

IN THE SUPREME COURT OF BELIZE, A. D. 2018

CLAIM NO. 176 OF 2018

BETWEEN: (BELIZE WATER SERVICES LTD. CLAIMANT
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(AND
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(PUBLIC UTILITIES COMMISSION DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Mr. Rodwell Williams, SC, along with Mr. Adler Waight for the Claimant

Ms. Naima Barrow for the Defendant

J U D G M E N T

1. The Claimant, Belize Water Services Ltd, is a company duly incorporated under the Laws of Belize with registered office situate at 7 Central American Blvd, Belize City, Belize and a service provider licensed under Section 15 of the Water Industry Act (Chapter 222) Laws of Belize 2011. The Defendant, the Public Utilities Commission, is a statutory corporation established under the Public Utilities Commission Act (Chapter 223) of the Laws of Belize 2011,

with registered office situate at 41 Gabourel Lane, Belize City, Belize. These are judicial review proceedings brought by Belize Water Services Ltd (BWS) against the Public Utilities Commission (PUC) seeking the following relief:

- i) A declaration that the decision dated January 2nd, 2018 by the Defendant to initiate and proceed with the conduct of an Interim Review Proceedings pursuant to Part IV of the Byelaws of the Water Industry Act is unlawful, null and void and of no effect.
- ii) An order of certiorari to quash the purported Belize Water Services Ltd. 2018 Annual Review Proceeding Initial Decision made final on February 26th, 2018.
- iii) Such other relief as the Court may think fit.
- iv) Costs

Facts

2. The following chronology of events was very helpfully provided by Ms. Naima Barrow as Counsel for the Defendant in her written submissions to the court. Where certain events alleged by the Defendant are disputed by the Claimant, the Court has noted those accordingly.

- 11th March 2015 Public Utilities Commission (“PUC”) and Belize Water Services Limited (“BWS”) completed a Full Tariff Review Proceeding setting rates for five years expiring on 31st March, 2020
- 5th October 2017 PUC wrote to BWS requesting certain reports with respect to an “*imminent Annual Review Proceeding*” to be submitted by 10th November, 2017. BWS refers to this letter as an invitation by the PUC to make an application for Annual Review Proceedings and states that the BWS was “*non-plussed*” by said letter.
- 2nd January 2018 PUC served notice on BWS that it would be conducting an Annual Review Proceeding (“ARP”) and requested that BWS submit information by the 15th January, 2018. This is disputed by BWS which claims the letter sent by the PUC does not amount in law to notice.
- 15th January 2018 BWS provides PUC with requested information.

26th January 2018 PUC officials attend BWS to explain the likely results of applying the Rate Setting Method (“RSM”) employed by the PUC for determining rates for BWS. This is disputed by the BWS which claims that questions were asked about the RSM but PUC officials were unable to answer.

30th January 2018 PUC forwards to BWS a letter and copy of its Initial Decision

31st January 2018 PUC forwards to BWS a letter and a copy of its comments on its initial decision

2nd February 2018 BWS informs PUC that ARP is justiciable and that it is minded to enjoin the PUC from pursuing it

6th February 2018 PUC responds to BWS to inform of the reasons for the ARP

16th February 2018 BWS informs PUC that the reasons advanced do not amount to exceptional circumstances and so the PUC is not entitled to carry out the ARP

16th February 2018 PUC seeks confirmation from BWS that it formally objects to the Initial Decision for the ARP

26th February 2018 PUC informs BWS that, with no objection to the Initial Decision for the ARP, it will adopt its Initial Decision as its Final Decision. The change to the tariffs and rates were set to come into force on April 1st, 2018. BWS applied for an interim injunction staying the ARP on March 23rd, 2018, and that injunction was granted and continued pending the final determination of this claim. Evidence was provided by the Claimant and the Defendant in the form of affidavits and exhibits. None of the affiants were cross-examined during these proceedings. Written legal submissions were filed with the court and argued orally by counsel for both sides.

