



BERMUDA

ELECTRICITY ACT 2016

2016 : 2

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WHEREAS since the early 1900's, when the first 50kW generating unit was installed in Hamilton, demand for electricity in Bermuda has grown, and there is concern about the implications of the current fossil fuel generation, particularly high cost, greenhouse gas (GHG) emissions, and vulnerability to supply and price shocks;

AND WHEREAS developments in technologies for renewable energy, energy efficiency and conventional energy give Bermuda the opportunity to seek to lower the cost of service, reduce local pollution as well as emissions of global greenhouse gases produced by electricity generation, improve the security of supply, and seek to improve affordability, whilst maintaining or improving quality of service;

AND WHEREAS a new regulatory framework for the electricity sector is necessary to promote increased investment and innovation as Bermuda seeks to enable the people of Bermuda to enjoy the benefits of such investment and innovation;

AND WHEREAS the Regulatory Authority has been established and has powers to supervise, monitor and regulate the electricity sector for the purposes set out in this Act, including the promotion of effective and sustainable competition, investment and the

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adoption of innovative technologies for renewable energy, energy efficiency and conventional energy, and the protection of the rights of consumers and end-users;

AND WHEREAS, in order to facilitate implementation of the new framework, it is in the public interest to enact this Act in relation to the supply of electricity;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

PART 1 PRELIMINARY

Citation

1 This Act may be cited as the Electricity Act 2016.

Interpretation

2 (1) In this Act, unless the context otherwise requires—

“affiliate” means any entity that, directly or indirectly, controls, is controlled by, or is under common control with another legal person, where “control” refers to—

(a) the power, whether held directly or indirectly, to exercise decisive influence over another entity by directing its management and policies, whether through ownership of shares, stocks or other securities or voting rights, or an agreement or arrangement of any type, or otherwise; or

(b) the ownership of 25 percent or more of the shares, stocks, or other securities or voting rights, including through an agreement or arrangement of any type;

“aggregation of demand side resources” does not include aggregation below the licence threshold;

“approved feed-in tariffs” means the feed-in tariff approved by the Authority in accordance with Part 6, section 36;

“approved retail tariffs” means the retail tariff approved by the Authority in accordance with Part 6, section 35;

“authorisation” includes a Standard Contract;

“Authority” means the Regulatory Authority established under the Regulatory Authority Act 2011;

“bulk generation” means generation using a system with an installed capacity at or above the licence threshold;

“Bulk Generation Licence” means a licence granted under section 25;

- “commencement date”, in relation to a particular provision or Part of this Act, means the date that the provision or Part, as the case may be, comes into force in accordance with section 70;
- “company” has the meaning given in section 2(1) of the Companies Act 1981;
- “demand side management” means all activities or programs undertaken by any person to influence the amount of electricity or timing of electricity they use;
- “demand side resources” means the reduced demand for electricity resulting from demand side management;
- “distributed generation” means generation using a system with an installed capacity below the licence threshold;
- “distributed generator” means a person that has a Standard Contract;
- “distribution” means conveying electric power below 22 kilovolts (kV);
- “electricity sector” means the regulated industry sector involving the supply, transmission, distribution and consumption of electricity;
- “end-user” means a person that uses electric power provided by the TD&R Licensee on a retail basis;
- “facility” means a site where electrical equipment is located to provide some form of electrical service;
- “feed-in tariff” means the pre-determined rate at which renewable energy is purchased by the TD&R Licensee from a distributed generator, for a pre-determined period, and under pre-determined conditions in accordance with Part 6;
- “generation” includes generation of renewable energy;
- “Government authorisation fees” means the fees established under section 52 of the Regulatory Authority Act 2011;
- “Grid Code” means the code developed by the TD&R Licensee, with the approval of the Authority, in compliance with its licence—
- (a) for the operation of the transmission system; and
 - (b) covering all material technical aspects relating to—
 - (i) connections to and the operation and use of, the transmission and distribution system; or
 - (ii) the operation of electrical installations required for the operation of the transmission and distribution system;
- “Integrated Resource Plan” means an energy plan for the supply of electricity in Bermuda approved by the Authority in accordance with, and set out in the matters required by, Part 8;

