

Rationale for Rule-making Proceedings

THE COMMISSION HAS CLAIMED TO BE THE REPRESENTATIVE OF THE **PUBLIC INTEREST**. THIS ROLE DOES NOT PERMIT IT TO ACT AS AN UMPIRE BLANDLY CALLING BALLS AND STRIKES FOR ADVERSARIES APPEARING BEFORE IT; THE RIGHT OF THE PUBLIC MUST RECEIVE ACTIVE AND AFFIRMATIVE PROTECTION AT THE HANDS OF THE COMMISSION

Scenic Hudson Preservation Conference v. FPC, 354 F.2d 608, 620 (2d Cir. 1965) (referring to the Federal Power Commission), *cert. denied sub nom., Consolidated Edison Co. v. Scenic Hudson Preservation Conference*, 384 U.S. 941 (1966).

One of the most widely used definitions of regulation was phrased by Barry Mitnick:

'Regulation is the public administrative policing of a private activity with respect to a rule prescribed in the public interest'.

The definition points to three central ideas:

1. Regulation is restrictive and directed towards private activities;
2. it rests on administrative controls undertaken on the basis of general rules; and
3. these rules and their implementation are by implication conducive to the public interest.

In the context of Belize Law¹, the statute governing regulation of the utility sector advances these principles, which are features in other common-law jurisdictions.

¹ **PUC Act** s.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) to enquire into the nature and extent of utility services and 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 standards which must be maintained in relation to such services;
(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.
(2) The Commission shall exercise the functions assigned or transferred to it under this Act and other laws in a manner which it considers is best calculated to -
(a) secure that all reasonable demands for utility services are satisfied;
(b) secure that licence holders are able to finance the carrying on of the activities which they are authorized by their licences to carry on;
(c) protect the interest of consumers in respect of-
(i) the tariffs charged and the other terms of supply;
(ii) the continuity of supply; and
(iii) the quality of the utility services supplied;
(d) promote efficiency and economy on the part of persons authorized by licences to supply utility services to consumers;
(e) promote research into and the development and use of new techniques by or on behalf of persons authorized by a licence to supply utility services;
(f) protect the public from dangers arising from the supply of utility services; and

These legal principles flows through in conditions of the licences granted to utility providers. It require utilities to satisfy the regulator's standards for performance at "lowest feasible cost" to use "all available cost savings opportunities"; and to pursue their customers' legitimate interests free of conflicting business objectives.

In return, the regulator must establish compensation that is commensurate with the utilities' performance. To promote the public interest, regulators set standards for performance, then compensate based on performance. And regulators can assign risk (including the risk of lousy luck borne by all businesses), then compensate based on the risk thus assigned.

LICENSED BUSINESSES: Water & Wastewater and Electricity Industries

1. WATER INDUSTRY - PRODUCTION & SUPPLY OF WATER, DISTRIBUTION & SALE OF WATER, SEWAGE TREATMENT & DISPOSAL SERVICES, SEWAGE COLLECTION SERVICES.
2. ELECTRICITY INDUSTRY - GENERATION & SUPPLY OF ELECTRICITY, DISTRIBUTION & SUPPLY OF ELECTRICITY, TRANSMISSION & SYSTEM OPERATIONS.

³The Legislature created four market segments in the Water and Wastewater Industry². [*For purposes of this discussion, Single Buyer is defined as a person authorized by a licence to deliver water and wastewater services to any and all premises in their service area or conduct electric system operations.*] Specifically, the Commission grants licenses to persons for the purpose of the provision of

- (i) **Bulk Water Supply**– extract water from the environment, treat for human consumption, then deliver to the Single Buyer;
- (ii) **Sewage Treatment Services** - collect and treat wastewater from the Single Buyer and from septic service companies for safe return to the environment;

(g) secure the establishment and maintenance of machinery for promoting the health and safety of persons employed in the supplying of utility services, and the Commission has a duty to take into account, in exercising those functions, the effect on the physical environment of activities connected with the supply of utility services.

23.-(1) In performing its duty under subsection (2) (c) (i) of section 22 above, the Commission shall take into account, in particular, the protection of the interests of consumers in rural areas.

(2) In performing its duty under subsection (2) (c) (iii) of section 22 above, the Commission shall take into account, in particular, the interests of those consumers who are disabled or of pensionable age.

² **Water Industry Act** s. 15-(1): Subject to any exclusive licence granted to any person for any service area, the P.U.C. may grant a licence authorising any person or entity.

(a) to provide an adequate water service and any other service or facilities deemed incidental or appropriate thereto to any area of Belize;

(b) to provide the service of removal of sewage by means of the sewerage system or any part thereof, including services incidental thereto to any area of Belize.

(2) Subject to any exclusive licence granted to any person for any service area, the P.U.C. may

(a) grant a licence authorising any person to supply water to any premises specified or of a description specified in the licence;

or

(b) extend such a licence by adding to the premises or description of premises specified in the licence.

- (iii) **Retail Water Supply** - deliver drinking water to residential, commercial, and industrial users; and provide fire protection through network of fire hydrants;
- (iv) **Sewage Collection Services** - collect all wastewater from households and businesses to send for proper treatment.

The Legislature created three market segments in the Electricity Industry³. Specifically, the Commission grants licenses to persons for the purpose of the provision of

- (i) **Electricity Generation and Supply** – owns and operates facilities that generates electricity, having a capacity greater than seventy-five kilowatts, for the purpose of giving a supply or to enable a supply to be given.
- (ii) **Electricity Transmission Services** - owns and operates transmission lines and substations that transport blocks of electric power from power stations to load nodes; and conducts system and grid operations for the public electricity system;
- (iii) **Electricity Supply Services** - owns and operates distribution lines and substations, including connections for electric services that delivers electricity to premises within that person’s authorized area.