Issues

3. i) Are there "*Exceptional Circumstances*" to warrant the initiation and completion of Interim Review Proceedings?
- ii) Did BWS receive proper notice of the Intended Interim Review Proceedings prior to its initiation and completion?

Legal Submissions on behalf of the Claimant

4. On behalf of the BWS, Mr. Rodwell Williams SC argued that the PUC failed to give BWS notice of the Annual Review Proceedings and that the circumstances stated in the letter sent by PUC do not amount in law to “*exceptional circumstances*” to justify the holding of an ARP. In setting out the statutory background to this dispute, Learned Counsel says that the Public Utilities Commission is an autonomous body endowed with all powers necessary to conduct its duties and functions under the Public Utilities Commission Act and any other act. The principal duty of the PUC is to ensure that every rate received by any public utility provider is fair and reasonable and in conformity with the rate setting methodologies specified in any ‘bye-laws’ or other subsidiary legislation(Section 11(1) Public Utilities Commission Act). The PUC has further duties to ensure that the services rendered by public utility providers are satisfactory and the charges reasonable, and is conferred with sweeping powers to effect those duties (Section 22 and 47 of the Public Utilities Commission Act). Lastly, all other Acts inconsistent with the Public Utilities Commission Act are subject to it. The PUC is tasked with regulating public utility service providers.

5. The PUC is empowered and tasked with protecting, among other things, the interests of consumers of water and sewerage services supplied by licensees (such as BWS) in respect of prices charged, continuity of supply, and the quality of services provided by licensees under the Water Industry Act (Chapter 222) Laws of Belize Revised Edition 2011. The PUC has been endowed with powers to investigate, require information, grant licences to water and sewerage service providers upon terms, cancel licences and keep register amongst others. Similarly, a licensee may charge its customers only such fees as approved by the PUC under due observance of the basis and methodology of approving fees prescribed in the applicable bye-laws.

The Water Industry Act Bye-Laws

6. The PUC has passed bye-laws regulating Water and Sewerage (Tariffs) by Statutory Instrument No. 67 of 2002 as amended by Statutory Instrument No. 102 of 2004 and 89 of 2008. The referenced byelaws regulate the fixing of tariffs/rates, and the mechanism, formula, and procedure whereby such tariffs are calculated or varied.

Mr. Williams SC draws attention to the definitions of “*Exceptional Circumstances*” and “*Interim Review Proceedings*”. He states that the current regime countenances two proceedings:

- a. Full Tariff Review Proceeding(occurring every Five Years)
- b. Interim Review Proceeding

Consideration of the regime would clearly delineate the scheme envisioned.

The tariffs of a licensee are fixed for a period of 5 years and are reviewed after the end of each successive Full Tariff Period. The entire tenor of Part III of the bye-laws demonstrates that the Tariffs Review Proceeding are intended to be fixed for that entire period as the Tariffs can only be varied via an Interim Review Proceeding.

Annual Review Proceedings not Annual

7. Mr. Williams SC submits that there appears to be a misnomer in the heading of Part IV in the marginal note of Rule 27 of the Bye-laws that would and does lead to some untidiness. Upon reading the definition section, it is apparent that Annual Review Proceedings as described in the marginal note, Rule 27 and the heading under Part IV does not appear. However, Interim Review Proceedings appears and is defined as review proceedings carried

out by the PUC on its own initiative or at the request of the licensee on the sufficiency of the tariffs based on the occurrence of an exceptional circumstance during a Full Tariff Period. Returning to Rule 27 it is clear that the same formulation exists. Mr. Williams SC therefore submits that notwithstanding the difference in description, the Interim Review Proceeding and Annual Review Proceeding are the same. It is apparent that Annual Review Proceedings are not annual. Rule 27 requires that any “Annual Review Proceeding” must be held on the basis of Exceptional Circumstances and from the definition section it can be gleaned that there must be some issue as to the sufficiency of the Tariffs.