- “interconnection” means the electrical connection of a generating station of a licensee, or of a distributed generation unit, to the TD&R Licensee;
- “large scale self-supply” means self-supply at or above the licence threshold;
- “Large Scale Self-Supply Licence” is a licence granted under section 25 that authorises the holder to engage in large scale self-supply;
- “licence” means a valid licence granted by the Authority under this Act;
- “licence threshold” means the installed capacity prescribed by regulations from which a licence is required for generation;
- “licensee” means a person that holds a valid licence in accordance with this Act;
- “Minister” means the Minister responsible for energy;
- “official website”, in relation to the Authority, means the website referred to in section 18 of the Regulatory Authority Act 2011;
- “Power Purchase Agreement” means an agreement entered into under section 48 between the TD&R Licensee and a Bulk Generation Licensee, approved by the Authority, whereby the TD&R Licensee contracts to purchase or acquire electricity generated by the Bulk Generation Licensee as specified in the agreement;
- “regulated activity” means an activity in the electricity sector set out in section 17;
- “regulations” means regulations prescribed under section 54;
- “Regulatory Authority fees” means the fees established to fund the operation of the Authority under section 44 of the Regulatory Authority Act 2011;
- “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;
- “retail” means the sale of electric power by the TD&R Licensee to the end-user;
- “self-supply” means generation using a system that is not interconnected to any part of the transmission and distribution network;
- “Standard Contract ” means a contract referred to in section 49;
- “TD&R ” means transmission, distribution and retail;
- “TD&R Licence” means licence granted under section 25;
- “third party” means a person other than the TD&R Licensee ;
- “transmission” means conveying power at or above 22 kilovolts (kV);
- “Utility” means the person that holds the TD&R Licence; and
- “wheeling” means the transmission and distribution of power not procured by the Utility over the transmission and distribution network of the Utility.

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(2) Unless a term is defined in this Act or the context otherwise requires, terms defined by the Regulatory Authority Act 2011 have the same meaning when used in this Act.

Relationship to the Regulatory Authority Act 2011

3 (1) This Act is sectoral legislation within the meaning of the Regulatory Authority Act 2011.

(2) To the extent possible, the provisions of this Act shall be construed consistently with the provisions of the Regulatory Authority Act 2011.

(3) In the event of an irreconcilable conflict between this Act and the Regulatory Authority Act 2011, the provisions of this Act shall prevail.

Relationship to the Bermuda Electric Light Company Act 1951

4 (1) To the extent possible, the provisions of this Act shall be construed consistently with the provisions of the Bermuda Electric Light Company Act 1951.

(2) In the event of an irreconcilable conflict between this Act and the Bermuda Electric Light Company Act 1951, the provisions of this Act shall prevail.

Application

5 This Act applies to the electricity sector, including the regulated activities that are set out in section 17.

Purposes of this Act

6 The purposes of this Act include the following, 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;
- (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;
- (f) to promote economic efficiency and sustainability in the generation, transmission, distribution and sale of electricity.

PART 2

FUNCTIONS AND POWERS OF THE MINISTER

Functions of Minister

7 (1) The Minister shall have those functions in respect of the electricity sector for which he is responsible that are specified in this Act.

(2) The Minister may issue Ministerial declarations that establish policies for the electricity sector.

(3) Section 4(3) and (4) of the Regulatory Authority Act 2011 applies for the purposes of this section.

Ministerial directions

8 (1) The Minister may, in accordance with sections 7 and 8 of the Regulatory Authority Act 2011, issue Ministerial directions to the Authority regarding any matter within his authority respecting the electricity sector.

(2) Ministerial directions shall be designed with due regard to the purposes of this Act.

(3) Ministerial directions may relate to the structure of the electricity sector; and where such directions concern companies the Minister shall consult both the Authority and the Minister responsible for the Registrar of Companies.

(4) The Minister shall not direct the Authority regarding—

(a) the application of general policies to specific matters before the Authority; or

(b) the specific rights or obligations of any individual licensee or licensees in the electricity sector.

(5) The Authority shall act in accordance with any Ministerial directions issued pursuant to subsection (1).

Trade-offs

9 (1) In formulating Ministerial directions, the Minister shall set priorities and resolve trade-offs or conflicts that arise from the purposes of this Act in the way that, in the opinion of the Minister, best serves the public interest.

(2) In determining the public interest, the Minister shall, in addition to considering Government policy, consider the purposes of this Act, public comments, and any technical analysis given by the Authority.

Publication of Ministerial directions

10 (1) Subject to subsection (2), any Ministerial directions shall—

(a) be published in the Gazette and on the official website of the Department responsible for energy; and

- (b) be available to the public at the Department responsible for energy in the form and on the terms determined by the Minister.

