

DATED 27th October 2017



BULK GENERATION LICENCE

granted to

TYNES BAY WASTE TO ENERGY FACILITY

Licensee: TYNES BAY WASTE TO ENERGY FACILITY

Address: 31 Palmetto Road, Devonshire DV05

Licence Number: BG2017102702

Issue Date: 27th October 2017

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PART I DEFINITIONS, INTERPRETATION, SCOPE AND TERMS OF THE LICENCE

The Regulatory Authority of Bermuda (the "**Authority**"), in exercise of the powers conferred to it by the Electricity Act 2016 (the "**EA**") hereby grants to Tynes Bay Waste to Energy Facility having its registered office at Ministry of Public Works, Department of Works and Engineering, (the "**Licensee**"), a licence (the "**Licence**"), to engage in the Bulk Generation of electricity at the generation station(s) identified in Schedule 1 and hereinafter referred to as the "**Generation Facilities**" up to a maximum installed capacity of 11.2 kilowatts ("**kW**") subject to the terms of this Licence, the EA, the Regulatory Authority Act 2011 ("**RAA**") and any Regulations, General Determinations, Administrative Determinations, Adjudicative Decisions, Orders and Directions made or issued in accordance with the EA and the RAA.

1 DEFINITIONS AND INTERPRETATION

1.1 In this Licence, unless the context otherwise requires:

"**Affiliate**" in relation to the Licensee means any holding company of the Licensee, any subsidiary of the Licensee or an subsidiary of a holding company of the Licensee.

"**Ancillary Services**" means:

- (a) such ancillary services as the Licensee may be required to have available in association with any Generation Unit pursuant to a Power Purchase Agreement; and
- (b) such ancillary services as are identified by the TD&R Licensee as being necessary for the performance by it of its statutory or license duties pursuant to the Grid Code or any other technical code.

"**Auditors**" means the Licensee's auditors holding office in accordance with the requirements of the Companies Act 1981.

"**Authority**" means the Regulatory Authority of Bermuda.

"**BELCO**" means the Bermuda Electric Light Company Limited, having its registered office at 27 Serpentine Road, Pembroke, HM07, Bermuda.

"**Bulk Generation**" means the generation of electricity using a system with an installed capacity at or above the Licence Threshold.

"**Bulk Generation Business**" means the authorised business of the Licensee relating to the Bulk Generation of electricity in Bermuda pursuant to this Licence.

"**Central Dispatch**" means the process of scheduling and issuing direct instructions for the dispatch of available Generation Units by the TD&R Licensee for the Grid System and which shall comply with the requirements of Section 20(3)(c) of the EA.

"**Commencement Date**" means the date on which this Licence is issued by the Authority.

"**Condition**" means a condition of this Licence including any Transitional Conditions set forth in the Annex to this Licence.

"Controls" means:

- (c) the power, whether held direct or indirectly, to exercise decisive influence over the Licensee, including by directing its management and policies, whether through ownership of shares, stocks or other securities or voting rights, or through an agreement or arrangement of any type, or otherwise, and
- (d) shall, in any event, be deemed to exist in any case involving the ownership of 25 percent or more of the shares, stock, or other securities or voting rights, including through an agreement or arrangement of any type,

and **"Control"** and **"Controlled"** shall be construed accordingly.

"Controlling Interest Holder" means a company or individual that is in Control of the Licensee.

"Dispatch Instructions" means the operating instructions of the TD&R Licensee to the Licensee in respect of its Generation Units and which shall comply with the requirements of Section 20(3)(c) of the EA.

"Disposal" includes any sale, gift, lease, licence, mortgage, charge or the grant of any encumbrance or any other disposition to a third party and **"Dispose"** shall be construed accordingly.

"Distribution Business" means the business of the TD&R Licensee in or ancillary to the transport of electricity through the TD&R Licensee's Distribution System and shall include (i) any business in providing connections to the TD&R Licensee's Distribution System; (ii) operations (iii) management, and (iv) investment but shall not include any other business of the TD&R Licensee.

"Distribution System" means the system of medium and low voltage electric lines and electrical plant and meters owned by the TD&R Licensee and used for conveying electricity without the use of the Transmission System.

"Environmental Laws" means those provisions of laws, in force from time to time, whose purpose is the protection of the environment, including the protection of human health, flora, fauna and the eco-systems on which they depend and, for the avoidance of doubt, shall include, all relevant law relating to the assessment of environmental impact and the protection of air, land and water and shall include the Clean Air Act 1991.

"financial year" means the period from 1 January to 31 December in any calendar year during the term of this Licence and the first financial year shall be the period from the Commencement Date until the succeeding 31 December and the last financial year shall be the period from 1 January until the date on which this Licence is revoked or terminated in accordance with its terms.

"Generation Facilities" means the Generating Units more particularly described in Schedule 1 to this Licence.

"Generation Unit" means any plant or apparatus for the generation of electricity including a facility comprising one or more generation units. For the avoidance of doubt, a Generation Unit shall not include any distributed generation systems.

"Government" means the Government of Bermuda.

"Government Authorisation Fees" means the fees established pursuant to section 52 of the RAA and required to be paid by the Licensee under sections 25 and 26 of the EA.

"Grid Code" means the code developed by the TD&R Licensee with the approval of the Authority as more particularly described in the EA and pursuant to the terms of the TD&R Licence.

"Grid System" means (i) the Transmission System and (ii) the Distribution System of the TD&R Licensee.

