

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 145 OF 2013

BETWEEN: CARIBBEAN UTILITIES COMPANY, LTD.

PLAINTIFF

AND: ELECTRICITY REGULATORY AUTHORITY

DEFENDANT

APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

To the Clerk of the Court, Law Courts, George Town, Grand Cayman

Name, address and description of applicant(s)

Caribbean Utilities Company, Ltd., 457 North Sound Road, P.O. Box 38, Grand Cayman KY1-1101, Cayman Islands

Judgment, order, decision or other proceeding in respect of which relief is sought

A decision of the Defendant dated 9<sup>th</sup> February 2013 to grant a Generation Licence to Dart Enterprises Contracting Co., Ltd. ("DECCO")

Relief Sought

1. That the Defendant be directed to provide to the Plaintiff reasons for its scoring of respective bidding evaluation points to Qualified Bidders.
2. Further and in the alternative, that the said decision be set aside for a failure to provide full, proper and adequate reasons for the said decision.
3. That the Defendant be directed to confirm whether in making its decision to award the 36MW Firm Generation Project and/or award a Generation Licence to DECCO it was unable to and did fail to take into account any alleged pricing changes made to any Qualified Bidder application and to provide any documentary evidence in relation thereto.
4. Further and in the alternative, that the said decision be set aside for a failure to provide transparency.
5. Further or other relief.
6. Costs.

Name and address of applicant's attorneys, or, if no attorneys acting, the address for service of the applicant

HSM Chambers, Suite 3 Buckingham Square, 720 West Bay Road, P.O. Box 31726, Grand Cayman KY1-1207, Cayman Islands

Signed:

HSM CHAMBERS

Dated: 6 May 2013

**GROUNDS ON WHICH RELIEF IS SOUGHT**

1.
  - (a) By letter dated 21 March 2013 to the Plaintiff the Defendant expressly refused to provide reasons for various respective scorings of evaluation points.
  - (b) The said refusal was contrary to the promotion of transparency as set out in section 5 of the General Regulatory Principles in the Second Schedule of the Electricity Regulatory Authority Law, including the requirement to give adequate reasons for specific regulatory decisions and actions affecting Stakeholders (Section 5(2)).
  - (c) The said decision to refuse to provide reasons was in violation of the principles of administrative law relevant to all administrative decision making (Section 5(8)).
2. It is incumbent upon the Defendant to ensure that its actions shall be transparent (Section 5(1)) and to promote this principle it is necessary in the public interest to ascertain whether and if so for whatever reasons the original pricing figures provided to the Defendant by DECCO were inaccurate and incorrect, thereby causing the Defendant in making its decision dated 9 February 2013 unintentionally to leave out of account material information which the Defendant ought to have taken into account in arriving at a fair and rational decision (section 5(8)).
3. The Plaintiff relies upon the affidavit of J.F. Richard Hew dated 2 May 2013 in support of the aforesaid Grounds.