COMPETITION IN: Water & Wastewater and Electricity Industries

1. WATER INDUSTRY - PRODUCTION & SUPPLY OF WATER AND TREATMENT & DISPOSAL SERVICES.
2. ELECTRICITY INDUSTRY - GENERATION & SUPPLY OF ELECTRICITY,

Furthermore, the legislature mandated that the Commission shall replicate competitive markets in wholesale markets. And placed an obligation on Single Buyers to be agents of the Commission for implementing competition. That is, licensees undertaking retail water supply, sewage collection services and electricity system operations shall facilitate well-functioning markets coming into being under the aegis of the Commission.

The incentives for Single Buyers, whom are also market participants in wholesale markets, to rent-seek will be ever present. That is, there has been a consistent pattern of behavior to seek regulatory favor instead of submitting to market discipline. Further, these rent-seeking incentives may well impede a well-functioning market from coming into being. Why submit to the vagaries and disciplines of the market when regulatory favor or worst regulatory capture is safer and cheaper for Single Buyers.

³ **Electricity Act** s. 14.-(1) The Commission¹, may grant a licence authorizing any person-

- (a) to generate electricity for the purpose of giving a supply to any premises or enabling a supply to be so given;
- (b) to transmit electricity for that purpose in that person’s authorized area; or
- (c) to supply electricity to any premises in that person’s authorized area.

(2) The Commission may:

- (a) grant a licence authorizing any person to supply electricity to any premises specified or of a description specified in the licence; or
- (b) extend such a licence by adding to the premises or description of premises specified in the licence..

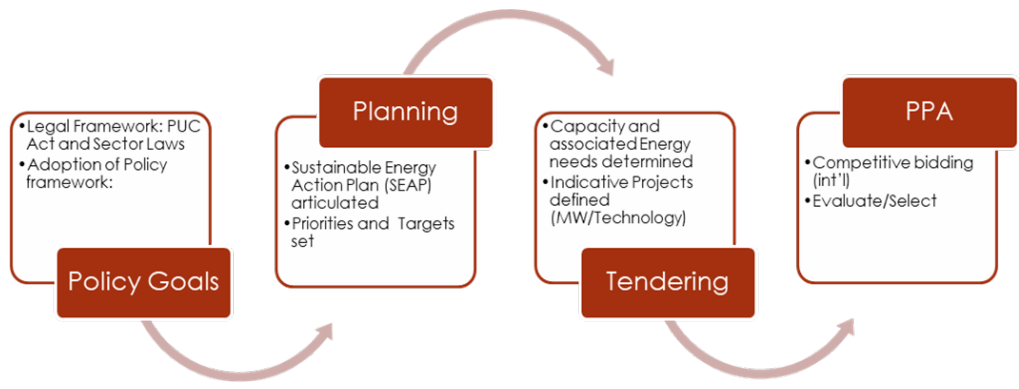
Economic regulation seeks to replicate the outcomes of effective competition. The invisible hand of the market ranks players ruthlessly, based on their merits. Regulation must do the same. This goal is necessarily aspirational, because in the real world both competition and regulation are imperfect. Entry barriers, externalities, oligopolistic and monopolistic market structures, customer inertia, and imperfect information make effective competition difficult to achieve, let alone measure so as to replicate. Despite such challenges, the Commission has a duty to use its best endeavours to replicate competition.

The Commission’s regulatory instrument of choice for promoting competition is the Request for Proposal process; which is tool utilized by virtually all jurisdictions in Latin America and the Caribbean.

TENDERING: The Request for Proposal Process

OPEN, COMPETITIVE BIDDING IS THE PREFERRED METHOD FOR PROCUREMENT OF WHOLESALE UTILITY SERVICES

The figure below describes the process flows for conducting Calls for Competition in the Electricity Industry, which is also applicable for the supply of bulk water and sewage treatment services within the Water & Wastewater Industry.



Under the Single Buyer business model the following roles and responsibilities are applicable for the business functions conducted within the Utility Sector:

Planning - Future supply capacity is administratively determined by the Regulator. Wherein the Single Buyer files a least cost, least risk expansion plan with demand forecasts, supply options and recommended scenario with the Regulator. To ensure alignment with the interests of ratepayers these proceedings shall be conducted utilizing public hearings.

Tendering - for new capacity for utility services is done through competition among private sector participants. The Regulator conducts a Request for Proposals (RFP) for the required capacity determined in the Planning

Process. The Regulator then requires the Single Buyer to sign Utility Purchase Agreements (UPAs) with successful private sector participants. This is often described as *competition for the market*, in contrast to *competition in the market*.

Of note, a segment of the Electricity Market in Belize is conducted via *competition in the market* modality – such as, operations in the Mexican Electric Market and domestic thermal generation.

Role of Single Buyer in RFP Process

Both the Water Industry Act and the Electricity Act places an obligation on Single Buyers to facilitate the Commission in creating competitive markets for wholesale utility services. As noted previously, because these entities (BWSL and BEL) are also market participants in the provision of wholesale utility services, the incentive for them to adopt anti-competitive behaviour is ever present.

Furthermore, in a practical sense the Commission relies on Single buyers to file relevant market information in order for the regulator to be able to perform as an effective competition proxy.