"Information" means any documents, records, accounts, estimates, returns or reports (whether or not prepared specifically at the request of the Authority) of any description and in any format specified by the Authority.

"Insolvency Event" means the occurrence of any of the following events, unless such event is capable of being set aside and proper proceedings to have such event set aside are filed with the appropriate court within thirty (30) days of such event:

- a) there is entered against the Licensee a decree or order by a court adjudging the Licensee bankrupt or insolvent or approving as properly filed by or on behalf of the Licensee a petition seeking reorganization, arrangement or reconstruction or appointing a receiver, liquidator, trustee, sequestrator (or other similar official) of the Licensee over a substantial part of its property or assets or ordering the winding up or liquidation of its affairs; or
- b) the institution by the Licensee of proceedings to be adjudicated bankrupt or insolvent; or
- c) the consent by the Licensee to the institution of bankruptcy or insolvency proceedings against it; or
- d) the filing by the Licensee of a petition or consent seeking relief from creditors generally under any applicable Law;
- e) the consent by the Licensee of the filing of any petition or for the appointment of a receiver, liquidator, trustee, sequestrator (or other similar official) of the Licensee or any substantial part of its property; or
- f) any other event shall have occurred with respect to the Licensee which under applicable Law would have an effect analogous to any of the events referred to in this definition.

"Law" means the laws of Bermuda.

"Licence" means this Bulk Generation Licence granted to the Licensee by the Authority pursuant to the provisions of the EA and the Schedules and Annexures hereto.

"Licensee" means Tynes Bay Waste to Energy Facility.

"Licence Threshold" has the meaning given to it in the EA.

"Merit Order" means an order for ranking available Generation Units as shall be prescribed in the Grid Code and which order shall have as its aim the promotion of Renewable Energy and the optimising of the economy, security, stability and reliability of the Grid System of Bermuda and shall take fully into account cost considerations, and such order shall comply with the requirements of section 20(3) of the EA.

"Minister" means the Minister responsible for energy in Bermuda (currently the Minister of Economic Development for Bermuda).

"Modification" includes any addition, omission, amendment and substitution of this Licence.

"Notice" means (unless otherwise specified) notice given in accordance with Condition 30 of this Licence.

"Operator" means, in relation to the Generation Facilities, the person who operates and maintains the same.

"Output" means electricity generated at the Generation Facilities and delivered to the Grid System.

"Power Purchase Agreement" means an agreement between the TD&R Licensee and a Bulk Generation Licensee in accordance with Section 48 of the EA for the sale and purchase of the whole or any part of the available capacity of the Generation Facilities of such Bulk Generation Licensee and/or the sale and purchase of the whole or any part of the Output by the Licensee from such Bulk Generation Licensee.

"Prudent Operating Practice" means the practice of a Reasonable and Prudent Operator.

"Quarter" means every three months starting April 1 for the first financial year and for each succeeding financial year.

"Reasonable and Prudent Operator" means a person who exercises that degree of skill, diligence, prudence and foresight which could reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances.

"Registered Capacity" means the normal full capacity of a Generation Unit as registered with the TD&R Licensee and amended from time to time in accordance with the Grid Code.

"Regulatory Authority Fees" means the fees established to fund the operation of the Authority under section 44 of the RAA and payable by the Licensee under Condition 4.

"Relevant Asset" means, subject to any Administrative Determination made by the Authority in respect of such definition or related methodology, any asset which is necessary to enable the Licensee to comply with its obligations under the EA, the RAA and this Licence and including those assets which form part of the Generation Facilities

owned and operated by the Licensee, including any interest in land upon which any such asset is situated.

"Retail Business" means the business of the TD&R Licensee as electricity supplier in Bermuda but excluding any activities forming part of (i) the Transmission and Distribution Business and (ii) the Bulk Generation Business.

"Renewable Energy" means energy that comes from resources that are constantly replenished, and includes energy produced by solar, wind, biomass, landfill gas, municipal solid waste, ocean (including tidal, wave, current, and thermal), geothermal, or hydro resources.

"Scheduling System" means a system to be prepared by the TD&R Licensee for, amongst other things, identifying the economic cost of electricity from Generation Units which are connected to the Grid System and which are available for the purposes of establishing a Merit Order and which shall comply with the requirements of Section 20(3)(c) of the EA.

"Sectoral Participants" has the meaning set out in the RAA.

"Sectoral Providers" has the meaning set out in the RAA.

"Separate Business" means any business of the Licensee other than its Bulk Generation business in Bermuda.

"TD&R Business" means the Transmission and Distribution Business of the TD&R Licensee and the Retail Business of the TD&R Licensee taken together.

"TD&R Licence" means the Transmission, Distribution and Retail Licence granted to the TD&R Licensee pursuant to the provisions of the EA.

"TD&R Licensee" means the person that is granted the TD&R Licence by the Authority pursuant to the EA.

"Transmission System" means the system of high voltage electric lines and electrical plant and meters owned by the TD&R Licensee and used for conveying electricity from a generating station to a sub-station, from one sub-station to another and from one generating station to another.

"year" means a period of 12 months commencing on 1 January.

