial banks in Saint Lucia plus an additional ten per cent (which shall be 1000 basis points) provided that such return on equity shall be at a rate not less than fifteen percent per annum (such figure to be expressed to three decimal places).

FOURTH SCHEDULE

(Section 26 (1) & 28)

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:

1)	Revenue in respect of	EC\$	EC\$
(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 in excess of 15% 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>	
			<u>2(j) — 2(k) = II</u>

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Electricity Supply Act

[1994.

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. Components of Rate Base

- 7) Average fixed physical assets and construction work in progress shall be calculated as
- (i) Fixed physical assets at book value
- (a) at beginning of year
- (b) at end of year

Average fixed physical assets (AFPA) is calculated as

$$\frac{7(i)a+7(i)b}{2} = c$$

and:

- (ii) Construction work in progress (WIP) shall be calculated as:
- (d) net book value at beginning of year
- (e) net book value at end of year

where average WIP is calculated as

$$\frac{7(ii)d+7(ii)e}{2} = f$$

and where average fixed physical assets is

Sum of c+f = VII

- 8) Allowable Inventory shall be calculated as the sum of:
- (i) Material and stock (excluding fuel) at net book value:
- (a) at beginning of year

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(b) at end of year

average allowable material and stock
inventory is therefore

$$\frac{8(i)a+8(i)b}{2} = g$$

where g is subject to a maximum of 12.5% of VII;

and:

(ii) The net book value of all fuel
(including without limitation lube oil)
held by the Company

(c) at the beginning of year

(d) at end of year

where average allowable fuel inventory
is calculated as

$$\frac{8(ii)c+8(ii)d}{2} = h;$$

where h may not exceed 1.5 times the
maximum monthly fuel consumption in
imperial gallons multiplied by the
average price of fuel per imperial gallon;

and where allowable inventory is calculated as Sum of g+h = VIII.

9) Average prepayments and deposits made by
the Company shall be calculated at book value:

(a) at beginning of year

(b) at end of year

where average allowable prepayments and
deposits is calculated as

$$\frac{9(a)+9(b)}{2} = j$$

where j may not be greater than 1.5% of AFPA,
and which shall

= IX

10) Allowable cash working capital shall be
calculated as:

(a) Total operating costs (II) less fuel
oil costs(b) Consumer deposits held as security
against non-payment of electricity
bills

and where

$$10(a) \times 12.5\% - 10(b) = X$$

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c. Calculation of Rate Base

11) Rate Base

VII+VIII+IX+X = XI

d. Calculation of Actual Rate of Return12) 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.

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

Guidelines for Fourth Schedule

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 provided that 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 historical cost less the amount of accumulated depreciation computed at annual rates designed to depreciate fully the said assets on a straight line basis over their respective estimated useful lives.

F) Depreciation provisions shall be in accordance with generally accepted accounting principles and practices as used by the Company for accounting purposes.

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FIFTH SCHEDULE

(Section 26 (5))

PART A

DECREASE OF BASIC ENERGY RATES

Total Basic Revenues x Excess Rate of Return

Total Kilowatt Hour Sale

= Cents per kilowatt hour reduction

PART B

INCREASE IN BASIC SALARY RATE

Total Basic Revenues x Deficit Rate of Return

Total kilowatt hour Sales

= Cents per kilowatt hour increase

For the purpose of this Schedule "total kilowatt hour sale" means the total kilowatt hours billed in any financial year.

Passed in the House of Assembly this 27th day of June, 1994.

W. ST. CLAIR-DANIEL,
Speaker.

Passed in the Senate this 12th day of July, 1994.

E. NEVILLE CENAC,
President.