The Cabinet weighed in on this subject matter and decided the following:

Cabinet Directive on RFP Process

Cabinet has directed that the RFP process should be structured as follows:

The Proposed RFP Process

- (i) The Ministry with responsibility for Energy shall seek the approval of Cabinet for Belize's National Energy Plan after which, the PUC shall direct BEL to file its LCEP.
- (ii) Within the overarching government goals and policies and in consultation with the PUC, BEL is to have in place a Least Cost Expansion Plan (LCEP). BEL's LCEP must be consistent with, comply with and otherwise fulfill the requirements of the National Energy Plan (NEP). The LCEP is to take into consideration existing generation and projected demand, identifying the gap between demand and available generation. The LCEP will also include a strategy to fill this gap. The strategy will include suggested generation projects prescribing installed capacity, energy generation, technology, location, interconnection point, and timing of construction start date and operation date.
- (iii) Upon filing of its LCEP, the PUC shall conduct a public hearing to include the inputs and feedback from the Ministry, the PUC Staff and other Interested Parties. PUC will ensure that BEL's LCEP complies with and fulfills the requirements of the Government's NEP.
- (iv) The PUC shall develop and disseminate standard bidding documents, inclusive of PPA templates. Once the PUC has approved the LCEP, the RFP process should be initiated in a timely manner to meet the identified generation needs.
- (v) The RFP process is to be set out and conducted by BEL. For clarity, the RFP Process is to be administered by a committee inclusive of the Ministry of Energy and PUC.
- (vi) The preferred tender process shall be open competitive modality. However, selective, restrictive, or reverse auction tendering procedures may, subject to the approval of the PUC, be conducted.
- (vii) A Bid Evaluation Team is to be established which will be comprised of five 5 members: two from BEL, one from the Ministry of Energy and Two from the PUC. This Evaluation Team may appoint technical evaluation advisers to assist in the evaluation of bids.

- (viii) BEL will invite eligible parties to submit full bids based on terms of reference (TOR). The preferred structure of the bids will be in two parts, a technical bid and an economic bid, as prescribed in the standard bidding documents (“SBD”).
- (ix) The TOR will prescribe what electricity services are being procured and set out the evaluation criteria and scoring methodology that will be used by the Evaluation Team to evaluate the bids. The SBD shall prescribe the bidding procedures and will also include a PPA template to define risk assignment.
- (x) BEL’s technical personnel will assist the evaluation team in carrying out the detailed evaluation of each bid, ranking the bids and identifying a preferred bidder, and preparing the Bid Evaluation Report. The PUC will be updated regularly on the progress of the RFP process and the bid evaluation while it is occurring.
- (xi) The completed Bid Evaluation Report will be submitted to the PUC who will verify that the RFP process has been carried out in a satisfactory manner and that the scoring and ranking of the bidders was done in compliance with the methodology and criteria approved by the PUC and set out in the TOR. The PUC may direct the Evaluation Team to revisit the evaluation of the bids if any issues arise in the PUC approval process that require such a revisitation.
- (xii) Once the PUC is satisfied that the RFP process and bid evaluation has been conducted properly and approves the Bid Evaluation Report, the PUC will direct BEL to start negotiations on a PPA with the preferred bidder. BEL will then invite the preferred bidder to enter negotiations utilizing the draft PPA that was included in the TOR as the basis of such negotiations and subject to any timelines set out in the standard bidding procedures. The PUC will be updated regularly on the progress of the PPA negotiations. At the conclusion of negotiations, BEL will submit the agreed PPA to the PUC for review and Approval.
- (xiii) The PUC has the authority to issue directives to BEL if, PPA negotiations, irregularities are brought to the attention of the PUC and BEL fails to correct them on notification by the PUC.
- (xiv) The PUC has the ultimate responsibility to ensure that the RFP process is carried out properly and that a PPA is executed as a final output of the RFP process.

Matter for handling Conflicts that may arise

- (i) If the BEL, and its Associates are presenting any electricity supply offers under the RFP Process, the PUC shall take full control of these proceedings.
- (ii) If the BEL, and its Associates are presenting a new PPA, modifying or interpreting any PPA, the PUC shall take full control of the these proceedings; and
- (iii) If BEL is unable to meet the timelines and other performance requirements prescribed by the PUC, the PUC in its own deliberate judgement may assume responsibility for the conduct of the proceedings.

BEL's PRESUMPTION: PUC's role is Oversight

"BEL IS IN RECEIPT OF THE REVISED ENERGY PROCUREMENT REGULATIONS AND WELCOMES THE REVISED VERSION WHICH MORE APPROPRIATELY PLACES THE PUC, AS REGULATOR, IN AN OVERSIGHT CAPACITY FOR THE PROCUREMENT PROCESS"

BEL is desirous of completely nullifying the statutory duties imposed by the Legislature. In the context of the tendering process. The utility has proposed that the Commission no longer be the competition proxy, but instead be a spectator.

The statutory scheme for both Electricity and for Water & Wastewater places an obligation on Single Buyers to be agents for the PUC in promoting competitive markets. Consequently requisite market information and rules of procedures used to create commercial relations are administratively determined *ex-ante* by the regulator.

In contrast the Telecommunications Act sets up the Commission as an anti-competitive watchdog - requisite market information and rules of procedures used to create commercial relations commercial relations are reviewed *ex-post* by the regulator. Yet even under the Telecoms Act, if there is anti-competitive behavior the Commission can prescribe remedies on the Parties; and not simply relegated to an oversight role.