1.2 For the purposes of interpreting this Licence:

- (a) unless a different definition is provided in this Licence, words or expressions shall have the meaning assigned to them in the EA, the RAA and Interpretation Act 1951.
- (b) where there is any conflict between the provisions of this Licence and the EA or RAA, the provisions of the EA or RAA as the case may be shall prevail. For the avoidance of doubt the provisions of the EA shall take precedence over the provisions of the RAA pursuant to Section 3(3) of the EA;

- (c) references to Conditions, Schedules, and Annexes are to Conditions, Schedules and Annexes of the Licence, as modified from time to time in accordance with the Licence and the EA;
- (d) headings and titles used in this Licence are for reference only and shall not affect its interpretation or construction;
- (e) references to any Law or statutory instrument include any modification, re-enactment or legislative provisions substituted for the same;
- (f) expressions cognate with those used in this Licence shall be construed accordingly;
- (g) words importing the singular shall include the plural and vice versa, and words importing the whole shall be treated as including a reference to any part unless explicitly limited;
- (h) reference to a person includes an individual, firm, partnership, joint venture, company, corporation, body corporate, unincorporated body of persons or any state or any agency of a state or any other legal entity; and
- (i) unless the contrary intention appears, words importing the masculine gender include the feminine.

2 SCOPE OF THE LICENCE

2.1 This Licence grants the Licensee the right to engage in Bulk Generation of electricity from the Generation Facilities.

2.2 The Licensee shall not and shall procure that any Affiliate shall not, on its own account (or that of the Licensee or of any Affiliate, as the case may be):

- (a) sell electricity in Bermuda to any person except to the TD&R Licensee under the terms of a Power Purchase Agreement (or in the event that BELCO is the Licensee, it shall not provide electricity in Bermuda to any person except to the TD&R Licensee under the terms of any power purchase arrangements between it and the TD&R Licensee, such terms to be on substantially the same basis as Power Purchase Agreements between the TD&R Licensee and third party Bulk Generation Licensees).
- (b) engage in wheeling;
- (c) purchase or otherwise acquire electricity in Bermuda for the purpose of sale or other disposition to third parties;
- (d) transmit electricity or otherwise convey electricity by any other means, except to the extent necessary to deliver electricity into the Grid System; and
- (e) engage in the distribution or supply of electricity to any premises.

2.3 Nothing in this Licence shall relieve the Licensee of its obligations to comply with any other requirement imposed by Law or Prudent Operating Practice to obtain any additional consents, permissions, authorisations, licenses or permits as may be

necessary to exercise the Licensee's right to discharge its rights and obligations under this Licence.

- 2.4** Following any written request by the Licensee, the Authority shall be entitled to issue instructions relieving the Licensee of its obligation to comply with any provisions of this Licence, to such extent as may be specified in the Authority's instructions.

3 TERM OF THE LICENCE

- 3.1** This Licence is valid and effective from the Commencement Date and shall remain in effect until the earlier of:

- (a) 30 years or such period as shall otherwise be agreed with the Authority from the Commencement Date; or
- (b) the date on which the Licence is surrendered in accordance with Condition 8 of this Licence; or
- (c) the date on which the Licence is revoked pursuant to Section 31 of the EA; or
- (d) the date on which the Licence is revoked due to an Insolvency Event affecting the Licensee.

- 3.2** Provided that the Licensee is not otherwise in material breach of this Licence, the Licensee may request an extension of this Licence by providing the Authority with a written request by no later than 12 months prior to the end date of the Licence pursuant to Condition 3.1. Such extension request may be granted or denied by the Authority acting in its sole discretion.

PART II - CONDITIONS

4 FEES, AND PENALTIES

- 4.1** The Licensee shall pay to the Authority such Government Authorisation Fees as may be prescribed pursuant to Sections 25, 26 and 66(3) of the EA; Section 52 of the RAA; and the Government Fees Act 1965.

- 4.2** The Licensee shall pay to the Authority such Regulatory Authority Fees as may be prescribed pursuant to Section 44 of the RAA.

- 4.3** The Licensee shall pay to the Authority any penalties that may be imposed on the Licensee by the Authority in accordance with Section 26(1)(c) of EA and Section 94 of the RAA.

- 4.4** The Licensee shall be liable in accordance with Section 57 of the RAA for failure to pay the fees set out in Conditions 4.1 and 4.2 above of this Condition 4.

- 4.5** The Licensee shall be liable in accordance with Section 60 of the EA for failure to comply with this Licence.

5 COMPLIANCE

- 5.1** The Licensee shall comply with:

- (a) the Conditions of this Licence, including any Schedules and Annexures to this Licence;
- (b) the terms of any associated licenses, authorisations and permits issued to the Licensee;
- (c) any Regulations issued by the Minister in accordance with section 54 of EA;
- (d) any Ministerial directions issued by the Minister pursuant to the EA;
- (e) any General Determinations made by the Authority pursuant to the RAA and the EA;
- (f) any Administrative Determinations made by the Authority pursuant to the RAA and the EA;
- (g) the EA;
- (h) the RAA; and
- (i) any other applicable Law, enactment, determination, regulation or order in effect in Bermuda to which the Licensee is subject.

5.2 Where there is an irreconcilable conflict between any applicable Laws, regulation, determination or order, the following order of precedence shall apply: Acts of Parliament, Regulations and Orders made by the Minister, international agreements that apply to Bermuda, General or other Administrative Determinations made by the Authority, and this Licence.

6 MODIFICATION OF THE LICENCE

6.1 The Licence may be modified:

- (a) by the Authority of its own motion pursuant to Section 29 of the EA and Section 51 of the RAA;
- (b) with the mutual consent of the Licensee and the Authority pursuant to Section 29 of the EA and Section 51 of the RAA;
- (c) by the Authority following an enforcement proceeding, pursuant to the provisions of section 93 of the RAA; or
- (d) by the Authority following any change of Control of the Licensee's Generation Business and/or its TD&R Business pursuant to the operation of Sections 30(3), 21 and 22 of the EA.

