

CAYMAN ISLANDS



**The Utility Regulation and
Competition Act (as amended)**

**THE UTILITY REGULATION AND COMPETITION
(ADMINISTRATIVE FINES AND PENALTIES) GUIDELINES**

2024

(Approved in draft by the Board of Directors 21 September 2023 and
Amended and put in effect on 23 May 2024)

Arrangement of Guidelines

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PART 1 – PRELIMINARY

Citation

1. These Guidelines may be cited as the Utility Regulation and Competition (Administrative Fines and Penalties) Guidelines, 2024 or URC (AFP) Guidelines 2024.

Definitions

2. In these Guidelines —

“The Act” or the “URC Act” means the Utility Regulation and Competition Act (as revised).

“administrative fine” or “fine” means a fine for which the Office has the power to impose;

“administrative penalty” or “penalty” means a penalty for which the Office has the power to impose;

“appeal” means an appeal to the Grand Court and any further appeals relating to the decision on such an appeal;

“breach notice” means a notice of the Office’s intention to impose a fine or penalty, issued by the Office to a party that the Office believes has breached a prescribed provision;

“discount agreement” means an agreement between the Office and a party that has breached a prescribed provision concerning the administrative fine or penalty;

“fine or penalty determination” means a determination issued by the Office to a party that has breached a prescribed provision;

“fine (continuing)” means a sanction imposed for a violation for each day that the act or omission to act continues;

“give”, in relation to a determination or information, includes to deliver, provide, send or transmit;

“notice” means written information given or to be given in person, by mail, or otherwise;

“original decision” means the Office’s decision in relation to an administrative fine or penalty or fine (continuing), to impose the sanction;

“party”, means the person on whom the sanction has been imposed or is being proposed or considered to be imposed;

“rectification notice” means a notice to the Office by a party that has breached a prescribed provision that the breach must be or was rectified within twenty-one days after the party received the breach notice;

“reply” means a notice to the Office by a party who has received a breach notice, making representations addressing the Office’s proposed action to impose a fine or penalty;

“reply period” means a period stated in a breach notice within which the party who received the notice may give a reply to the Office.

PART 2 - PRESCRIBED MATTERS

Classification of a breach of prescribed provisions

3. Each breach of a prescribed provision is classified in Schedule 1 as minor, moderate, serious or very serious. (If Schedule 1 does not include a listed provision which broadly addresses the violation, then the categorization of the violation is 'minor'.) This guidance does not apply to breaches addressed by the Office using the ticketing regimes.
4. Guidelines 5, 6 and 7 state the criteria for—
 - (a) considering matters;
 - (b) imposing an administrative fine or penalty; and
 - (c) the usual amount and its variation.

General criteria in relation to both fine or penalty and amount

5. (1) The criteria referred to are —
 - (a) the nature and seriousness of the breach;
 - (b) the degree of the party's inadvertence, intent or negligence in committing the breach;
 - (c) if the breach is a continuing one, its duration;
 - (d) the measures or precautions the party took to prevent the breach;
 - (e) the measures or precautions that a reasonable person in the party's position, acting prudently and exercising due diligence, would have taken to prevent the breach;
 - (f) whether or not the breach was due to —
 - (i) reasonable reliance on information given to the party;
 - or

-
- (ii) a cause beyond the party's control, including, for example, someone else's act or default or an accident;
 - (g) the degree of difficulty in detecting the breach;
 - (h) the evidence of intent by the party to conceal the breach or mislead the Office;
 - (i) the party's conduct after becoming aware of the breach, including, for example —
 - (i) whether and how quickly the party brought the breach to the Office's attention; and
 - (ii) the party's efforts to remedy the breach or prevent its reoccurrence;
 - (j) any financial or other damage or loss or other harm done or caused by the breach, including, for example, to —
 - (i) the party's creditors or customers;
 - (ii) utility sectors and markets;
 - (iii) the performance of the Office's functions; or
 - (iv) a member of the general public.
 - (k) whether, before or after the breach, there was a change to the party's business or affairs that affects or may affect the consequences of the breach for the party, including, for example, the party's ability to pay a fine or penalty;
 - (l) if the Office has imposed a fine or penalty on the party in similar circumstances to the breach, the amount of that fine or penalty;
 - (m) the party's history of compliance, in the five years before the breach, with the Act and sectoral laws; and
 - (n) any payment of compensation to victims, and investigation costs incurred by the Office.
- (2) In considering the party's history of compliance, regard

need only be had to the party's compliance with, and breaches of, those laws of which the Office is aware or is made aware by the party.