(2) The Minister may cause to be redacted any portion of a Ministerial direction so published if he reasonably concludes that publication of that portion of the Direction would—

- (a) jeopardise national security;
- (b) result in the disclosure of confidential, proprietary or sensitive information; or
- (c) harm the public interest.

Assistance by Department of Energy

11 There shall continue in existence a Department responsible for energy that shall—

- (a) assist the Minister in the discharge of his functions under this Act; and
- (b) have such functions as are assigned to it by this, or any other, Act.

Information and technical advice may be requested from the Authority

12 (1) The Minister, when necessary for the performance of his duties, may request the Authority to provide him with information regarding the electricity sector.

(2) The information that the Minister may obtain from the Authority under subsection (1) includes technical analyses and technical advice concerning the electricity sector and related matters.

(3) The Authority shall—

- (a) submit such information in accordance with section 6 of the Regulatory Authority Act 2011;
- (b) in its submission, identify any information to which the Authority has granted confidential treatment under section 33(5) of the Regulatory Authority Act 2011.

Delegation to the Authority

13 The Authority shall undertake such functions as may be delegated to it by the Minister from time to time in accordance with section 9 of the Regulatory Authority Act 2011.

PART 3

THE ELECTRICITY REGULATOR, ITS FUNCTIONS AND POWERS

Functions of the Authority

14 (1) The function of the Authority is generally to monitor and regulate the electricity sector.

(2) For the purposes of subsection (1), the functions of the Authority shall include—

- (a) those conferred on it by this Act, including the functions necessary to effectively and efficiently achieve the purposes set out in section 6;
- (b) subject to this Act, those conferred on it by the Regulatory Authority Act 2011;
- (c) the making of administrative determinations to provide for the control and conduct of the provision of electricity services, including—
 - (i) the grant, renewal, modification, suspension or revocation of licences for the provision of electricity;
 - (ii) transparency measures and notice requirements relating to the rates, charges and other terms and conditions for the provision of electricity services for the benefit of end-users;
 - (iii) on the advice of the Utility, the establishment and enforcement of procedures and technical standards for interconnection to the grid;
 - (iv) the establishment and supervision of technical standards for equipment used in connection with the provision or use of electricity services, including equipment used by electricity providers and equipment to be connected to the grid.

Performance of functions

15 (1) In performing its functions, the Authority shall—

- (a) conform to any Ministerial directions issued by the Minister under section 8;
- (b) have due regard to the purposes in section 6;
- (c) have due regard to the regulatory principles in section 16 of the Regulatory Authority Act 2011.

(2) Where any of the purposes of this Act and the Ministerial directions appear to be in conflict, the Minister shall resolve the conflict in such manner as best serves the public interest.

Delegation to staff

16 The Authority may exercise the powers conferred on it under section 27 of the Regulatory Authority Act 2011 to delegate any of its functions under this Act to any Commissioner or to any member of the staff.

PART 4
REGULATED AND PROHIBITED ACTIVITIES

Regulated activities

17 The regulated activities to which this Act applies are as follows—

- (a) transmission or distribution of electricity;
- (b) generation of electricity;
- (c) large scale self-supply of electricity;
- (d) retail of electricity;
- (e) sale of electricity;
- (f) wholesale purchase of electricity.

Restrictions on engaging in regulated activities without a licence

18 (1) Except as provided in section 49(1) (Standard Contract), no person shall engage in any regulated activity unless that person is authorised by a licence granted by the Authority under Part 5 to conduct that regulated activity.

(2) Notwithstanding section 5(3) to (5) of the Regulatory Authority Act 2011 and regulations thereunder, no waiver shall be granted in respect of the restrictions contained in this Act on the supply of electricity.

Prohibited activities

19 (1) No person shall engage in any prohibited activity.

(2) The following activities are prohibited activities—

- (a) wheeling; and
- (b) subject to subsection (3), receiving electricity from a person other than the TD&R Licensee.

(3) Notwithstanding subsection (2)(b), a person does not engage in a prohibited activity where—

- (a) the person receives electricity from the generator of a neighbour on adjoining property with consent;
- (b) such receipt of electricity occurs immediately following a destructive event;
- (c) that person is without receipt of the electricity supply that he was receiving from the TD&R Licensee immediately before that event;
- (d) the person only receives electricity as set out in this subsection until the TD&R Licensee restores his electrical power.