7 ENFORCEMENT, SUSPENSION AND REVOCATION

7.1 The Authority may initiate enforcement proceedings pursuant to Section 53 of the EA and Section 93 of the RAA.

7.2 The Authority may revoke this Licence:

(a) in accordance with the provisions of Section 31 of the EA and Section 51 of the RAA; and

(b) in the event of an Insolvency Event affecting the Licensee.

7.3 The Authority shall be entitled to suspend this Licence in accordance with Sections 31 and 53 of the EA and Section 51 of the RAA. The Authority may, in its sole discretion, lift an on-going suspension and re-instate the Licence.

7.4 In the event of any revocation of this Licence in accordance with Condition 7 of this Licence and/or any surrender of this Licence by the Licensee pursuant to Condition 8 of this Licence, the Licensee shall without delay provide all reasonable assistance and take all reasonable steps and co-operate fully with any new Bulk Generation Licensee to transfer its assets to such new Bulk Generation Licensee as notified to the Licensee by the Authority so that that there is the minimum of disruption and so as to prevent or mitigate any inconvenience or risk to the health or safety of End-Users, Sectoral Providers, Sectoral Participants and all members of the public.

8 SURRENDER OF LICENCE

8.1 Unless the Authority agrees otherwise, the Licensee shall not be entitled to surrender this Licence.

8.2 Unless the Authority agrees otherwise, the Licensee shall not, during the term of its Licence, be entitled to cease fulfilling its duties during the term of its Licence.

9 COMPLIANCE WITH GRID CODE AND OTHER OPERATIONAL CODES

9.1 The Licensee shall comply with the applicable provisions of the Grid Code and other relevant operational codes.

9.2 The Authority may (following consultation with any Sectoral Providers and/or Sectoral Participants) issue directions relieving the Licensee of its obligation under Condition 9.1 in respect of such parts of any applicable operational codes (except the Grid Code) to such extent as may be specified in those directions.

10 CENTRAL SCHEDULING AND DISPATCH

10.1 The Licensee shall comply with instructions for dispatch of available Generation Units forming part of the Generation Facilities in accordance with the Grid Code.

10.2 The Licensee shall at such times and in such manner as may be provided under the Grid Code and any other applicable operational code, provide the TD&R Licensee with all information reasonably required by it to enable it, in conformity with the conditions of its TD&R Licence:

(a) to operate the system of Central Dispatch; and

(b) to operate the Scheduling System.

11 ANCILLARY SERVICES

11.1 The Licensee shall, from time to time and upon the request of the TD&R Licensee:

- (a) provide to the TD&R Licensee Information as to the Ancillary Services it has available and those which it could make available; and
 - (b) offer on reasonable terms, such terms to be subject to the approval of the Authority, to provide Ancillary Services from any operating Generation Unit of the Licensee to the TD&R Licensee.
- 11.2** The Licensee shall provide to the Authority, upon the request of the Authority, information on the provision of Ancillary Services, including details of the costs to the Licensee of providing such Ancillary Services.
- 11.3** The Authority may settle any terms of agreement in dispute between the TD&R Licensee and the Licensee in such manner as appears to the Authority to be reasonable in accordance with Section 58 of the RAA.
- 11.4** Insofar as the TD&R Licensee wishes to proceed on the basis of the terms as approved by the Authority, the Licensee shall forthwith enter into and implement such agreements in accordance with its terms.

12 PROVISION OF INFORMATION TO THE AUTHORITY

- 12.1** The Licensee shall, in accordance with Section 26(1)(f) of the EA, the provisions of Part 8 of the EA and any General Determination by the Authority, furnish to the Authority in such manner and at such reasonable times as the Authority may reasonably require, such Information relating to the electricity sector including any Information reasonably required by the Authority in order for it to comply with its obligations under Section 52 of the EA.
- 12.2** Subject to the provisions of Part 8 of the RAA and any applicable General Determination by the Authority, the Licensee shall permit the Authority or persons designated by the Authority to examine, investigate or audit, or procure such assistance as the Authority may reasonably require to conduct an examination, investigation or audit of, any aspect of the Bulk Generation Business.
- 12.3** Subject to the provisions of Section 92 of the RAA and any applicable General Determination by the Authority, the Licensee shall permit the Authority or persons designated by the Authority to enter the Licensee's premises, and shall facilitate reasonable access by them to the premises used by the Licensee, to conduct an inspection, examination, investigation or audit of the Licensee.
- 12.4** The Licensee shall notify the Authority as soon as possible upon becoming aware that it is in a position in which it may potentially breach any Condition set out in this Licence.
- 12.5** The Licensee shall place a complete copy of this Licence on the Licensee's website or, if no such website exists, in a conspicuous place in the Licensee's principal place of business such that it is readily available for inspection free of charge by members of the general public during normal office hours.

13 PROVISION OF INFORMATION TO TD&R LICENSEE

The Licensee shall furnish to the TD&R Licensee, in such manner and at such times as the Authority may direct, such information as the Authority may consider necessary

to enable the TD&R Licensee to perform the functions assigned to it by law or its TD&R Licence.