- (3) Paragraph (2) applies even if no punishment was imposed or no other action relating to the breach was taken under those laws.

Additional criteria in relation to fine or penalty amount

6. In deciding the amount of a fine or penalty, the criteria also include —
- (a) the following in relation to the party —
 - (i) any circumstances of mitigation that may exist;
 - (ii) resources and ability to pay;
 - (iii) financial hardship if a natural person; and
 - (iv) proportional consequences in relation to the contravention.
 - (b) potential adverse financial consequences on third parties of imposing a fine or penalty in the amount proposed; and
 - (c) a circumstance that aggravates, or may tend to aggravate, the breach or its effects. The Office will consider the following circumstances when calculating a fine or penalty:
 - (i) repeated contraventions by the party;
 - (ii) continuation of the contravention after either becoming aware of the contravention or being notified of a contravention by OfReg;
 - (iii) the extent to which the party knew, or ought to have known, that a contravention was occurring or would occur; and
 - (iv) the absence, ineffectiveness or repeated failure of internal mechanisms or procedures intended to

prevent contravention by the party concerned.

Usual Fine or Penalty

7. The Office, when determining the amount of an administrative fine or penalty, will start at 30%, 50%, 60% or 70% of the maximum fine or penalty amount prescribed in the Act for minor, moderate, serious and very serious breaches respectively.

Power to discount usual fine or penalty to reflect agreement

8. (1) The Office may, but need not, negotiate on a without prejudice basis with a party to attempt to reach a discount agreement with the party regarding a breach, whether or not the Office has given a breach notice.
- (2) Subject to paragraph (3), the Office may discount the usual fine or penalty to reflect the fact of the discount agreement and the stage in the fine or penalty process under Part 3 at which the agreement was reached.
- (3)(a) In this guideline, “usual fine or penalty” means the amount of the fine or penalty the Office decided or would otherwise have decided before taking into account the discount agreement after considering the criteria prescribed in Guidelines 5, 6 and 7.
- (b) The discount criteria is set out in the table herewith:—
- (c) all factors and criteria;
- (d) the criteria prescribed in Guidelines 5, 6 and 7; and
- (e) any compensation and costs agreed to be paid by the party.

Discount Criteria

| Stage | Discount | Description |
|-------|-----------|---|
| 1 | Up to 40% | Stage 1 refers to the period preceding the Office's discovery of the breach. Essentially, this applies to cases where the Office becomes aware of the breach solely because the person advises the Office of the breach. |
| 2 | Up to 30% | Stage 2 refers to the period from the commencement of the breach investigation by the Office until, but not including the date on which the Breach Notice for Proposed Discretionary Fine is issued to the person. |
| 3 | Up to 20% | Stage 3 refers to the period from the end of Stage 2 until the expiration of the period (including any extensions granted) allowed to the person for providing written representations in response to the Breach Notice for Proposed Discretionary Fine. In cases where these representations are submitted to the Office prior to the set deadline, Stage 3 will end on the date on which the Office is in receipt of the written representations. |
| 4 | Up to 10% | Stage 4 refers to the period from the end of Stage 3 until, but not including the date on which the Fine Notice of Discretionary Fine is issued by the Office. |

PART 3 - FINE OR PENALTY PROCESS

General

9. (1) The Office may impose an administrative fine (including continuing) or penalty by taking the following steps —
 - (a) Notifying a party in writing, in the form of a breach notice, stating the nature of such suspected failure to comply or contravention and providing relevant documents supporting the allegation;
 - (b) if guideline 13 (rectification) applies, complying with that guideline; and
 - (c) in due course, giving the party a fine or penalty determination.
- (2) A party notified in accordance with subsection (1) may, within twenty-one days of the date of the determination, provide a written response in respect of such suspected failure to comply or such contravention, and will also provide any documentation which the party wished the Office to consider in making any determination in relation to any suspected failure to comply or contravention.
- (3) A party, in any response submitted to the Office as specified in subsection 91(3), may request that the Office hear the party in person or through a representative and, if so requested, the Office may in its discretion allow such request. Representatives appearing on behalf of a party do not need to be persons having legal qualifications.
- (4) The Office will grant a request only in exceptional circumstances.
- (5) If the Office decides to proceed with a hearing, the party will submit any document that they wish the Office to consider at a hearing within the time period permitted. The Office must adhere to the process outlined in subsections 91(7) to (10) of

the Act.