RFP Regulations – Clauses with markup	Feedback: BEL and Allan Sharp (AS)	PUC's Considerations
Section 3. Application and Scope		
<p>(1) These Regulations shall govern the wholesale procurement processes conducted by a Single Buyer for procurement of any of the Regulated Services; <u>in particular, their obligation to facilitate competition in the relevant Regulated Services.</u></p> <p>(2) These Regulations seek to implement the policies and strategies of the Government in relation to the RFP processes of Utilities and the Commission. <u>Whereby</u> LCEPs or such other Resource Plans that are submitted to the Commission shall be in accordance with the national policies <u>or such other directives</u> of the Government as specified from time to time in relation to Regulated Services. <u>Such policies or directives shall not be interpreted as intended to impair the duty of the PUC to promote competition, or in accordance with such directives as the Minister may prescribe.</u></p>	<p>AS - Does this not open up for manipulation by the Minister for personal or particular interests?</p>	<p>These regulations do not directly create or prevent manipulation by a Minister for personal interest. It is arguable that these regulations limit manipulation for personal interest because they:</p> <ul style="list-style-type: none"> • Conform to stated government policy. This means that they do not conform to any individual's agenda; • Specify in writing what the processes are. This makes it more difficult to change them on a whim. <p>The PUC Act and the enabling sector statutes for electricity, water and telecommunications is a balancing of interests, roles and responsibilities.</p> <ol style="list-style-type: none"> 1. The Legislature sought to make the PUC independent of the Minister in its Decision-making; the Authority's personnel, financial and administrative functions; and as a competition proxy. 2. The Minister influences the PUC by promulgating Policies of a general nature, appointment of Commissioners, and fixing the Levy collected from licensees. <p>These Regulations give effect to the provisions of the relevant statutes by preserving the authority of the Minister to set Policy, thereby influencing Energy Plans and associated Energy Support Schemes. These Regulations shall not be interpreted as intended to impair the role and autonomy of the PUC as a Competition Proxy.</p>
<p>(4) These Regulations shall prescribe the procedures in procurement by a Single Buyer for:</p> <p>(a) electric capacity, energy or ancillary services pursuant to a power purchase agreement or any other contractual arrangement ...;</p> <p>(b) water supply services pursuant to a bulk water supply agreement or any other contractual arrangement ...;</p> <p>(c) wastewater treatment and disposal services pursuant to a wastewater treatment service agreement or any other contractual arrangement ...;</p>	<p>AS - Why does this not include Utilities related to Internet Service Providers, Telephone companies and any other provider deemed a utility provider by the PUC?</p>	<p>Telecommunications services do not conduct Requests for Proposals. If that changes in the future, say for example for cloud services, then this could change. Even then it may be arguable that there is no need for these Regulations since there is ample competition in telecommunications and free market principles can be allowed to flourish.</p>

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(d) any other regulated utility services that the Minister Commission may by Order designate as having a Market Dominant Provider		
Section 4. Principles of Procurement		
(2) The Commission shall maximise transparency in competitive tendering and take precautionary measures to enhance integrity, such as (a) validating the needs assessment, definition of requirements and choice of procedures; (b) providing clear rules, and possibly guidance, on the choice of the procurement method; (c) setting relevant and objective criteria for evaluating bids.	BEL - This section should refer to the fact the Single Buyer will prepare and set out the definition of requirements, choice of procedures, choice of procurement method, and criteria for evaluating bids in the TOR which is then subject to validation by the PUC. This is important for clarity and consistency with other sections and the overall scheme of respective roles as set out in the proposed regulations	BEL erred - presumption is contrary to the statutory scheme. Section 3. Application and Scope defines the purpose of these Regulations and the authority granted by the legislature. Of particular import is Section 3-(3) of these Regulations confers on the PUC to secure demands for utility services are satisfied - is consistent with relevant provisions of the PUC Act (s. 22) and the Electricity Act (s. 6).
	AS - Section 4 (2) (c): Possibly name some of the minimum qualitative and quantitative criteria.	A Code, which can be periodically reviewed is a better place to put criteria such as these. Under these Regulations the PUC must promulgate SBD's and associated handbook, and shall circulate for Public comment before adopting same. The Principles of Procurement are in effect a checklist of the activities the PUC must carry out in the conduct of the RFP process.
(3) The Commission shall take all reasonable steps to ensure that its representative participating in the procurement process meets high professional standards of knowledge, skills and integrity.	BEL - The regulations make clear that the PUC is to play an oversight role and as such should have no representative participating directly in the ordinary course of the procurement process. BEL proposes that where there is a conflict of interest and the Single Buyer cannot lead the process that an Independent Party is selected to lead, not the PUC who must ultimately retain its impartiality to be an effective overseer of the process.	BEL erred. These Regulations are made under the PUC Act s. 55 – "(1) The Commission may, with the approval of the Minister, make Regulations for giving effect to the provisions of this Act." The PUC Act and the Electricity Act intended for the PUC to act as a proxy for competitive markets.
(4) The Commission shall put mechanisms in place to mitigate risks to the integrity of the procurement process. Specific mechanisms for monitoring the procurement process and detection of misconduct may include: (a) periodic reporting to the Commission by the Single Buyer; (b) utilizing an independent person to verify that rules were followed; (c) the establishment of procedures for reporting misconduct; (d) facilitating the reporting of related complaints;	AS - Section 4 (4) (b): Use an international auditing firm preferably over using and "independent" person.	"Independent person" does not preclude an international auditing firm. There is no overriding public interest for insisting on the use of an international auditing firm.
Section 5. Procurement flowing flows out of a Planning Determination		
(1) The Commission shall only approve LCEPs or such other Resource Plans and make Planning Determinations that are in	BEL - The term 'Planning Determination' is too vague, and it could well be that the PUC can come up with its own 'Planning	We understand BEL's criticism (<i>lack of sufficient definition of Planning Determination and</i>