14 SERVICE STANDARDS AND PERFORMANCE STANDARDS

- 14.1** The Licensee shall comply with any applicable service standards including those standards relating to power reliability and power quality applicable to it and other standards set out in any General Determination made pursuant to Section 34 of EA.
- 14.2** The Licensee shall report to the Authority in accordance to provisions of any General Determination regarding the same but in any event provide:-
- (a) details on an annual basis as to which service standards and performance standards it has complied with and which standards it has failed to meet; and
 - (b) where service and performance standards have not been met details regarding any interventions made to rectify such service and performance deficiencies during the last year.
- 14.3** In addition, within 60 days of the end of each financial year, the Licensee shall submit to the Authority a report setting out those matters referred to in paragraph 14.2 above in respect of the previous financial year. The Licensee shall, if required by the Authority, publish a summary of the report in a manner approved by the Authority.
- 14.4** The Licensee shall operate and maintain the Generation Facilities in a safe, efficient and economic manner.
- 14.5** If the Licensee fails to meet its required service standards as set forth in this Licence, the Grid Code, codes of practice or General Determinations, the Licensee shall forthwith discuss with the Authority the reasons for any non-compliance and the steps that the Licensee intends to take in order to remedy such non-compliance.
- 14.6** The Authority shall give the Licensee reasonable time to implement the remedial measures notified by the Licensee to the Authority pursuant to paragraph 14.5 of this Condition 14.
- 14.7** If after the Licensee has been given a reasonable opportunity by the Authority to implement the steps it has outlined to the Authority under paragraphs 14.5 and 14.6, the Licensee still fails to meet its required service standards, the Authority shall be entitled to:
- (a) impose a financial penalty as determined by the Authority on the Licensee in respect of its failure to comply with its required service standards; and/or
 - (b) require that the Licensee pay compensation as determined by the Authority in respect of its failure to comply with its required service standards pursuant to the terms of this Licence.
- 14.8** The Authority shall review the service standards referred to in this Condition 14 which the Licensee is required to comply with when conducting any tariff review pursuant to Section 37 of the EA.

14.9 The Licensee shall be liable in accordance with the provisions of Section 58 of the EA if it fails to comply with those safety standards set out in Section 58 of the EA.

15 APPOINTMENT OF OPERATOR

15.1 In the event that the Operator is someone other than the Licensee, the prior written approval of the Authority for the appointment of such person as Operator shall be obtained, such approval not to be unreasonably withheld or delayed.

15.2 Subject to Condition 15.1, the Authority shall not be entitled to refuse to give its approval of a person pursuant to Condition 15.1 if that person is competent to operate the Generation Facilities to the standard of a Reasonable and Prudent Operator, but where an approved person is no longer competent to exercise that function, the Authority may, by notice in writing given to the Licensee, revoke an approval of that person under this Condition.

15.3 The Authority shall be entitled to refuse to give its approval of a person pursuant to Condition 15.1 if that person is the Operator of any other generation facilities within Bermuda.

16 CHANGE IN CONTROL OF LICENSEE

16.1 The Licensee shall not complete any proposed change in Control of the Licensee without first obtaining the prior written authorisation of the Authority in accordance with section 30 of the EA and Section 87 of the RAA, which shall not be unreasonably withheld.

16.2 The Licensee shall be liable in accordance with Section 56 of the EA if it contravenes this Condition.

17 ASSIGNMENT

17.1 This Licence shall not be transferred or assigned without the prior consent of the Authority and Section 30 of the EA 2016 shall apply accordingly.

17.2 The Licensee shall not sub-license, assign or grant any right, interest or entitlement in the Licence nor transfer the Licence to any other Person, including an Affiliate of the Licensee without the prior written authorization of the Authority.

17.3 The Licensee shall be liable in accordance with Section 56 of the EA if it contravenes this Condition.

18 ENVIRONMENTAL MATTERS

The Licensee shall comply with Environmental Laws.

19 DISPOSAL OF RELEVANT ASSETS

19.1 Subject to Condition 19.3, the Licensee shall obtain the prior written consent of the Authority in order to Dispose of any Relevant Asset and/or to create security over any Relevant Asset and/or to relinquish control over any Relevant Asset, such consent shall not be unreasonably withheld.

- 19.2** Subject to the provisions of any applicable General Determination, the Licensee shall give to the Authority not less than 2 months' prior written notice of its intention to create any security or effect a Disposal of or relinquish control over any Relevant Asset, together with such reasonable further information as the Authority may request relating to such asset or the circumstances of such intended Disposal or relinquishment of control or to the intentions.
- 19.3** Notwithstanding paragraphs 19.1 and 19.2, the Licensee may effect a Disposal of or relinquish operational control over any Relevant Asset where:
- (a) the Authority has issued instructions for the purposes of this Condition containing a general consent (whether or not subject to conditions) to:
 - (i) transactions of a specified description; and/or
 - (ii) the Disposal of or relinquishment of operational control over Relevant Asset(s) of a specified description; and
 - (b) the Disposal or relinquishment of operational control in question is effected pursuant to a transaction of a description specified in the instructions or the Relevant Asset in question is of a description so specified and the Disposal or relinquishment of operational control is in accordance with any conditions to which the consent is subject.
- 19.4** Notwithstanding paragraph 19.1, the Licensee may Dispose of or relinquish operational control over any Relevant Asset specified in any notice given under paragraph 19.2 in circumstances where:
- (a) the Authority confirms in writing that it consents to such Disposal or relinquishment (which consent may be made subject to the acceptance by the Licensee or any third party in favour of whom the Relevant Asset is proposed to be Disposed or operational control is proposed to be relinquished of such conditions as the Authority may specify); or
 - (b) the Authority does not inform the Licensee in writing of any objection to such Disposal or relinquishment of control within the notice period referred to in paragraph 19.2 (subject to the provisions of any General Determination).