(4) In this section, “destructive event” means a hurricane, flood, or other event, whether similar to the aforementioned or not.

PART 5
LICENSING

Licences: general

20 (1) The Authority may, in accordance with this Part, by administrative determinations grant the following types of licence—

- (a) a TD&R Licence that authorises the holder to transmit, distribute and retail electricity and to purchase electricity from Bulk Generation Licensees and distributed generators;
- (b) a Bulk Generation Licence that authorises the holder to engage in bulk generation of electricity;
- (c) a Large Scale Self-Supply Licence that authorises the holder to engage in large scale self-supply of electricity.

(2) Notwithstanding subsection (1)(a), the Authority shall grant one TD&R Licence only.

(3) The TD&R Licensee shall—

- (a) ensure that all Bermuda residents are provided with access to a supply of electricity;
- (b) ensure that consumer protection provisions are in place;
- (c) provide for optimal supply, transmission, distribution and storage of electricity that are planned, organised and implemented in accordance with the Integrated Resource Plan, a balanced consideration of security of supply, consumer protection and sustainable development.

(4) Part 7 of the Regulatory Authority Act 2011 (sections 85 and 86) shall apply for the purposes of subsection (2).

[Section 20 subsection (1) amended by 2017 : 37 s. 2 effective 27 October 2017]

Application for licence

21 (1) A person that wishes to obtain or renew a licence shall submit to the Authority the application, information and documents required by general determination, together with the application fee set by the Authority.

(2) When the Authority receives an application for a licence, the Authority shall publish a notice on its official website and in the Gazette respecting such application in the form approved by the Authority.

(3) The notice published under subsection (2) shall state—

- (a) the name of the applicant;
- (b) the objects of the applicant;

- (c) that the application will be available for viewing by any member of the public at the Authority's office;
 - (d) an invitation to the public to make comments;
 - (e) the period within which any comments in relation to the issue of the licence may be lodged with the Authority;
 - (f) the address where any comments may be submitted (and that such comments may be made electronically); and
 - (g) such other particulars as may be determined by the Authority.
- (4) For the avoidance of doubt, any notice issued or revised under this section is not a statutory instrument within the meaning of the Statutory Instruments Act 1977.

Procedure for determining application

- 22 (1) Subject to subsection (2), the Authority shall determine an application in accordance with the procedure set by general determination.
- (2) The Authority may require an applicant to provide, within a time stipulated, further information necessary to determine the application.
- (3) The Authority may, on an application under section 21—
- (a) grant a licence with or without conditions; or
 - (b) refuse the application for a licence.

Criteria for grant of licence

- 23 (1) The criteria for the grant of a TD&R Licence are that the applicant is a company registered in Bermuda and—
- (a) has obtained such permission as required under the Companies Act 1981, the Development and Planning Act 1974, the Building Act 1988 and any other relevant legislation;
 - (b) has demonstrated the technical capacity required to operate such a facility reliably and safely or, in the case of a company which is not yet providing electricity services, the Authority is satisfied that such services will be carried on with the professional and technical skills appropriate to the nature and scale of its proposed regulated activity and facility;
 - (c) has demonstrated the necessary financial capacity to build and maintain the facility;
 - (d) every person who is, or is to be, a director, controller or senior executive of the applicant company is a fit and proper person to perform the functions in relation to any regulated activity carried on by the company, having regard to the probity of the applicant and its officers.
- (2) The criteria for the grant of a Bulk Generation Licence are—

- (a) the criteria listed in subsection (1) (applied with any necessary modifications) but any person may be an applicant; and
- (b) that either the applicant—
 - (i) is the TD&R Licensee or its affiliate and, subject to any written instruction of the Authority under section 44, the proposed generation complies with the Integrated Resource Plan; or
 - (ii) is another Bulk Generation Licensee and has entered into a Power Purchase Agreement with the TD&R Licensee in accordance with section 48.

(3) The criteria for the grant of a Large Scale Self-Supply Licence are the criteria listed in subsection (1) except (c) and (d) (applied with any necessary modifications), provided that any person may be an applicant.

(4) In accordance with section 48(2) of the Regulatory Authority Act 2011, the Authority may grant different classes of licence.

Form and content of licence

24 (1) A licence shall be in the form, and include the terms, as set by the Authority by administrative determination in respect of that type of licence.