8. The definition section of the Byelaws state the following:

“Exceptional circumstances’ means any act, event or circumstance beyond the reasonable control of a licensee, which has a material effect on 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 rate of taxation, fees, licences or permits or impositions of new taxes, fees licences or permits (direct or indirect) in the water and sewerage sector of Belize;*
- g) *Change in the quality of service standards;*
- h) *Any other unforeseen circumstances.”*

Mr. Williams SC does not deny that the PUC has the general and wide power to regulate public utility providers. The byelaws guide the PUC in its use of its power and set out the regime under which the PUC is to operate. Learned Counsel submits that it is a condition that the power to review rates, a power in consonance with the expressed duties of the PUC, is exercisable only upon the existence of Exceptional Circumstances and the PUC is without jurisdiction and in error if none exist. It cannot be doubted that the clear wording requires that “*any other unforeseen circumstance*” must be a matter that BWS has no control over, and is unforeseen in an objective way. A review of the grounds would indicate that there must be a change or some

new circumstance to qualify as unforeseen circumstances. He further argues that there is no justification for a wider meaning and an enactment or provision cannot be hewn from the words associated with it. The words “*unforeseen circumstances*” must give flavor to it. An unforeseen circumstance must be any act, event or circumstance beyond the control of BWS, that has a material effect on its financial position and, as can be gleaned from the definition section, that affects the sufficiency of the Tariffs, and that must be unforeseen in the sense that it was due to some change or some event unaccounted for.

9. Mr. Williams SC argues that the letter dated February 6th, 2018 expresses the basis upon which the PUC sought to initiate an Interim Review Proceeding:

a. *“A significant increase in consumption, coupled with an increase of the actual average Tariff charges to consumers, as compared with those approved by applying the Regulatory Model in the 2014-2015 FTRP.”*

b. *“The decision by BWS to maintain significant cash in bank balances and short term investments rather than invest such available funds in distribution systems expansion and other infrastructure to improve on the economy of scale in order to minimize per capita costs for*

customers as intended by the Business Plan and the Regulatory Model.”

Learned Counsel submits that the PUC has added new reasons to its initial foray into the explanation as to the facts that led it to believe that there were Exceptional Circumstances, reasons that are distinct and different than that raised in the letter above. In the Second Affidavit of Rudolph Williams, Director of Water and Wastewater Sector of BWS, dated May 11th, 2018, it was said that there has been an increase in sales that is beyond the control of BWS, that the PUC misunderstood and miscalculated in relation to some additional operations expenditure, that BWS did not provide adequate information at the Full Tariff Review Proceeding, that BWS has not invested enough to cover capital expenditure as required, that the lowering of the Tariffs was done to provide greater incentive to BWS, that there has been unapproved capital contributions from customers by BWS, and that BWS reevaluated its assets. Learned Counsel for BWS submits that the PUC put forward the real basis upon which it initiated the IRP in its letter of February 6th, 2018. It first stated that there has been an increase in sales and later bolstered that understanding by referencing that those sales were outside the control of BWS and unforeseen circumstances in the Second Affidavit of

Rudolph Williams. It is contended that those connections (as explained in the Fourth Affidavit of Alvan Haynes, Chief Executive Officer of BWS) were accounted for and cannot be unforeseen circumstances within the meaning of Exceptional Circumstances. It also recognized that BWS purposefully chose to maintain significant cash in bank balances - a matter within the control of BWS.

10. Rodwell Williams SC further argues that the following matters are matters alleged by the PUC justifying initiation of the IRP that the PUC itself recognize were within the control of BWS:

- a. The maintenance of significant cash in bank balances;
- b. The requirement of capital contribution by BWS; and
- c. Reevaluation of assets by BWS.