20 REPLACEMENT OF GENERATION FACILITIES

- 20.1** The Licensee shall not replace any Generation Facilities without the prior consent of the Authority.
- 20.2** Any such replacement must be consistent with the governing Integrated Resource Plan, pursuant to Part 8 of the EA.
- 20.3** If the Licensee requires to replace its Generation Facilities, it must first provide to the Authority a detailed reporting setting out the proposal (the "**Proposal**").
- 20.4** The Authority shall assess the Licensee's Proposal and make a determination on whether the net benefits resulting from the replacement of the Generating Facilities is commensurate with the net benefits of other available options in the markets.

20.5 The Licensee's Proposal shall be granted or denied by the Authority acting in its sole discretion.

21 PROHIBITION ON CROSS SUBSIDIES AND DISCRIMINATION

21.1 The Licensee shall procure that no Separate Businesses of the Licensee shall:

- (a) give any direct or indirect cross-subsidy to the Licensee; and
- (b) receive any direct or indirect cross-subsidy from the Licensee.

21.2 The Licensee shall procure that no Separate Business of the Licensee shall discriminate in favour of the Licensee.

22 ACCOUNTING REQUIREMENTS

22.1 The first financial year of the Licensee shall run from the Commencement Date to 31st December 2017 and thereafter each financial year shall run from 1 January to the following 31 December.

22.2 The remaining conditions of this Condition apply for the purposes of ensuring that the Licensee maintains accounting and reporting arrangements which enable separate accounts to be prepared for each Separate Business and which show the financial affairs of each such Separate Business.

22.3 The Licensee shall:

- (a) keep such accounting records in respect of its Bulk Generation Business as are required to be kept in respect of such business by any Laws;
- (b) keep such accounting records as are instructed to be kept in respect of any instructions issued by the Authority; and
- (c) keep such accounting records for its Bulk Generation Business separately identifiable from those of its Separate Businesses and the accounting records of the Controlling Interest Holder.

22.4 Annually, the Licensee shall, in respect of its Bulk Generation Business, prepare:

- (a) accounting statements comprising a profit and loss and other comprehensive income statement, a statement of financial position, a statement of changes in equity and a cash flow statement, together with notes thereto, and in appropriate detail the amounts of any revenue, cost, asset, liability, reserve or provision, which has been either:
 - (i) received by the Bulk Generation Business from any of other business (whether or not a Separate Business and including from the Controlling Interest Holder) together with a description of the basis of such revenue, cost or liability received; or
 - (ii) charged from the Bulk Generation Business or to any other business (whether or not a Separate Business and including the Controlling

Interest Holder) together with a description of the basis of that charge;
or

(iii) determined by apportionment or allocation between the Bulk Generation Business and any other business of the Licensee (whether or not a Separate Business and including the Controlling Interest Holder) together with a description of the basis of the apportionment or allocation.

(b) only where the Licensee is BELCO, each financial year, sufficient accounting information in respect of each of the Licensee's Generation Business and TD&R Business to allow for reconciliation against the licensee's consolidated financial statements.

22.5 The Licensee shall procure, in respect of the accounting statements prepared in accordance with this Condition in respect of a financial year, a report by the Auditors addressed to the Authority stating whether in their opinion those statements have been properly prepared in accordance with this Condition and give a true and fair view of the revenues, costs, assets, liabilities, reserves and provisions of, or reasonably attributable to, the Separate Business to which the statements relate.

22.6 The Licensee shall deliver to the Authority a copy of the Auditor's report referred to in Condition 22.5(a) and the accounting statement referred to in Condition 22.4 (a) as soon as reasonably practicable.

22.7 The Licensee shall not in relation to the accounting statements in respect of a financial year change the bases of charge, apportionment or allocation referred to in Condition 22.4(a) from those applied in respect of the previous financial year, unless the Authority shall previously have issued directions for the proposes of this Condition directing the Licensee to change such bases in a manner set out in the directions or the Authority gives it prior written approval to the change in such bases. The Licensee shall comply with any directions issued for the purposes of this Condition.

22.8 If the Licensee changes the bases of charge, apportionment or allocation from those adopted for the immediately preceding financial year, it shall show a reconciliation of the revised and prior-year methodologies.

22.9 Accounting statements in respect of a financial year prepared under Condition 22.4(a) shall, so far as reasonably practicable and unless otherwise approved by the Authority having regard to the purposes of this Condition:

(a) have the same content and format (in relation to each Separate Business) as the annual accounts of the Licensee (and any affiliate or related undertaking of the Licensee) prepared under the Law and conform to the best commercial accounting practices and to the accounting standards or such other standards as may be notified to the Licensee by the Authority from time to time; and

(b) be published with the Licensee's consolidated financial statements.

22.10 References in this Condition to costs or liabilities of, or reasonably attributable to, any Separate Business shall be construed as excluding taxation, capital liabilities which do not relate principally to a particular Separate Business and interest thereon; and references to any accounting statement shall be construed accordingly.

22.11 Without prejudice to any other provision of this Condition and subject to the Authority giving reasonable notice to the Licensee, the Licensee shall, on request of the Authority, give to the Authority within a reasonable time of such request by the Authority access to the Licensee's accounting records, policies and statements referred to in this Condition.

23 OPERATIONAL REPORTING REQUIREMENTS

23.1 On or before the final business day of January, April, July, and October of each calendar year, the Licensee shall submit to the Authority a quarterly report containing monthly operating statistics for the prior Quarter required by the Authority.