(2) A licence may contain other provisions not inconsistent with the terms in the administrative determination indicated in respect of that type of licence.

(3) *[Repealed by 2017 : 37 s. 3]*

[Section 24 subsection (1) amended and subsection (3) repealed by 2017 : 37 s. 3 effective 27 October 2017]

Grant of licence

25 (1) The Authority may grant a licence if—

- (a) the applicant pays the Government authorisation fees;
- (b) the grant is consistent with the purposes of this Act and any Ministerial directions regarding the structure of the electricity sector under section 8;
- (c) the applicant meets the criteria for the grant of the type of licence to which the application relates.

(2) Section 48 of the Regulatory Authority Act 2011 applies to the grant of licences under this Act.

Conditions

26 (1) The Authority may include, as a condition of any licence, permit or other authorisation, a requirement that the licensee—

- (a) pay any fees or penalties that may be imposed by the Authority;
- (b) comply with this Act and any regulations;

- (c) comply with any administrative determinations made by the Authority;
 - (d) meet any consumer protection requirement specified by the Authority;
 - (e) if deemed to have a dominant position, comply with any remedy imposed by the Authority;
 - (f) comply with any information request issued by the Authority relating to the electricity sector; and
 - (g) participate in industry self-regulatory or co-regulatory bodies, when directed to do so by the Authority.
- (2) For the purposes of sections 47 and 48, the Authority shall include, as a condition in any TD&R Licence—
- (a) the requirement that the TD&R Licensee must provide interconnection to a Bulk Generation Licensee in accordance with those sections;
 - (b) the conditions subject to which such interconnection must be made.
- (3) The Authority may only include, as a condition of any licence, permit or other authorisation, any additional condition if the condition is adopted with the consent of the Minister.
- (4) Any condition imposed by the Authority shall be objective, proportionate, not unreasonably discriminatory and specified expressly in the authorisation.

Notice of grant

- 27 (1) The Authority shall publish notice of the grant of a licence on its official website and in a newspaper of general circulation in Bermuda.
- (2) For the avoidance of doubt, any notice issued or revised under this section is not a statutory instrument within the meaning of the Statutory Instruments Act 1977.

Term and renewal of licence

- 28 (1) Subject to section 31, the Licence shall be for the term stated in the licence which term shall not exceed 30 years.
- (2) Unless provision to the contrary is made in the licence, a licence may be renewed.
- (3) Notwithstanding section 49(5) of the Regulatory Authority Act 2011, the Authority shall not grant a temporary licence.

Modification of licence

- 29 (1) Subject to this section, the Authority may of its own motion, or with the consent of the licensee, modify a licence.
- (2) Section 51 of the Regulatory Authority Act 2011 shall apply with respect to the modification of a licence under this Act and, before taking any action pursuant to this section, the Authority shall give the licensee reasonable notice and an opportunity to

comment, and shall take into account any representations made by or on behalf of the licensee.

(3) The Authority, of its own motion or at the request of the licensee, may modify the service standards under Part 6.

Transfer of licences

30 (1) A licence shall not be transferred or assigned without the prior consent of the Authority.

(2) Transfer includes change in control of the licensee, where “control” refers to—

- (a) the power, whether held directly or indirectly, to exercise decisive influence over a licence holder, 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; or
- (b) the ownership of 25 percent or more of the shares, stocks, or other securities or voting rights, including through an agreement or arrangement of any type.

(3) The Authority shall determine whether to give consent under subsection (1) as if the transferee were an applicant for the licence.

(4) The Authority—

- (a) shall not give consent under subsection (1) before an Integrated Resource Plan has been approved under section 44(2) and published under section 45; and
- (b) shall have due regard to the Integrated Resource Plan when making its decision as to whether or not to give consent.

(5) If the Authority intends to give consent under subsection (1) to the transfer or assignment of the TD&R Licence or a Bulk Generation Licence, it shall first consult the Minister and obtain his approval.

(6) The Minister may refuse to give his approval under subsection (5), but only if he is satisfied that the Authority’s intended consent to the transfer or assignment is not in accordance with any Ministerial directions issued pursuant to sections 8 and 9.

[Section 30 subsections (4), (5) and (6) inserted by 2019 : 21 s. 2 effective 8 July 2019]

Suspension or revocation of licences

31 (1) A licence may, subject to subsection (3), be suspended in whole or in part, upon an adjudicative decision and order suspending a licence on the basis that the licensee is in breach of its obligations under the licence and the breach is such that suspension is justified and —

- (a) the suspension is confirmed on appeal under section 33; or

(b) the time limited by law for filing a notice of appeal has expired and the licensee has not filed a notice of appeal.