<p>accordance with national policies of the Government as may be specified from time to time in relation to Regulated Services or that are in accordance with such directives prescribed by the Minister.</p> <p>(2) Where a Planning Determination indicates a requirement for contracting additional capacity, the Single Buyer shall conduct the RFP process as set forth in these Regulations.</p>	<p>Determination' despite what the Single Buyer submits as its requirements. The regulations should include clear language that states explicitly that a Planning Determination is a determination of a specific need for generation capacity/supply/demand-side resource management system of a certain quantity (power, energy, voltage), with certain output characteristics (availability, intermittency etc), of a certain fuel type(s), within a certain distance of a point(s) on the grid, for a specific (minimum/maximum) period of time arising from an LCEP or Resource Plan that is prepared by the Single Buyer and validated by the PUC (at the start of each FTP) or that is based on a request for additional capacity by the Single Buyer (outside of an LCEP/Resource Plan) that may be deemed necessary because of an emergency or previously unforeseen need. The regulations make no provisions for updating the LCEP/Resource Plan outside of a rate review where there may be a legitimate need for such action.</p>	<p><i>associated rules of procedures) as regards the Planning Process is not adequately articulated. Planning Determination in these Regulations references the requisite Regulations governing such proceedings. The PUC can give the assurance that those Planning Regulations are in the works.</i></p> <p><i>What this section 5 is seeking to do is to ALWAYS require proper planning [thereby produce a procurement plan] before conduct of an RFP.</i></p>
<p>(4) Where the Commission determines that the possibility exists for conflict of interest between the interested parties in an RFP it shall conduct, to the exclusion of the Single Buyer, the RFP Process and associated contract award. That is, where there is a conflict of interest as determined by the Commission, the Commission shall <u>cause an Independent Person to</u> lead and direct the RFP Process and contract award, not the Single Buyer. In such a case, the RFP process as set forth in these Regulations shall apply to the <u>Independent Person appointed by the</u> Public Utilities Commission in the same manner as if it was the Single Buyer SAVE that at no time shall the Commission be deemed an Affiliated Person or would a conflict of interest be deemed to arise in connection with the Commission being deemed the Single Buyer for any purposes hereunder.</p> <p><u>(5) Provided that the exclusion of the Single Buyer from the procurement process does not eliminate the obligation of the Single Buyer from supporting the Evaluation Committee through the provision of pertinent technical and market information.</u></p>	<p>BEL - The criteria for what constitute a conflict of interest must be set out clearly from the start, rather than relying on the Commission's judgement in any situation. Importantly, the conflict-of-interest standard applies to all parties (including the PUC) not only the Single Buyer. We propose a more robust and far-reaching standard that excludes a party or person if they have a direct pecuniary interest in any of the participants or the outcomes of the process. Beyond this, while the Single Buyer should indeed be excluded if it is in a position of conflict, the PUC would also be in a position of conflict if it were to take over the process. We recommend that the PUC should then instead appoint an Independent Expert to lead and manage the process or cause the Bid Evaluation Committee (without the Single Buyer) to do so. In such case, an additional person appointed by the Ministry of Finance and an additional person appointed by the Ministry of Public Utilities should replace the two persons appointed by the Single Buyer on the Bid Evaluation Committee. In all instances, these persons should have the relevant qualification and experience to conduct the evaluation process.</p> <p>AS - This is important as presently FORTIS/BECOL has 3 members on the Board of Directors of BEL and therefore any RFPs issued in the electricity sector where Fortis/BECOL wish to participate, should not be conducted or at least not evaluated and reviewed by BEL. I hope this section is addressing this conflict of interest</p>	<p>BEL appears to not appreciate the Legislature's wisdom in resolving conflicts of interest within the Utility Sector. Because the PUC is required to act as a proxy for competitive markets, the conflict of interest provisions in the PUC Act are the most stringent of any Law. This why these Regulations deem the PUC having no conflict. That is, if there is a conflict of interest in the procurement process, then the PUC Act is being violated.</p> <p>The matter of the PUC making a determination that other participant(s) in the Procurement Process have a conflict of interest is squarely within its jurisdiction.</p> <p><u>Change</u> - The matter of the PUC engaging an Independent Party for the conduct of an RFP is accepted.</p> <p>Yes. These provisions are intended prevent any abuse of market power in procurement that may arise from either BEL, BECOL/Fortis, BSSB or the GOB being prospective economic actors in an RFP. The PUC is committed to transparent processes that protect the interest of the public</p>