- (6) The Office when issuing a determination will refer to subsections 91(12) and 91(13) of the Act, when a fine has not been paid in full within the specified time period.
- (7) However, the following exceptions apply in relation to an administrative fine or penalty —
 - (a) if the party entered into a discount agreement for the breach and ancillary matters, and the administrative fine or penalty is no more than the amount agreed under the agreement, a fine or penalty determination may be given without first giving a breach notice; and
 - (b) if a fine is varied on appeal, the steps do not apply to the fine as varied.
- (8) The Office may only impose a fine (continuing) —
 - (a) by giving the party a fine determination; and
 - (b) if the relevant fine is not stayed.
- (9) A decision relating to the imposition of an administrative fine or penalty and a fine (continuing) need only be made on the balance of probabilities.

General provisions in relation to fine or penalty and breach notices

10. The following apply in relation to a breach notice or fine or penalty determination —
 - (a) it is not mandatory to use the prescribed form under Schedule 2 hereto;
 - (b) the notice or determination is deemed to comply with those requirements if —
 - (i) its form appears to follow the prescribed form; and
 - (ii) it has been completed, or substantially completed, in the way required by the prescribed form; and
 - (c) if the notice or determination contains an inaccuracy, it is only invalid because of the inaccuracy if the party

establishes that the inaccuracy was material, and it misled the party.

Requirements for breach notice

11. (1) A breach notice will be dated and state all of the following —
- (a) the party's name;
 - (b) that the Office proposes to impose a fine or penalty on the party for a specified breach that it believes the party committed;
 - (c) the prescribed provision for which the fine or penalty is proposed to be imposed;
 - (d) the nature of the specified breach;
 - (e) a summary of the facts and circumstances that the Office believes constituted the specified breach in relation to a fine or penalty, the fine or penalty the Office proposes for the specified breach;
 - (f) that the party may give the Office a reply within the reply period; and
 - (g) that, for a fine or penalty, the party may give the Office a rectification notice.
- (2) The reply period is required to end at least thirty days after the giving of the breach notice.

No response

12. (1) This guideline applies only if —
- (a) a breach notice has been given for an administrative fine or penalty or fine (continuing);
 - (b) the reply period has ended; and
 - (c) a reply has not been given.
- (2) Where a party makes no submission in respect of a suspected failure to comply or contravention, then the party will be considered by the Office to have no evidence to refute the allegation of the failure to comply or the contravention.

Rectification of a breach subject to an administrative fine or penalty

13. (1) This guideline applies only if —
- (a) a breach notice has been given for an administrative fine or penalty;
 - (b) the party subject to the breach notice rectified the breach specified in the notice within twenty-one days of receiving the notice;
 - (c) the reply period has ended; and
 - (d) a rectification notice has been given.
- (2) The Office has a duty to consider, in light of the matters raised in the rectification notice, whether the specified breach was rectified within twenty-one days of the issue of the breach notice to its satisfaction.
- (3) If the Office is satisfied that the breach was rectified as described in paragraph (2) and, in the case of the breach of a filing requirement that the party has requested a filing extension and paid any applicable filing extension fees, the Office will —
- (a) refrain from issuing a fine or penalty determination or imposing a fine or penalty on the party for the breach; and
 - (b) give the party notice of its decision in accordance with guideline 14(5).