(2) A licence may, subject to subsection (3), be revoked by the Authority upon—

(a) the expiration of the term, without renewal;

(b) an adjudicative decision or order revoking a licence on the basis that the licensee is in breach of its obligations under the licence and the breach is such that revocation is justified and—

(i) the revocation is confirmed on appeal under section 33; or

(ii) the time limited by law for filing a notice of appeal has expired and the licensee has not filed a notice of appeal.

(3) Section 51 of the Regulatory Authority Act 2011 shall apply with respect to the suspension or revocation of a licence under this Act and, before taking any action pursuant to this section, the Authority shall give the licensee reasonable notice and an opportunity to comment, and shall take into account any representations made by or on behalf of the licensee.

Refusal of licence

32 (1) The Authority may refuse to grant a licence on either of the following grounds—

(a) the application is incomplete, and any time accorded to the applicant for completing the applications has expired; or

(b) the criteria for approval are not satisfied in the opinion of the Authority.

(2) An application is incomplete if it does not contain the information and documents required under section 21 or further information required by the Authority under section 22(2).

(3) If an application is refused under subsection (1), the Authority shall inform the applicant in writing.

(4) In the case of refusal on the ground in subsection (1)(b), the Authority shall, before refusing the application, give the applicant an opportunity to make representations regarding the proposed refusal and shall take the representations into account.

Appeal

33 (1) A person that is aggrieved by the determination of an application for the grant, modification, suspension, revocation or transfer of a licence by the Authority may appeal to the Supreme Court on that account.

(2) Section 96 of the Regulatory Authority Act 2011 applies in relation to such an appeal.

PART 6

SERVICE STANDARDS AND PRINCIPLES FOR RETAIL OF ELECTRICITY

Service standards

34 (1) The Authority shall, by general determination, set standards for reliability, power quality and customer service for the supply of electricity that are in line with industry best practice.

(2) Section 13(p) of the Regulatory Authority Act 2011 applies for the purposes of this section.

Retail tariff-setting principles

35 (1) The Authority shall determine the retail tariff in accordance with the methodology set by general determination and in accordance with the principles set out in this section.

(2) The tariff methodology shall seek to enable the TD&R Licensee to generate a total revenue that recovers reasonable costs of service incurred in achieving the service standards and, in particular, the reasonable costs in respect of—

- (a) investment if it is prudently incurred and for which the investment is used and useful;
- (b) reasonable return on investment that is commensurate with the return on investments in business undertakings with comparable risks, and that is sufficient to attract needed capital.

(3) The tariff shall seek to enable the TD&R Licensee to generate a total revenue that recovers reasonable costs of service incurred in achieving the service standards and, in particular, the reasonable costs in respect of the following expenses efficiently incurred—

- (a) operating expenses;
- (b) fuel procured for generation;
- (c) generation procured;
- (d) other expenses including—
 - (i) the Government authorisation fees and the Regulatory Authority fee; and
 - (ii) other statutory fees.

(4) The methodology set by administrative determination relating to the setting or approval of tariffs and the regulation of revenues shall—

- (a) be designed to enable an efficient licensee to recover the cost of its licensed activities, including a reasonable return as set out in subsections (2) and (3);

- (b) include information that gives end-users proper information regarding the costs that their demand imposes on the licensee's business.

(5) A licensee may not charge an end-user any other tariff or make use of provisions in agreements other than that determined or approved by the Authority pursuant to this Act and the regulations and rules.

(6) No licensee shall vary the tariff or any published schedule of prices or charges for electricity unless notice in writing of the intention to vary the tariff, and the amount of the variation, has been approved by the Authority.

(7) Section 13(o) of the Regulatory Authority Act 2011 applies for the purposes of this section.

Feed-in tariff-setting principles

36 The Authority shall determine the feed-in tariff in accordance with the methodology set by general determination and in accordance with the following principles—

- (a) the rate shall seek to allow compensation for, at most—
 - (i) the actual cost of generation that the TD&R Licensee avoids by purchasing power from distributed generation; and
 - (ii) an estimate of any economic benefits from distributed generation;
- (b) the term of validity of the tariff shall be at least equal to the expected useful lifetime of the system used and maintained efficiently.