Learned Counsel submits that these matters cannot qualify as Exceptional Circumstances within the meaning of the statute. He further submits that there appears to be a conflation of unforeseen circumstances in an objective sense and those unforeseen by the PUC such as where it stated in paragraph 22 of the Second Affidavit of Rudolph Williams that *“new systems contributed to BWS which do in fact result in significant additional operation expenditure in order to operate and maintain such systems”* which was

unforeseen by the PUC. Rodwell Williams SC says that this matter is not an exceptional circumstance. Thirdly, he contends that circumstances that are proven inaccurate such as the increase in sales that were known to all parties and accounted for, that BWS did not provide the PUC with adequate information at the Full Tariff Review Proceeding, and that BWS has not undertaken the necessary capital contributions. A review of all the other new and unsighted grounds would prove that none of these were outside the control of BWS nor unforeseen and therefore ultimately not within the definition of Exceptional Circumstances. He further submits that the issue of the need to make a rebate to customers is to be had during a Full Tariff Review Proceeding and to import to do so at this stage is a flagrant breach of Rule 14(2) of the Byelaws. He therefore argues that in the premises, no exceptional circumstances exist, and the PUC's decision to initiate and complete an Interim Review Proceeding is therefore null and void.

11. On the issue of Notice, Rodwell Williams SC argues that the PUC acted in breach of its common law and statutory duty to provide proper notice to BWS of its intention to initiate an IRP. He describes Section 13(3) of the Water Industry Act as mandatory in nature and cites that section as follows:

*“Where powers are conferred upon the P.U.C. under this Act or any subsidiary legislation made thereunder to make any Orders or decisions, or to give or issue any directives to any person, the P.U.C. **shall not make** such Orders or decisions, or give or issue such directives without first giving notice to, and inviting comments from any person or body who may be interested or affected by such Orders, decisions or directives.”* (emphasis added)

Mr. Williams SC submits that the letter from the PUC to BWS dated October 5th, 2017 is not notice of any intended proceedings, but rather an invitation and some vague expectation that there would be an imminent IRP. He further argues that there must be sufficient material to allow a person affected to make comment and it is clear that the principle has been embodied in the provisions where under Section 13(4) the notice **shall** specify the last date on which comments should be received by the PUC and the date on which a public hearing will be held if interested persons or bodies so request. In those premises, the letter of October 5th, 2017 is of no assistance, and as no notice was given prior to the actual initiation of the IRP on January 2nd, 2018, then breach of Section 13(3) renders the ARP a nullity. In addition, it is a basic requirement of fairness that *“a person who may be*

adversely affected by the decision will have an opportunity to make representations on his own behalf, either before the decision is taken with a view to producing a favourable result, or after it is taken, with a view to procuring its modification, or both. (6) Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests, fairness will very often require that he is informed of the gist of the case which he has to answer". **Doody v. Secretary of State for the Home Department** [1993] 3 All ER 92.

The Claimant therefore asks for the relief prayed.

Legal Submissions on behalf of the Defendant

12. Ms. Naima Barrow on behalf of the PUC argues that there was no need to give BWS notice that it would be conducting Review Proceedings because that decision alone does not affect BWS. BWS is affected if, as a result of the Review Proceedings, PUC decides to lower or increase rates and when PUC so decided BWS had sufficient notice of that decision. The powers and authorities of the PUC are those which are necessary or arise out of the functions and duties which are imposed upon the PUC by statute. Specifically, its power to conduct the Review Proceedings is implied in its

general duty to ensure that charges imposed by BWS are reasonable and to protect the interest of consumers in respect of the tariffs charged.

13. Learned Counsel then examines the rights and obligations of the PUC and BWS under the Public Utilities Commission Act Chapter 223 (the PUC Act), the Water Industry Act (the Water Act) Chapter 222, and the Water and Sewerage (Tariffs) Byelaws Statutory Instrument 67 of 2002 (the Water Byelaws 2002). BWS has contended that the PUC acted in breach of s 13(3) of the Water Act by not giving notice to BWS and inviting BWS' comments on the PUC's decision to conduct the Review Proceedings prior to doing so. In determining this issue one must have regard to the provisions of s. 13.3 of the Water Act which provides as follows:

*“13.3 Where powers are conferred upon the P.U.C. under this Act, or any subsidiary legislation made thereunder to make any Orders or decisions, or to give or issue any directions to any person, the PUC shall not make such Orders or decisions; or give or issue such directives without first giving notice to, and inviting comments from **any person or body who may be interested or affected by such Orders, decisions or directives.**”(emphasis added)*

