



## **Change of Control under Section 87 of the Regulatory Authority Act 2011 and section 30 of the Electricity Act 2016**

### **Invitation to Comment**

Matter: A transaction concerning the proposed acquisition of control of Bermuda Electric Light Company Limited by Algonquin Power and Utilities Corp.

**Date:** 3 April 2020

**Response Deadline:** 4 May 2020

## Invitation to Comment

1. The Regulatory Authority of Bermuda (“RA”) has received a notification and application (the “Application”) with respect to the proposed transaction (the “Proposed Transaction”), whereby Algonquin Power and Utilities Corp. (“Algonquin”), a Canada based company, seeks to become the sole owner of Bermuda Electric Light Company Limited (“BELCO”), the regulated subsidiary of Ascendant Group Limited (“Ascendant”). The RA is assessing the Application pursuant to Sections 6, 30 and 21- 23 of the Electricity Act 2016 (“EA”) and Sections 12 and 87 of the Regulatory Authority Act 2011 (“RAA”), as appropriate, and is required to, inter alia, give an invitation to the public to make comments on the Application. Therefore, the purpose of this Invitation to Comment is to seek comments from the public on the Proposed Transaction, with respect to those matters set out in paragraphs 9 to 13.

### Background on the Parties

2. Ascendant is a publicly traded company currently listed on the Bermuda Stock Exchange (ticker: AGL.BH). The business activities of Ascendant currently include owning various energy and energy-related businesses in Bermuda. BELCO is its largest subsidiary.
3. The current business activities of BELCO include transmission, distribution and retail (“TD&R”) and bulk generation of electricity, provided by BELCO as a holder of a bulk generation licence and the sole TD&R licence. Ascendant is its sole shareholder.
4. Algonquin is a publicly traded company listed on the Toronto Stock Exchange and the New York Stock Exchange under the symbol AQN. The business activities of Algonquin include owning and running various energy companies, including natural gas, water, and electricity generation, transmission and distribution utility services in the United States and Canada. Algonquin also has renewable energy experience through its portfolio of wind, solar and hydroelectric generating facilities.
5. Algonquin operates through its two operating groups, Algonquin Power Co. (“Liberty Power”) and Liberty Utilities (Canada) Corp. (“Liberty Utilities”). Algonquin holds indirect interests in clean energy facilities through Liberty Power. It also owns and operates electricity, natural gas, and water generation, transmission and distribution utilities serving customers in twelve states and one Canadian province through Liberty Utilities. The utilities within the Algonquin portfolio that are most similar to BELCO include Algonquin’s affiliates Liberty Utilities (Granite State Electric) Corp. (“Granite State”), Liberty Utilities (CalPeco Electric) LLC (“Calpeco”), and The Empire District Electric Company (“Empire”).
6. Granite State is an electric utility located in New Hampshire and serves approximately 44,000 customers, with a system peak of 198 MW. It owns and operates 2,747 miles of distribution line. Calpeco is an electric utility located in Lake Tahoe, California and serves approximately 49,400 customers, with a system peak demand of 131 MW. The utility owns and operates approximately 99 miles of transmission line and 1,942 miles of distribution line. It also owns and operates two solar generation facilities, with a total capacity of 60MW. Empire is an electric utility that serves approximately 178,000 customers in Arkansas, Kansas, Missouri, and Oklahoma, with a system peak of 1,211 MW. It owns and operates approximately 1,258 miles of transmission line and 7,000 miles of distribution line. It also owns and operates several coal, natural gas and hydro generation facilities, with a total capacity of 1,326 MW.

### RA Assessment Process

7. The Proposed Transaction falls within the meaning of a concentration as set out in section 87(4) of the RAA and requires written approval from the RA before it can be effected.
8. The RA has a responsibility to assess the Proposed Transaction in accordance with the applicable legislative and regulatory framework, including the RAA, Part 5 of the EA, the Ministerial Direction (Transfer of Ownership of Licensees) under Section 8 of Electricity Act 2016, Notice ID GN0900/2019 (the “Direction”) and the Regulatory Authority (Application for Licences) General Determination 2017. In particular, the concentration review process is set out in Section 87 of the RAA. Section 30(3) of the EA requires the RA to determine whether to give consent to any transfer of licence as if the transferee were an applicant for the licence, while Section 30(4)(b) requires the RA to have due regard to the Integrated Resource Plan (“IRP”) when determining whether to give consent to any transfer. Sections 30(5) and 30(6) of the EA address the Minister’s role with regard to any proposed transfer. The Direction provides guidance in prioritizing the purposes of the EA, as set out in Section 6 of the EA, when assessing any proposed transfer.