Imposing a fine or penalty

Decision about fine or penalty

14. (1) This guideline applies at the end of the reply period in relation to a breach notice if —

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- (a) no reply has been given;
 - (b) a reply has been given and the Office has complied with guideline 12; or
 - (c) a rectification notice has been given and the Office has complied with guideline 13.
- (2) If the breach notice was for a fine or penalty or fine or penalty (continuing) and the Office still holds the belief stated in the notice and is not satisfied that the breach was rectified within thirty days of the issue of the notice, the Office is required to impose the fine or penalty.
 - (3) The amount of an administrative fine or penalty will not be more than the amount stated in the applicable sections of the Act.
 - (4) If the Office imposes a fine or penalty, it may decide that the fine or penalty is payable immediately on the giving of a fine or penalty determination or within a particular period after that time.
 - (5) If the Office decides not to impose any fine or penalty, it may give the party notice of the decision within fifteen (15) days after the end of the reply period.
 - (6) The decision to impose a fine or penalty or the amounts and terms and conditions related thereto will not be the subject of a public consultation in accordance with section 7 of the Act.

Requirements for fine or penalty determination

- 15. (1) A fine or penalty determination is required to be dated and state all of the following —
 - (a) the party's name;
 - (b) a description of the breach or violation;
 - (c) that the Office has imposed a specified fine, penalty or a fine (continuing) on the party;
 - (d) the findings in accordance with the Act;
 - (e) the amount of the fine or penalty, and details of the

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- consideration of Part 2; and
- (f) when the fine or penalty is required to be paid.
- (2) If the specified determination is a fine, the determination will state also —
- (a) if a reply was given during the reply period, the reasons why the Office still holds the belief stated in the breach notice;
 - (b) if a rectification notice was given within the reply period, the reasons why the Office is not satisfied that the breach was rectified within thirty days of the issue of the breach notice; and
 - (c) that the party may, within thirty (30) days after receiving the fine or penalty notice, apply to the Executive Committee to review the decision to impose the fine or penalty.
- (3) If the specified fine is a fine (continuing), the fine determination will state —
- (a) the date of the breach notice given for the relevant fine; and
 - (b) the date range wherein the breach or violation continues or continues.
- (4) The determination will state that the party may seek a review or appeal.

PART 4 - REVIEWS AND APPEALS

Application for review or appeal

16. (1) Under subsection 91(11) of the Act, a party may, within twenty-eight days next following the date of the notification made under subsection 91(10) of the Act, appeal to the Grand Court.
- (2) Section 92 of the Act provides that a person affected by an administrative determination of the Office, may within forty-five (45) days of the administrative determination, appeal to the

Grand Court by way of judicial review.

Security for costs

17. The Office may apply to the Grand Court —
- (a) for an order that the appellant provide sufficient security for costs; and
 - (b) for a stay of the appeal or review proceedings until such security is provided.

Stay of original decision only by application

18. (1) An appeal or review does not stay the operation of the original determination.
- (2) However, the Grand Court may, on the appellant's application, order that the fine or penalty imposed by the original determination be stayed to secure the effectiveness of the appeal or review.
- (3) The stay ordered by the Grand Court —
- (a) may be given on conditions that the Court considers appropriate;
 - (b) operates for the period fixed by the Court; and
 - (c) may be amended or revoked by the Court.
- (4) The period of a stay will not extend past when the Grand Court decides the appeal.

PART 5 - PAYMENT AND ENFORCEMENT

Fine or penalty is a debt to the Office

19. (1) A fine or penalty becomes a debt owing to the Office on the day the fine or penalty was required to be paid under the relevant fine or penalty notice.
- (2) Paragraph (1) is subject to any setting aside or variation of

the fine or penalty on a review applied for under (guideline) regulation 16 or an appeal.

Payment of more than one fine or penalty

20. If more than one fine or penalty has been imposed on a party, payments for the fine or penalty are to be applied in the order in which the fine or penalty became owing.

Enforcement

21. (1) The Office may recover in a civil proceeding, as a debt, the unpaid amount of a fine or penalty or interest, or both.
- (2) However, paragraph (1) does not apply while the fine or penalty is stayed.
- (3) A proceeding to recover a debt under this guideline does not prevent —
- (a) interest continuing to accrue on the total owing;
 - (b) if the party is a body corporate, the Office enforcing the fine or penalty by serving a winding up notice for the debt; or
 - (c) the use of any other enforcement method including licence provisions.

PART 6 - MISCELLANEOUS

Notices by the Office

22. (1) Any notice, in relation to administrative fines, will be served by post.
- (2) Any notice, order or other document required or authorised to be given to any person under these Guidelines can be affected—
- (a) if served on him personally;
 - (b) if served on an attorney-at-law who has conduct on behalf of such person of any matter to which the notice, order or document relates;

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- (c) if sent by prepaid registered post to him at his last known postal address, and a receipt purporting to have been signed by him has been received in return; and
- (d) in the case of a company, if the notice, order or document has been handed to an officer of the company or left at the company's registered office.