Ms. Barrow says that the PUC disputes the applicability of section 13.3 of the Water Act to the Review Proceedings. She submits that the PUC's decision to conduct review of the rates of BWS alone does not interest or affect any person or body, but is rather a regular function of the PUC. As it is quite possible that there is no change to BWS' rates after the PUC reviews those rates, it cannot be that every time PUC decides to review the rates of the BWS that it must inform the BWS. The PUC submits that in any event it gave BWS notice that it would be reviewing its rates prior to doing so by its letter to the BWS dated 5th October, 2007.

The basis of BWS' contention in relation to the PUC's decision to initiate Annual Review Proceedings is that the PUC can only initiate review proceedings in the instances provided for in the Water Byelaws 2002 for an ARP and that there is no jurisdiction to otherwise conduct review proceedings. Byelaw 27 of the Water Byelaws 2002 makes the following provisions in relation to the conduct of an ARP:

"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.”

After setting out the definition of “*exceptional circumstances*” as provided by the Water Byelaws 2002, Ms. Barrow cites the provisions on “*Regulated Rate of Return*” as indicated in Schedule 1 of the byelaws:

“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 by the said

licensee's shareholders at the end of the licence period by the Government of Belize.

14. Ms. Barrow argues that the PUC's power to conduct the Review Proceedings is implied in its general duty, imposed by statute, to ensure that charges imposed by BWS are reasonable and to protect the interest of consumers in respect of tariffs charged. Learned Counsel states that this general duty is found in the PUC Act, the Water Act and the Water Byelaws. She relies on Section 11 of the PUC Act which provides that the rates charged by public utility providers are to be fair and reasonable, and should always conform with the rate setting methodologies specified in subsidiary legislation or administrative orders. Section 22 of the PUC Act outlines the duty of the PUC as it relates to rates charged in respect of utility services as follows:

"22(1) It shall be the duty of the Commission to ensure that the services rendered by a public utility undertaking operated by a public utility provider (hereinafter referred to as 'utility services') are satisfactory and that the charges imposed in respect of those services are reasonable, and for this purpose, notwithstanding anything to the contrary in any law, the Commission shall have the power -

a)....

b) to determine and prescribe in accordance with the provisions of this Act, the Electricity Act, the Telecommunications Act, the Water and Sewerage Act, and other subsidiary legislation made under these Acts, the rates which may be charged in respect of utility services.”

Section 22(2)(c) specifically provides that in exercising its duty, the PUC shall act in a manner best calculated to *“protect the interest of consumers in respect of (i) the tariffs charged and the other terms of supply”*.

By virtue of section 3(2) of the PUC Act which provides as follows:

“The Commission shall be an autonomous institution governed by the provisions of this Act and any other law, and may exercise any powers and functions entrusted to or conferred upon it by or in accordance with the provisions of this Act or any other law, and such other duties incidental or ancillary to, or consequential upon, the performance of its functions.”

Ms. Barrow goes on to cite Section 8 of the Water Act:

“8(1) The P.U.C. shall exercise any of its functions assigned or transferred to it under this Act or in a manner which it considers is best calculated to

- (a) *Secure that all reasonable demands for water and sewerage are satisfied;*
- (b) *Secure that licensees are able to finance the carrying on of the activities which they are authorized by their licences to carry on;*
- (c) *promote competition in the supply of water and sewerage services;*
- (d) *protect the interests of consumers of water and sewerage services supplied by persons authorized by licenses to supply such services in respect of*
 - (i) *the prices charged and the other terms of supply;*
 - (ii) *the continuity of supply; and*
 - (iii) *the quality of services provided by the licensees;*
- (e) *promote the efficiency and economy on the part of persons authorized by licences to supply water and sewerage services and the efficient use of water supplied to consumers;*
- (f) *promote research into and the development and use of, new techniques by or on behalf of persons authorized by a licence to supply water and provide sewerage services;*

(g) protect the public from dangers arising from the supply of water and sewerage services;

(h) secure the establishment and maintenance of machinery for promoting the health and safety of persons employed in the supply of water and sewerage services;

(i) conserve water and avoid undue consumption;

(j) prevent misuse or contamination of water supplied by a licensee;

and the P.U.C. has a duty to take into account, in exercising those functions, the effect on the physical environment of activities connected with the supply of such services by licensees.