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		while securing a stable economic environment and reasonable compensation for investors
Section 6. Efforts to lower barriers		
<p>(1) The Commission shall, during a Planning Determination, set and publish target dates in respect of calls for competition.</p> <p>(2) The Commission may by Order vary the target dates previously set for Calls For Competition.</p> <p>(3) The quantum and timing of procurement needs identified in a Planning Determination shall be published by the Commission and shall apply to the relevant RFP.</p> <p>(43) The Commission shall give fair notice of procurement needs and dates so as to facilitate preparation and participation by economic operators.</p> <p>(54) Prior to the conduct of an RFP and to mitigate the early-stage project development risks to be borne by all bidders, the Commission shall collaborate with partners or utilize regulatory tools at its disposal, to mitigate the early-stage project development risks to be borne by successful bidders. Collaboration-Early-stage activities may include:</p> <p>(a) site selection or land acquisition;</p> <p>(b) soil bearing capacity and other geotechnical investigations;</p> <p>(c) investment-grade resource measurements and assessments;</p> <p>(d) pre-feasibility studies;</p> <p>(e) securing grid access or interconnection</p> <p>(5) Furthermore, the Commission may collaborate with the Government of Belize, International agencies, Private sector entities and Researchers to undertake early-stage activities.</p>	<p>BEL - The targets dates and all other activities under (2) through to (5) are to be conducted by the Single Buyer, not the Commission, following pre-established guidelines set by the PUC after consultation with Single Buyer. The Commission's role is one of an oversight.</p> <p>AS - Section 6(4). Fair Notice by Industry Standards or some similar wording. We want to avoid having notice periods that favor a particular provider. The word "Fair" by itself does not have enough "teeth". We need something where the organization providing the RFP can be held accountable if they do not comply.</p>	<p>BEL erred – presumption is contrary to the statutory scheme.</p> <p>The PUC sets the notice period, the PUC is impartial. The PUC Act secures the impartiality of the Commission.</p> <p>This is a General procurement Notice. This is why it's under the heading Efforts to lower barriers, and is to be disseminated after a Planning Determination. Empirical evidence suggests that giving potential participants a heads-up with general specificity and having periodicity builds interest in a Call. There is a more specific Notice that will be disseminated when the PUC triggers a Call for a RFP.</p> <p>Furthermore, non-compliance with notices would be taken into account during determination proceedings.</p>
Section 7. Calls for Competition		
<p>(1) The Planning Determination shall identify, where necessary, the need for new capacity to be deployed and may also include:</p> <p>(a) identification of variation between projected demand and available supply;</p> <p>(b) a recommended expansion-Expansion plan-Plan defining supply options and related commissioning timelines;</p> <p>(c) an indicative Procurement Plan.-</p> <p>(2) In line with the Planning Determination The Minister may issue utility subsector policies for the purpose of guiding t, the Commission shall</p> <p>(a) prepare all relevant procurement documentation, worksheets, etc.in terms of utility subsector development and evolution;</p>	<p>BEL - This is another case of separating a Planning Determination from the LCEP/Resource Plan. A Planning Determination can only arise from an LCEP/Resource Plan or Special Request from the Single Buyer. The sections on Planning Determination and LCEP could be better arranged for cogency and to emphasize the relationship between the two.</p> <p>AS - Section 7(2). I recommend not having the Minister have power to direct an organization to act, either directly or through a policy he creates. This is a loop hole for misuse.</p>	<p>What this section 7 is seeking to do is - not withstanding that a Planning Determination approved a Procurement Plan, there needs to be an affirmative triggering by the Commission. It's really to make sure that the assumptions and basis for the procurement is still valid when the Call is made, and ensure that the institutional arrangements are in place to effectively carry out the RFP.</p> <p>Statutes grants the Minister power to issue policies and make regulations having general application.</p>

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<p>(b) request the Government of Belize and the Single Buyer appoint members to the Bid Evaluation Committee (BEC).</p> <p>(3) The Commission shall consult lead a RFP Dialogue with the Single Buyer and the members of the BEC.</p> <p>(4) At the conclusion of the RFP Dialogue, the PUC shall finalize the RFP documentation, and hand off to the Single Buyer.</p> <p>(45) The Single Buyer shall only use Commission-approved procurement documentation for conduct of the RFP Process.</p>		<p>These Regulations are made with the approval of the Minister. The actions of all members of parliament are subject to public scrutiny.</p>
<p>Section 8. Planning Determination</p>		
<p>(1) No less than 90 days before the commencement of an FRP, the Single Buyer shall file with the Commission its LCEP or Resource Plan as described in this section, unless a shorter period shall be agreed in writing with the Commission.</p> <p>(2) Not less than 45 days after the Single Buyer has filed its LCEP or Resource Plan, or such other period as may be determined by the Commission, the Commission shall convene a public hearing on the adequacy of the LCEP or Resource Plan.</p> <p>(3) The hearing shall conclude with the Commission making a Planning Determination.</p> <p>(4) The Commission may direct the Single Buyer to file any additional forecasts, demand-side resource options, supply-side resource options and model relevant supply mix scenarios as may be necessary to aid in making the Planning Determination.</p> <p>(5) The Commission shall make the Planning Determination when it is satisfied that the amended LCEP provides sufficient scope and depth to make a sound planning decision.</p> <p>(6) Where no less than 75 days have passed since the initial filing of the LCEP or Resource Plan and subsequent filings remain, in the opinion of the Commission, to be unsatisfactory, the Commission shall issue its Planning Determination in accordance with the policy directives of Government or the Minister and, insofar as is feasible, the latest LCEP or Resource Plan filed by the Single Buyer..</p>	<p>BEL - This section adds some structure to the Planning Determination process. Again, for cogency, the definition of a Planning Determination and the procedure for making a Planning Determination should be brought under one section.</p> <p>BEL also registers its concern that there is no opportunity to challenge the Planning Determination, particularly if it substantially deviates from the LCEP submission. There should be a provision for Independent Review of the Planning Determination if the Single Buyer contends that the Planning Determination does not reasonably consider the LCEP submission or other key issues. The LCEP is a significant core operational plan resulting in long-term commitments so the Single Buyer should be afforded every opportunity to ensure its energy supply strategy and proposals reflected therein are fully and fairly considered.</p>	<p><i>This clause is a placeholder for Planning Regulations yet to be promulgated. That is, proceedings prescribed in the [future] Planning Regs will supersede these clauses as drafted.</i></p> <p><i>Also, The PUC Act has provisions for the appeal of any Commission Decision</i></p>
<p>Section 9. Single Buyer to conduct RFP</p>		
<p>(1) Except where subsection 5(4) applies, the Single Buyer shall conduct the RFP Process in accordance with the rules, processes, procedures and codes promulgated by the Commission, in accordance with Part II herein.</p>	<p>BEL - Since it is the Commission who will set the rules etc., this requires an Independent Party (Expert) to assess whether the Single Buyer acted in conformance with the rules.</p>	<p><i>The matter of the PUC making a determination that the Single Buyer or any other participant is not complying with prescribed Rules is squarely within its jurisdiction.</i></p>