Tariff reviews

37 (1) Within two years from the commencement date of this Part, and every five years or less as determined by the Authority, or as directed by the Minister, the Authority shall conduct—

- (a) a retail tariff review in accordance with section 35 to establish the approved retail tariff; and
- (b) a feed-in tariff review in accordance with section 36 to establish the approved feed-in tariff.

(2) The retail tariff review and the feed-in tariff review may be done at different times.

PART 7

CONSUMER PROTECTION PROVISIONS

Functions of the Authority: consumer protection

38 The Authority may make general determinations—

- (a) governing the commercial and marketing practices of the TD&R Licensee and any other sectoral participants to protect the rights of end-users and

other licensees or authorised persons, having due regard to the purposes of this Act; or

- (b) issuing or approving codes of practice relating to such practices.

Confidentiality of customer information

39 The Authority may make general determinations governing the processing, disclosure and use by the TD&R Licensee and any other sectoral participants of personal data that they obtain, subscribers or users in the course of business other than for the purpose of supplying electricity, including—

- (a) disclosure of an end-user's name, address, email address and telephone number (including fixed and mobile numbers);
- (b) use or disclosure of subscription data provided when a customer orders a service; and
- (c) any other customer-related data, as defined for this purpose by the Authority, that is obtained by the TD&R Licensee from users or sub-users.

PART 8

GENERATION PLANNING: INTEGRATED RESOURCE PLAN

Request for TD&R Licensee Integrated Resource Plan proposal

40 (1) Within two years from the commencement date, and every five years or less, as determined by the Authority, or as directed by the Minister, the Authority shall issue a notice requesting an Integrated Resource Plan proposal from the TD&R Licensee that contains—

- (a) a resource plan that includes the expected demand for the period and the state of the TD&R Licensee's existing resources; and
 - (b) a procurement plan that details how the licensee proposes to meet this demand.
- (2) The notice shall require that in preparing the proposal the TD&R Licensee—
- (a) consider—
 - (i) all possible resources, including new generation capacity, demand side resources (including demand response and energy efficiency), and retirement of generation capacity; and
 - (ii) a range of renewable energy and efficient generation options, and a prudent diversification of the generation portfolio;
 - (b) prioritise actions that most meet the purposes of this Act, conform to Ministerial directions, and be reasonably likely to supply electricity at the least cost, subject to trade-offs contained in the Ministerial directions or instructions from the Authority;

- (c) indicate recommendations regarding whether any resources will be procured through competitive bidding in accordance with section 48(7) of the Regulatory Authority Act 2011;
 - (d) include proposed limits for total distributed generation capacity over the planning period.
- (3) The notice shall be sent to the TD&R Licensee by registered mail or registered electronic mail and published on the official website of the Authority, and shall indicate—
- (a) the period, not longer than five years, which the proposal is to cover;
 - (b) the date, not later than 90 days, by which the proposal is to be sent to the Authority;
 - (c) the form and content required;
 - (d) any other guidance or instruction concerning the content and process.
- (4) For the purposes of subsection (2)(c), the Authority shall make an administrative determination establishing competitive bidding procedures.

Submission of TD&R Integrated Resource Plan proposal

- 41 (1) The TD&R Licensee shall prepare and submit to the Authority an Integrated Resource Plan proposal that complies with this Act, any administrative determinations, and the request for an Integrated Resource Plan proposal issued under section 40.
- (2) The Integrated Resource Plan must contain the requirements that are set out in section 40.

Request for comments and for other generation proposals

- 42 (1) After receipt of the Integrated Resource Plan proposal under section 41, and acceptance by the Authority—
- (a) the Integrated Resource Plan proposal shall be published on the official website of the Authority and in a newspaper of general circulation in Bermuda; and
 - (b) a notice shall be established of the availability of the Integrated Resource Plan proposal accepted under this section for review and comments by the public.
- (2) The notice shall also request the submission of proposals for bulk generation or demand side resources and contain the following information—
- (a) the period, not longer than five years, which a proposal is to cover;
 - (b) the date, not later than 60 days from the date of the notice, by which a proposal is to be sent to the Authority;
 - (c) the form and content required; and

- (d) any other guidance or instruction concerning the content and process of a proposal.
- (3) Any person that submits a proposal pursuant to a notice under this subsection (2) shall in that proposal demonstrate—
- (a) how its inclusion in the Integrated Resource Plan would result in an electricity supply that is more consistent with the purposes of this Act and Ministerial directions;
 - (b) how it uses technology that is in commercial operation in another jurisdiction.