23.2 These Quarterly reports shall include, at a minimum:

- (a) energy produced (in MWh) by each generating unit within the licensed Generating Facilities;
- (b) energy supplied (in MWh) to the network of the TD&R Licensee;
- (c) peak demand (in MW) imposed by the Transmission System and Distribution System on the Licensee;
- (d) the maximum available generating capacity (in MW) of the Licensee's Generating Facilities at the time of peak demand on the Transmission System and Distribution System;
- (e) spent lubricant (in barrels) disposed of or recycled; and
- (f) safety and environmental incident reports.

23.3 On or before the 15th day of each calendar month, the Licensee shall provide to the Authority, a report of the amount of fuel and lubricant consumed by the Generating Facilities for the previous month. For each type of fuel and lubricant consumed, the report shall detail the volume (in barrels) purchased, the cost of purchases (in Bermudian dollars), opening and closing stocks, and consumption of fuel and lubricant used by the Generating Facilities.

23.4 Within 12 months of the Commencement Date and for the purposes of enabling the reports in Condition 23.2, the Licensee shall install, maintain and regularly calibrate (within industry specifications) fuel metering equipment to accurately measure, in real time, all fuel consumed by the Generating Facilities.

24 NO ABUSE OF DOMINANT POSITION

24.1 The Licensee shall occupy a dominant position in the electricity sector if section 51(2) of the EA becomes applicable at any time.

24.2 If the Licensee abuses its dominant position the Authority shall be entitled to take those actions set out in section 85(7) of the RAA and section 26(1) of the EA.

25 FORCE MAJEURE; OTHER EVENTS

- 25.1** If the Licensee is prevented from complying with this Licence by acts of God, war, warlike operations, civil commotion, major strikes or any other significant or protracted industrial action, fire, tempest or any other causes beyond the Licensee's reasonable control;
- (a) the Licensee shall notify the Authority, as promptly as reasonably practicable, of the obligations of the Licence with which the Licensee cannot comply, the expected duration of the event of force majeure, and the measures the Licensee is taking to overcome the consequences of the event of force majeure; and
 - (b) the Authority shall suspend such obligations of the Licensee as the Authority concludes the Licensee cannot comply with for as long as the event of force majeure continues.
- 25.2** In addition to events of force majeure, the Licensee shall notify the Authority of any fact or event likely to affect materially the Licensee's ability to comply with any Condition of this Licence, or an insolvency-related fact or Insolvency Event in respect of the Licensee or any Affiliate, or any preparatory steps being taken that might lead to an Insolvency Event, immediately upon becoming aware of such fact or event.

26 INDEMNIFICATION

- 26.1** The Licensee shall indemnify the Authority against all actions, claims and demands which may be brought or made by any person in respect of any injury or death of any Person or damage to any property arising from any act of the Licensee permitted or authorized by the Licence. The Authority shall provide the Licensee with notice of any such actions, claims and demands, but the Authority's failure to do so shall not relieve the Licensee of any obligations imposed on the Licensee by this Condition.

27 INSURANCE

- 27.1** Subject to Conditions 27.2 and 27.3 below, the Licensee shall obtain and maintain insurance coverage for:
- (a) physical damage to the generating facilities and ancillary equipment and structures; and
 - (b) business interruption.
- 27.2** The Licensee is released from the obligation to maintain insurance under Condition 27.1 if provision for the liability is made through any of the following alternatives, subject to the approval of the Authority:
- (a) self-insurance which refers to the Licensee's financial capacity to meet any liability to a third party in respect of which the Licensee does not otherwise have insurance; or
 - (b) a special tariff factor in the tariff methodology through which a factor in the tariff is applied for a time approved by the Authority after the disaster until the system

is re-built providing the financing and re-building are be done under the supervision of the Authority.

27.3 The Licensee shall not be required to obtain and maintain insurance if it is not on economic terms. The Licensee shall as soon as reasonably possible inform the Authority if it is of the opinion that such insurance is not on economic terms. The Authority will consider the Licensee's opinion and if it agrees that the Licensee's opinion is reasonable, confirm to the Licensee that the insurance may be foregone until such time as it may again become available on economic terms.

27.4 The Licensee shall not pass any increase fuel costs covered by the insurance to the TD&R Licensee and its customers.

28 OUTSOURCING

The Licensee may utilise the services of third parties on an ongoing basis in the provision of its Bulk Generation Business services. The procurement of such outsourced services shall be subject to Authority approval if they represent core and ongoing Bulk Generation Business functions, but not including temporary specialty support.

29 SITE DECOMMISSIONING

29.1 As part of the application process in respect of this Licence, the Licensee shall submit to the Authority an independent site decommissioning plan which details how the Licensee, upon termination of any Power Purchase Agreement or power purchase arrangements between BELCO's Generation Business and the TD&R Licensee (as applicable), plans to restore the project location to a clean and safe condition, suitable for future use of the land on which it is located. This includes, amongst other things, retiring the Generating Facilities, restoring the site to a safe and useful condition within eighteen months of retiring the Generating Facilities and managing the excess materials and waste in an environmentally responsible manner and in compliance with industry and/or local regulations (whichever is more stringent). At least eighteen months prior to the anticipated retirement date (the "**Review Date**"), both the Licensee and Authority will revisit the plan to ensure all elements comply with industry and/or local regulations.

29.2 At the Review Date, and in accordance with the terms of any applicable Power Purchase Agreement or power purchase arrangements between BELCO's Generation Business and the TD&R Licensee (as applicable), the Authority may require the Licensee to provide a financial surety to the TD&R Licensee to cover the site decommissioning should the Licensee fail to properly perform this function. Such duty will then revert to the TD&R Licensee.