(2) In performing its duty under subsection (1) (d) (i) above, the PUC shall take into account, in particular, the protection of the interests of consumers of water in rural areas.

(3) In performing its duty under subsection (1)(d)(iii) above, the PUC shall take into account, in particular, the interests of those who are disabled or are of pensionable age.

(4) In this Part “license” means a license granted under Section 15 below.

(5) It shall also be the duty of the PUC so far as it appears to it practicable from time to time to do so, to collect information with respect to commercial activities connected with water and sewerage services carried on in Belize and the persons by whom they are carried on with a view to its becoming aware of, and ascertaining the circumstances relating to the matters with respect to which its functions are exercisable.

(6) This section applies to any activities connected with the provision and supply of water and sewerage services.”

Section 87 of the Water Act provides that:

“87(1) The P.U.C. shall, in consultation with licensees and with the Minister’s approval, make byelaws relating to -

(a) the methodology and process for the determination of tariffs, charges and fees to be charged for the provision of water and sewerage services by licensees;

(b) the quality of service standards, including penalties for violations of such standards and the methodology and process for establishing and enforcing quality of service standards and the calculation and assessment of penalties for their violations.

(2) Byelaws on tariffs, charges, fees and quality of service standards to be made by the PUC under subsection (1) above shall be made in a manner -

(a) which is calculated to afford a licensee a reasonable opportunity to recover the reasonable costs of providing service and secure a reasonable rate of return on investment when operating in a manner compatible with international standards of an efficiently operated water and sewerage system of similar characteristics to that of Belize; and

(b) that reasonably assures customers of their access to basic water and sewerage services at an affordable price in accordance with Government's policy and objectives.

(3) The PUC shall, subject to the approval of the Minister, assess annual licence fees and collect such fees from entities licensed under this Act and pay such fees into the Consolidated Revenue Fund, and in making assessments of fees under this subsection. The PUC shall assess fees adequate to reimburse the Consolidated Revenue Fund for the monies allocated from that Fund to meet the budget for its office.”

Section 88 of the Water Act also provides that:

“Every rate made, demanded or received by any licensee shall be fair and reasonable and in any case shall be in conformity with and shall use the rate setting methodologies specified in any Regulations, byelaws, Orders, directions or other subsidiary legislation or administrative orders made under this Act, or any licence authorizing the provision of such services.”

Ms. Barrow also relies on the Water Byelaws’ provisions for ratemaking principles as follows:

“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 Proceeding as described in Part III and based on -

(a) a Business Plan submitted by the licensee and approved by the PUC;

(b) the Regulated Rate of Return in Schedule 1.

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

(4) Subject to these Byelaws, a licensee shall not charge a customer less than the applicable Tariffs determined in accordance with these Byelaws 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.”

Byelaw 14 of the Water Byelaws states that -

“(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 forecasts of cost of providing water supply and sewerage services in Belize.

(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 the revenues required to give effect to the Regulated Rate of Return over the license period."

15. After laying out the statutory framework as the basis of submissions on behalf of the PUC, Ms. Barrow turns to the case law on which she grounds her arguments. She relies on the local case of ***Belize Electricity Ltd. v. The Public Utilities Commission*** Claim 708 of 2006 where this court was asked to answer several questions raised on a case stated regarding the rights, powers and authority of the PUC. In that case, this court relied on the cases of ***Newfoundland Light & Power Co. Ltd. v. Board of Commissioners of Public Utilities ("the Newfoundland case")*** 164 NFI & PEIR 164 and ***Bell v Canada*** CRTC [1989] 1 S.C.R. 1722 @ 1758 in considering and applying the following principles:

“The failure to identify a specific statutory power in the Board to undertake a particular impugned action does not mean that the jurisdiction of the Board is thereby circumscribed; so long as the contemplated action can be said to be ‘appropriate or necessary’ to carry out an identified statutory power and can be broadly said to advance the purpose and policies of the legislation, the Board will generally be regarded as having such an implied or incidental power.”