### Invitation to Comment

9. The RA invites interested parties to submit their observations on the Proposed Transaction to the RA related specifically to the extent to which the Proposed Transaction is likely to have one or more of the following effects:
  - i. The purposes of the RA as set out in the RAA<sup>1</sup>;
    - a. Promote and preserve competition;
    - b. Promote the interests of the residents and consumers of Bermuda;
    - c. Promote the development of the Bermudian economy, Bermudian employment and Bermudian ownership;
    - d. Promote innovation; and
    - e. Fulfil any additional functions specified by sectoral legislation.
  - ii. Create an entity with a dominant position or enhance an existing dominant position in any relevant electricity markets;
  - iii. Substantially lessen competition in any relevant market; or
  - iv. Harm the public interest.
10. The RA also invites interested parties to submit their observations on how the Proposed Transaction would impact the following:
  - i. The IRP;
  - ii. The purposes of the EA, namely, to seek:
    - a. to ensure the adequacy, safety, sustainability and reliability of electricity supply in Bermuda so that Bermuda continues to be well positioned to compete in the international business and global tourism markets;
    - b. to encourage electricity conservation and the efficient use of electricity;

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<sup>1</sup> Section 12 of RAA

- c. to promote the use of cleaner energy sources and technologies, including alternative energy sources and renewable energy sources;
  - d. to provide sectoral participants and end-users with non-discriminatory interconnection to transmission and distribution systems;
  - e. to protect the interests of end-users with respect to prices and affordability, and the adequacy, reliability and quality of electricity service; and
  - f. to promote economic efficiency and sustainability in the generation, transmission, distribution and sale of electricity.<sup>2</sup>
11. In relation to any concern that has been identified in response to the queries set forth in paragraphs 9 and 10 above, please indicate whether the concern could be addressed by the RA through the imposition of conditions of the Proposed Transaction and, if so, please describe the key components of the proposed condition(s).
12. The RA will only consider comments which address the issues listed at paragraphs 9 and 10 above.
13. Comments must reach the RA no later than 11:59 pm on 4 May 2020 to be considered. Comments should be sent to the RA via email at [electricity@ra.bm](mailto:electricity@ra.bm) with the subject line "BELCO Proposed Change of Control".

*Likely Impact of the Proposed Transaction on Competition*

14. Section 87 (5) (b) of the RAA requires that the notification shall contain "an assessment of the likely impact of the proposed concentration on competition in any relevant market within a regulated industry sector."
15. The RA believes that there will be no impact on the competitive conditions with respect to the TD&R of electricity, as the Section 20(2) EA stipulates that there shall only be one TD&R licensee, and such licensee is BELCO.
16. As a Bulk Generation Licensee, BELCO currently has a near-monopoly in electricity generation, supplying approximately 97% of electricity in Bermuda.
17. However, the Electricity Sector Policy 2015 states the following:
18. "It is the Government's policy to create an enabling environment for IPPs to introduce competition in bulk generation, help reduce the cost of power in Bermuda, develop new energy sources, and contribute to achieving the other objectives of this Policy."
19. Whereas the proposed change of control is unlikely to enhance BELCO's existing dominant position in the generation market, it is likely to perpetuate this dominance without mitigating action.

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<sup>2</sup> Section 6 of the EA

Undertakings or conditions to mitigate or eliminate anti-competitive effects

20. Undertakings in relation to anti-competitive effects are not required for the TD&R Licence because the Electricity Sector Policy and the EA envisage TD&R operations being conducted by a regulated monopoly.
21. There does not appear to be any options for mitigating BELCO's dominance in generation in the short-term future.
22. All future bulk generation will be procured through a transparent competitive process based on the plan laid out in the Integrated Resource Plan. Based on the TD&R licence, BELCO is currently responsible for managing the generation procurement process. The terms of the TD&R licence may require amendments to remove the potential for conflicts of interest if BELCO or an affiliate of Algonquin were to bid for any future bulk generation.
23. The RA will consider the comments received as part of its evaluation of the Proposed Transaction.