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<p>(2) Where a Single Buyer does not conform to subsection (1) herein, it commits an offence.</p>		<p>The Comment is factually incorrect: the Regulations can only come into force with the Minister's approval. The comment is also illogical: why is an IE needed to assess? Lastly, the suggestion is inconsistent with the role of the PUC</p>
<p>Section 10. Single Buyer to set agree on timeline</p>		
<p>(1) Subsequent to a Call For Competition, the Single Buyer shall set agree and follow a timeline for conduct of the RFP Process. (2) Where the Commission determines that the Single Buyer has, without reasonable justification, not followed the timeline in subsection (1) above, it shall conduct the RFP Process to the exclusion of the Single Buyer.</p>	<p>BEL - If the Single Buyer sets the timeline, then the Commission may assess whether it has followed the timeline, otherwise an Independent Party must conduct such an assessment. Where the Single Buyer does not conform to the timeline, the first remedy should be that the Single Buyer is given an opportunity to rectify the situation. In any case, the PUC would be in a position of conflict if it were to take over the process. We recommend that the PUC should then instead appoint an Independent Expert to lead and manage the process.</p>	<p>The PUC cannot delegate its statutory duties.</p> <p>The matter of the PUC making a determination that the Single Buyer is not performing as intended is squarely within its jurisdiction. The decision as to whether to give the Single Buyer more time cannot be automatic. It depends on the context.</p> <p>Change -The PUC conducts a Dialogue before the commencement of an RFP, where BEL agrees with the Commission the timeline</p>
<p>Section 11. Standard Bid Documents and Codification</p>		
<p>(1) The Commission shall <u>develop, in consultation with interested parties, develop</u> and disseminate standard bidding document ("SBD") templates in a Code. The RFP process shall be initiated in a timely manner, to be specified by the Code, to meet the identified capacity needs for utility services once it has approved the LCEP or such other Resource Plan.</p>	<p>BEL - This is indeed the purview of the PUC, but these codes should be developed in consultation with the Single Buyer and reviewed every three years.</p>	<p>The PUC has to consult with Interested Parties.</p> <p>No Change - Does procurement practice change so much that a three year review should be mandated?</p>
<p>Section 12. Tendering Method and Features</p>		
<p>(1) The preferred tendering method shall be open competitive modality. However, selective or restrictive tendering procedures may, subject to the approval of the Commission, be entertained. (2) In selective and restricted procedures, the Commission shall establish objective rules and criteria that enable the Single Buyer to reduce the number of candidates that will be invited to make a bid or to negotiate. If justified, the Commission shall nonetheless take account of the need to ensure adequate competition when selecting the number of candidates or bidders; (3) The Commission shall weigh other features of the tender design such as setting ceiling norms for achieving a manageable number of candidates. (4) The Commission shall design features of the tender to meet the goals of the Call For Competition within the socio-</p>	<p>BEL - The Commission can do these through the Codes etc and its validation of the TOR; however, it is not for the Commission to be directly involved in any instance of the procurement process.</p> <p>AS - Are there any conditions that can be specified in the document for when selective or restrictive tendering procedures would be approved to be used? Again, we need to reduce loop holes. The words used in 12(2) are not definitive but subjective, reducing the credibility of the process.</p>	<p>These subject matters will be fleshed out to some extent in the Codes referenced in section 11.</p> <p>Making open, competitive bidding an absolute was considered too rigid – para (1) makes clear it is preferred. The selection of other tendering procedures is being done by the Commission and not the Single buyer, is in an effort to minimize "loop holes"</p> <p>Para (2) & (3) speaks to if there an unwieldy number of potential bidders, say for a solar PV RFP. Then the PUC must consider other options such as say ceiling norms derived from a descending clock auction, rather than summarily</p>

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<p>economic development context and utility system characteristic, <u>while seeking to maximize welfare gains.</u></p>		<p>agreeing to BEL's suggestion for a restricted procedure.</p> <p>Para (4) speaks to a more general application say a biomass conversion RFP, where both the number of players and the resource limitations makes a plain vanilla open, competitive bidding very difficult to do. A Dialogue process may work best?</p> <p>Section 11-(4) of these Regulations requires that in such a case the Dialogue is intended to clarify the technical aspects of the tender, while preserving trade secrets. To complete the tendering process the participants must submit sealed bids that are properly evaluated.</p> <p>Furthermore Section 12-(2) is granting the Commission the flexibility in procurement method with limitations.</p>
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<p>Section 13. Bid Evaluation Team Roles and Responsibilities in Tendering Process</p>		
<p>(1) The RFP process shall be administered by the Single Buyer. That is, the Single Buyer is responsible for the carrying out of the tendering process upon a Call for Competition being triggered by the Commission.</p> <p>(2) The Single Buyer may engage technical expertise to assist it in any aspect of the tendering process, under the control of a committee consisting of the Ministry, the Ministry of Finance and the Single Buyer. This committee is the Bid Evaluation Committee.</p> <p>(3) The Bid Evaluation Committee ("Evaluation Committee" or "BEC") shall be comprised of 5 members: two to be appointed by the Ministry, one from the Ministry of Finance and two from the Single Buyer. The BEC shall be responsible for evaluating the bids; and shall, subject to the rules of procedures set out in the Code, decide how to conduct its work by way of majority voting.</p> <p>(4) The Evaluation Committee may appoint technical advisers to assist in preparation of tenders, the auction and/or in the evaluation of bids.</p>	<p>BEL - The RFP Process is administered by the Single Buyer, not the Bid Evaluation Committee (BEC). The BEC is responsible solely for evaluating bids; the Single Buyer is responsible for the tendering process. The BEC should be chaired by the Single Buyer and comprised of 5 members: two to be appointed by the Ministry of Finance, two from the Single Buyer, and one to be appointed by the Ministry of Public Utilities. The BEC should be comprised of members who together possess a balanced and senior level of technical and professional competence, knowledge and experience in financial management, public procurement, contract and energy law and electricity services.</p> <p>AS - Is there a reason why the PUC is not specifically mentioned as a member of the committee? PUC must also approve the PUC? If so, where does it state this?</p> <p>AS - Does this mean that there will be NDA signed by the committee members and consultants or this will be the only statement on confidentiality?</p>	<p>Accept comments from BEL, EXCEPT that the composition of the BEC had been prescribed after consultation with the Ministries of Energy and Finance; and the BEC sets its own procedures including a determination as to who is the chair.</p> <p>Since the PUC will serve as an arbiter of any issues arising from the RFP process, the PUC will not appoint a member to the BEC.</p> <p>NDA's to be prepared as part of the RFP documentation by the Commission.</p>