AND

“The approach to the interpretation of statutes conferring regulatory authority...is only the expansion of the wider rule that the Court must not stifle the legislator’s intention by reason only that a power has not been explicitly provided for.”

Ms. Barrow notes, quite rightly, that this Court’s decision to answer the questions posed by BEL in this Claim were overturned by the Court of Appeal which held that only the PUC had the jurisdiction to state cases for determination by the Court. However, she submits that the digest of the cases contained in this case remains relevant and undisturbed.

In conclusion, Ms. Barrow submits on behalf of the PUC that the Review Proceedings were appropriate or necessary to ensure that the rates being charged by BWS were accomplishing its intended objective and not resulting in BWS securing an unfair and unwarranted advantage. It is settled law that the powers and authorities of the PUC are those which are expressed in the statute as well as those which are necessary or arise out of the functions and duties which are imposed upon it by statute. The PUC's power to initiate the Review Proceedings is implied in its general duty to ensure that charges imposed by BWS are reasonable and to protect the interest of consumers in respect of tariffs charged. In the circumstances, this claim should be dismissed with costs.

Decision

15. I am most grateful to counsel for the Applicant and the Respondent for their comprehensive arguments which have assisted this court in reaching its decision. Having considered the submissions on behalf of the parties, oral and written, and all the evidence as contained in the affidavits, I am of the respectful view that the arguments of the Applicant must prevail. I agree with Mr. Rodwell Williams' SC submissions that the letter sent by the PUC to BWS on October 5th, 2017 does not amount to notice of proceedings as

required by section 13 of the Water Industry Act. The provision is mandatory in nature, and the notice must specify very important information such as the last date on which comments should be received by the PUC. As there was non-compliance by PUC with this provision of the Water Industry Act, it follows that the ARP is a nullity. It is clear that the application of the basic rules of statutory interpretation to the section of the Act in dispute makes it clear that there must be "*Exceptional circumstances*" as defined in the Act before the PUC is empowered to hold these particular review proceeding. While the Court agrees fully with the position so ably articulated by Ms. Barrow that the PUC is mandated to ensure that utility providers provide services in exchange for a reasonable rate paid by consumers, that mandate is set out within the parameters of the relevant statutes. In the excerpt cited by Ms. Barrow in the BEL case, this Court made it very clear that the Court will not interfere "*where there are express provisions in the law limiting the exercise of the Commission's powers,*" or "*where there are specific limits clearly delineated in the enabling statute placed on the jurisdiction of the Commission*". One of the major purposes underlying this legislation is that there must be a considerable degree of stability in the commercial contracts between the utility companies and the consumers. While it is true that the

PUC holds the extremely important role of ensuring that rates charged to consumers are reasonable, the PUC is a creature of statute and can only carry out its duties in a manner provided by the enabling legislation. In this particular instance, the legislators saw it fit to expressly mandate that the PUC can only hold review proceedings if one of these exceptional circumstances exists. Looking at the nature of the circumstances delineated in the section as exceptional, I fully agree with Mr. Williams SC that there must be some unforeseen quality and some event beyond the control of the utility provider, e.g., an Act of God such as a hurricane or an earthquake would enable the circumstance to be considered exceptional. In my respectful view, the PUC acted outside its jurisdiction as the circumstances cited as justification for the ARP lacked the characteristics of exceptional circumstances as set out in the statute. The relief sought by the Applicant is therefore granted. Costs awarded to the Applicant to be paid by the Respondent to be agreed or assessed.

Dated this Friday, 25th day of January, 2019.

Michelle Arana
Supreme Court Judge