Compensation and Costs

23. A party that is found to be in breach of relevant provisions will be held responsible for all costs resulting from the infringement. However, other parties may be required to contribute to the compensation payable to those affected by their actions.

24. A party, after being granted immunity against a fine or penalty issued by the Office, will only be liable only for the damage it has caused, but may be required to contribute to the compensation payable to those affected by their actions.

25. The Office may seek to recover the costs of its investigation as a part of a fine, penalty or discount agreement.

Confidential treatment and publicity

26. The application for confidential treatment of documents submitted to the Office must adhere to the procedure outlined in section 107 of the Act.

27. The amount of issued administrative fine or penalty will be publicly disclosed on the Office's website as well as other forms of communications where necessary.

SCHEDULE 1

(Guideline 3)

BREACH CATEGORIES

| Item | Prescribed Provision | Classification of breach |
|-------------|---|---------------------------------|
| 1. | Failed to comply with or contravened a request for information under section 9 of the Act. | Minor |
| 2. | Failed to comply with or contravened one or more terms, conditions, specifications or requirements of a licence. | Serious |
| 3. | Failed to comply with or contravened one or more terms, conditions, specifications or requirements of an order or directive. | Very serious |
| 4. | Failed to comply with or contravened one or more terms, conditions, specifications of statutory duties or regulations. | Serious |
| 5. | Willful obstructs or knowingly fails to comply with reasonable requests for information by any Member of or any member of the staff in exercise any function conferred by the URC Act or by sectoral legislation. | Very serious |

| | | |
|----|---|--------------|
| 6. | Contravened the Act and/or the Sectoral Laws. | Serious |
| 7. | Knowingly reveals or in any manner communicates to any other person, except as authorised or required by this Act or any sectoral legislation, any information for which the Office has granted confidential treatment. | Very serious |
| | | |

**SCHEDULE 2
PRESCRIBED
FORMS**

PART 1 - BREACH AND FINE OR PENALTY NOTICES

FORM 1

**BREACH NOTICE FOR PROPOSED ADMINISTRATIVE FINE OR
PENALTY**

The Utility Regulation and Competition Act (as amended)
*The Utility Regulation and Competition (Administrative Fines and
Penalties) Guidelines, 2024*

To: *[Here insert the party's name and Postal address]* ("you"). At
*[delete whichever of the following is not applicable]: [Here insert the
party's physical address. OR*

*Here insert the party's email for notices from the Office to the
party, see guideline 22]*

TAKE NOTICE that the Utility Regulation and Competition Office
proposes to impose an administrative fine or penalty of [X]
thousand dollars on you.

Particulars are as follows:

- i The relevant prescribed provision is:

*[Here insert the prescribed provision from the law or
regulations (for guidance see column 2 in
Schedule 1) that the Office believes has been
breached and the full citation of the primary law.]*

i The facts and circumstances the Office believes constituted the breach are:

[Here insert the facts and circumstances contended to constitute the breach and any relevant surrounding circumstances.]

i The amount of [X] thousand dollars is the maximum fixed under [X] of the Act. AND TAKE FURTHER NOTICE that, within [X] days of the date of the notice , you may give the Office a written notice making representations about whether it should impose the fine or penalty and will provide any other documentation which the party wishes the Office to consider in making any determination in relation to any suspected failure to comply or contravention.

Dated _____, 20__.

Signed on behalf of the Utility Regulation and
Competition Office

Print officer's name:

FORM 2

DETERMINATION FOR FINE (CONTINUING) IMPOSED UNDER SECTION 91

The Utility Regulation and Competition Act (as amended)
The Utility Regulation and Competition (Administrative Fines and Penalties) Guidelines, 2024

To: [*Here insert the party's name and Postal address*] ("you"). At [*delete whichever of the following is not applicable*]: [*Here insert the party's physical address. OR*

Here insert any email for notices from the Office to the party, see guideline 22.]