30 NOTICES

30.1 Unless the Authority determines otherwise, notices to the Licensee under the Licence shall be in writing and sent by electronic mails to the Chief Executive Officer of the Licensee at the address communicated to the Authority from time to time.

30.2 Unless the Authority determines otherwise, notices from the Licensee to the Authority under the Licence shall be in writing and sent by electronic mail to the Chief Executive of the Authority to ectricity@RAB.bm.

31 AVAILABILITY OF RESOURCES

31.1 The Licensee shall at all times act in a manner calculated to secure that it has sufficient management resources and financial resources and financial facilities to enable it to:

- (a) carry on its Bulk Generation Business; and
- (b) comply with its obligations under this Licence and the EA.

31.2 The Licensee shall submit a certificate addressed to the Authority, approved by a resolution of the Board of Directors of the Licensee and signed by a director of the Licensee pursuant to that resolution. Such certificate shall be submitted on 30th April each year and shall be in one of the following forms:

- (a) "After making enquiries, the directors of the Licensee have a reasonable expectation that the Licensee will have available to it, after taking into account in particular (but without limitation) any dividend or other distribution which might reasonably be expected to be declared or paid, sufficient financial resources and financial facilities to enable the Licensee to carry on the Separate Businesses for a period of 12 months from the date of this certificate.";
- (b) "After making enquiries, the directors of the Licensee have a reasonable expectation, subject to the terms of this certificate, that the Licensee will have available to it, after taking into account in particular (but without limitation) any dividend or other distribution which might reasonably be expected to be declared or paid, sufficient financial resources and financial facilities to enable the Licensee to carry on the Bulk Generation Business for a period of 12 months from the date of this certificate. However, the directors would like to draw attention to the following factors which may cast doubt on the ability of the Licensee to carry on the Bulk Generation Business."; or
- (c) "In the opinion of the directors of the Licensee, the Licensee will not have available to it sufficient financial resources and financial facilities to enable the Licensee to carry on the Bulk Generation Business for a period of 12 months from the date of this certificate."

31.3 The Licensee shall submit to the Authority together with the certificate referred to in paragraph 31.2 of this Condition a statement of the main factors which the directors of the Licensee have taken into account in giving that certificate.

31.4 The Licensee shall inform the Authority in writing immediately if the directors of the Licensee become aware of any circumstances which cause them no longer to have the reasonable expectation expressed in the most recent certificate given under paragraph 31.2.

31.5 The Licensee shall use its best endeavours to obtain and submit to the Authority with each certificate provided for in paragraph 31.2 a report prepared by its Auditors and addressed to the Authority stating whether or not the Auditors are aware of any inconsistencies between, on the one hand, that certificate and the statement submitted with it and, on the other hand, any information which they obtained during their audit work.

31.6 The Licensee shall procure from the Controlling Interest Holder a legally enforceable undertaking in favour of the Licensee (in a form specified by the Authority) that the Controlling Interest Holder will refrain from any action, and will procure that every subsidiary of the Controlling Interest Holder (other than the Licensee) will refrain from any action, which would then be likely to cause the Licensee to breach any of its obligations under this Licence or the EA.

31.7 The Licensee shall:

- (a) deliver to the Authority evidence (including a copy of such undertaking) that the Licensee has complied with the obligation to procure an undertaking pursuant to paragraph 31.6; and
- (b) inform the Authority immediately in writing if the directors of the Licensee become aware that the undertaking has ceased to be legally enforceable or that its terms have been breached.

SCHEDULE 1
Generation Facilities

Unit	Technology	Capacity (kW)
T1	Steam Turbine	3800
T2	Steam Turbine	7400

ANNEX

TRANSITIONAL CONDITIONS

The Licensee shall comply with each of the Transitional Conditions set forth below until such time as the Authority makes an Administrative Determination in respect of the subject matter of each such Transitional Condition:

A1 ACCOUNTING SEPARATION REQUIREMENTS AND PROHIBITION OF CROSS-SUBSIDIES AND DISCRIMINATION.

A1.1 Notwithstanding the provisions of Condition 21 and Condition 22, the Licensee shall not be obliged to comply with the provisions of Conditions 21 and 22 until such time as:

- (i) the Authority determines the methodologies, mechanisms and other actions to be taken to enable the Licensee to comply with Conditions 21 and 22;
- (ii) any such methodologies, mechanisms and other actions are approved by the Authority by Administrative Determination; and.
- (iii) the Authority determines a practical timeframe for the implementation of the methodologies, mechanisms and other actions that will enable the Licensee to comply with Conditions 21 and 22.

A2 SERVICE STANDARDS AND PERFORMANCE STANDARDS

A2.1 Notwithstanding the provisions of Condition 14, the service and performance standards in force immediately before the Commencement Date shall continue to apply after the Commencement Date until such time as the Authority makes a General Determination pursuant to Section 34 of the EA.

A3 DECOMMISSIONING

A3.1 Notwithstanding the provision of Condition 29, the Licensee shall not be obliged to comply with the provisions of Condition 29 until such time as:

- (i) The Authority determines the mechanism under which the Licensee shall set aside appropriate funds to be used for decommissioning its Generation Units and specifically the requirements as regards how those funds should be kept and records to be kept in relation to such funds; and
- (ii) The Authority determines the specific decommissioning activities for which the Licensee would be responsible.