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<p>(5) theThe members of the Evaluation CommitteeBEC shall maintain strict confidentiality in the conduct of the RFP Process.</p> <p>(6) The Evaluation CommitteeSingle Buyer shall, as the Commission may direct, regularly update the Commission on the progress of the RFP process.</p>		
<p>Section 16. Bid Evaluation Report</p>		
<p>(1) The Evaluation Committee shall submit the completed Bid Evaluation Report to the Commission and the Commission shall verify if the RFP Process was carried out in a satisfactory manner and that the scoring and ranking of the bidders was done in compliance with the methodology and criteria approved-set by the Commission and set out in the terms of referenceRFP documentation.</p> <p>(2) The Commission may direct the Evaluation Committee to revisit the evaluation of the bids if any issues arise in the Commission approval process that require such a revisitation.</p>	<p>BEL - "The scoring and ranking of the bidders" is to be done "in compliance with the methodology and criteria" set out in the TOR which is prepared by the Single Buyer and approved by the Commission.</p>	<p><i>Changes done in section 13 above addresses BEL feedback.</i></p> <p>The TOR sets out the nature, significance, and risk of the procurement opportunity; while the Evaluation lays out the method and criteria that will be applied to the proposals.</p>
<p>Section 17. Decision-making of the Commission</p>		
<p>(1) The Commission shall verify that the RFP Process was carried out in accordance with its rules, processes, procedures and codes herein and that the scoring and ranking of the bidders was done in compliance with the methodology and criteria approved-set by the Commission and set out in the TOR.</p> <p>(2) The Commission may direct the Evaluation Committee to revisit the evaluation of the bids if any issues arise in the Commission's review and approval process that require such a revisitation-</p>	<p>BEL proffers that "...in compliance with the methodology and criteria approved by the Commission and set out in the TOR" should be "in compliance with the methodology and criteria set out in the approved TOR".</p> <p>It is also unclear what "Decision of the Commission" is being referred to in (17)(3). The Commission can only approve or disapprove the selected bidder as per the BEC report, it makes no other decision.</p>	<p>Since PUC may review the entire process and not only the selection.</p>
<p>Section 18. Past Performance</p>		
<p>(1) In selecting the successful bid, the Commission may take into account the past performance of the Bidder if it was previously successful in a bid.</p>	<p>BEL - It is the Bid Evaluation Committee, not the Commission, who selects the successful bid. The Commission may (and should) require as part of the Codes and standard evaluation criteria that Past Performance be considered.</p>	<p>BEL erred – the BEC recommends, the Commission makes the determination.</p>
<p>Section 20. Material Mistakes & Force Majeure</p>		
<p>(1) Where the Commission or Bid Evaluation Committee has made a material mistake or makes a determination that force majeure has affected relevant market forces, the Commission may cancel an RFP.</p> <p><u>(2) Where the Commission or the Evaluation Committee has made a material mistake, the Commission may cancel an RFP.</u></p>	<p>BEL - "Material mistake" and "force majeure" need to be defined.</p>	<p><u>Force majeure is defined in Law.</u></p>

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<p>(2) Where the Commission cancels an RFP process for reason other than force majeure, it shall compensate for costs wasted in preparing documentation in furtherance of a tender, being all tenderers whose bid had been accepted by the Commission for advanced consideration. <u>The quantum of reimbursable costs is at the sole discretion of the Commission.</u></p>		
<p>Section 23. Effect of Offence</p>		
<p>(1) Where the Single Buyer commits an offence under these Regulations the Commission may elect to conduct the RFP Process to the exclusion of the Single Buyer.</p>	<p>BEL - All parties participating in the process, not only the Single Buyer, can commit an offence. Therefore, the consequences of committing an offence must apply equitably to all parties. While the Single Buyer could indeed be excluded if it commits an offence, the PUC would be in a position of conflict if it were to take over the process. We recommend that the PUC should then instead appoint an Independent Expert to lead and manage the process</p>	<p>BEL erred.</p> <p>The matter of the PUC making a determination that other participant(s) in the Procurement Process have committed an offence is squarely within its jurisdiction.</p> <p>The PUC Act and the Electricity Act intended for the PUC to act as a proxy for competitive markets.</p>
<p>Other matters</p>		
	<p>AS - What is being included to ensure the Single Buyer executes an agreement (PPA) within a reasonable time, and not be delaying the process?</p>	<p>All licences contain provisions which reserve the right of the PUC to compel licensees to sign a designated agreement. Providing utility services is a privilege, not a right; an those who exercise the privilege must act subject to national interest</p> <p>These Regulations only deal with the subject matter of procurement of utility Services. There is a sister Regulation being worked on for Contracting and Rate-setting that will be published shortly. That Regulation shall specify such time performance.</p>