TAKE NOTICE that the Utility Regulation and Competition Office has imposed a fine (continuing) of x \$ [twenty-five thousand dollars] ("this fine") on you. You are required to pay this fine [*Here insert "immediately" or, if the Office has decided to give time to pay, the period within which this fine is required to be paid.*]

Particulars are as follows:

- a. This fine relates to a fine notice for an administrative fine (primary) given to you that was dated [*Here insert date of the relevant administrative fine and, if more than 2 were given on that day, otherwise identify that fine*].
 - b. The reason for imposing this fine is that the ground under [X] of the [X] Act for imposing this fine exists, namely that:
 - (a) the breach for which the fine was imposed has not stopped and has not been remedied; and
-

(b) the fine imposed by the administrative fine (and any previous fine (continuing) imposed for the administrative fine) have not been paid.

Dated _____, 20__.

Signed on behalf of the Utility Regulation and
Competition Office
Print officer's name

FORM 3

DETERMINATION FOR PENALTY IMPOSED UNDER SECTION 11

The *Utility Regulation and Competition Act (as amended)*
The *Utility Regulation and Competition (Administrative Fines and Penalties) Guidelines, 2024*

To: *[Here insert the party's name and address] ("you"). At [delete whichever of the following is not applicable]: [Here insert the party's physical address. OR Here insert any email for notices from the Office to the party, see guideline 22.]*

TAKE NOTICE that the Utility Regulation and Competition Office has imposed a penalty of \$[X] ("this penalty") on you. You are required to pay this fine *[Here insert "immediately" or, if the Office has decided to give time to pay, the period within which this fine is required to be paid.]*

Particulars are as follows:

- a. This fine relates to a breach notice for an administrative penalty in relation to a request for information made under section 9 of the Utility Regulation and Competition Act (as revised) given to you that was dated *[Here insert date of the relevant administrative fine and, if more than 2 were given on that day, otherwise identify that fine].*
 - b. The reason for imposing this penalty is that the ground under section 11 of the Utility Regulation and
-

Competition Act for imposing this penalty exists, namely that:

- (a) the Office is satisfied that you have, in one or more of the respects notified, been in contravention of the requirement notified under section 10;
- (b) the requirement(s) notified under section 10 has not been complied with; and
- (c) no proceedings for an offence under this Act have been brought against you in respect of the contravention.

Dated _____, 20____.

Signed on behalf of the Utility Regulation and
Competition Office

FORM 4

**DETERMINATION FOR ADMINISTRATIVE FINE IMPOSED
UNDER SECTION 91**

The *Utility Regulation and Competition Act (as amended)*
The *Utility Regulation and Competition (Administrative Fines and
Penalties) Guidelines, 2024*

To: [*Here insert the party's name and address*] (“you”). At [*delete
whichever of the following is not applicable*]: [*Here insert the party's
physical address. OR*
*Here insert any email for notices from the Office to the party, see
guideline 22.*]

TAKE NOTICE that the Utility Regulation and Competition Office
has imposed an administrative fine of [*Here insert the amount of the
administrative fine.*] on you.

You are required to pay the fine [*Here insert “immediately” or, if
the Office has decided to give time to pay, the period within which
the fine is required to be paid.*]

Particulars are as follows:

a. The relevant prescribed provision is:

[*Here insert the prescribed provision from column 2 in
Schedule 1 that the Office believes has been breached
and the full citation of the primary law.*]

b. The reasons for the decision to impose the fine are:
[*Here insert the reasons.*]

Also, if a reply was given to the relevant breach notice (if any) during the reply period, also insert the Office's findings on each matter raised in the reply that addressed the issue of whether a fine should be imposed.]

c. The reasons for the amount of the fine are:

[Here insert the reasons. Also, if a reply addressed the issue of the amount, also insert the Office's findings on each relevant matter raised in the reply.]

AND TAKE FURTHER NOTICE of the following under the [Act] and Guidelines:

d. Under subsection 91(11) of the Act, you may within twenty-eight (28) days next following the date of the notification made under subsection 91(10) of the Act appeal to the Grand Court against the decision to impose the fine or its amount, or both.

[Omit this paragraph if the party entered into a discount agreement for the breach and the fine is no more than the amount agreed under the agreement.]

Dated _____, 20__.

Signed on behalf of the Utility Regulation and
Competition Office