Integrated Resource Plan consultations

43 The Authority shall hold, for each proposal received before the stipulated deadline—

- (a) at least one public consultation, whether alone or together with a consultation in respect of other proposals; and
- (b) as many meetings as the TD&R Licensee and the Authority decide necessary among the TD&R Licensee, proponents and other persons that the Authority considers relevant for assessing the proposal.

Integrated Resource Plan review and approval

44 (1) The TD&R Licensee shall prepare for the review and approval of the Authority a final draft Integrated Resource Plan that takes into consideration public comments and proposals, and implements comments of the Authority, if any.

(2) The Authority may approve the Integrated Resource Plan if, acting in accordance with the regulatory principles and any administrative determinations, it considers that the final draft Integrated Resource Plan is the best approach to meeting the purposes of the Act and complying with Ministerial directions.

Publication of Integrated Resource Plan

45 The Authority shall publish and maintain an Integrated Resource Plan approved under section 44 on its official website for the period during which it applies.

PART 9

GENERATION COMMITMENT AND PROCUREMENT

Procurement of resources

46 (1) Subject to subsection (2), the TD&R Licensee shall, in accordance with the Integrated Resource Plan approved under section 44 procure resources from third parties in accordance with this Part.

(2) The Authority may issue an administrative determination to amend any provision of the Integrated Resource Plan if the Authority considers that such amendment is needed to achieve the purposes of this Act.

Requirements for purchase of third party power

47 (1) A third party as set out in subsection (4) may enter into an agreement with the TD&R Licensee for the purchase of electrical power by the TD&R Licensee from that third party.

(2) Procurement of power shall be effected—

- (a) in accordance with generation procurement as set by administrative determination for the Integrated Resource Plan; and
- (b) under such Power Purchase Agreements agreed and approved under section 48.

(3) Interconnection for the purposes of procurement of power shall be provided on conditions that relate to—

- (a) the circumstances under which—
 - (i) interconnection must be allowed;
 - (ii) interconnection may be refused; or
 - (iii) any other circumstances that the Authority considers to be appropriate to facilitate the procurement and interconnection of third party power as set out in the Integrated Resource Plan approved under section 44;
- (b) the strengthening or upgrading of the transmission or distribution power system in order to provide for interconnection, including (subject to the approval of the Authority) such contributions towards upgrading by the potential users of such systems;
- (c) the rights and obligations of other existing or new users regarding the use of such power systems;
- (d) compliance with the Grid Code and any code of practice issued by the Authority.

(4) In this section and section 48, “third party” means a Bulk Generation Licensee.

Power Purchase Agreement

48 (1) A Power Purchase Agreement is an agreement between the TD&R Licensee and a third party for bulk generation or aggregation of demand side resources that—

- (a) establishes the terms and conditions on which the TD&R Licensee must purchase power from a third party;
- (b) requires compliance with the Grid Code; and

(c) is conditional upon the approval of the Authority and the grant of a Bulk Generation Licence.

(2) For the purpose of this Act, a third party that wishes to engage in bulk generation or aggregation of demand side resources shall seek the Authority's approval of its Power Purchase Agreement with the TD&R Licensee.

(3) The Authority shall approve a Power Purchase Agreement if the Authority is satisfied, after considering the Integrated Resource Plan, that the Power Purchase Agreement—

- (a) is consistent with the Integrated Resource Plan, the purposes of this Act and any Ministerial directions;
- (b) does not create risks to power quality or reliability, or unreasonable financial risks for the TD&R Licensee.

(4) Section 58 of the Regulatory Authority Act 2011 shall apply in relation to any disputes that may arise in connection with a Power Purchase Agreement entered into pursuant to this section.

Standard Contract

49 (1) A third party who wishes to engage in distributed generation shall apply for a Standard Contract with the TD&R Licensee in the manner, and accompanied by the information and documents as set out by administrative determination of the Authority.

(2) The TD&R Licensee shall execute a Standard Contract with a person that applies for distributed generation if—

- (a) entry by the TD&R Licensee into the contract with that third party would not put the TD&R Licensee beyond the limit of the distributed generation capacity agreed by the TD&R Licensee under the approved Integrated Resource Plan;
- (b) the contract—
 - (i) conforms to the Standard Contract template set by administrative determination;
 - (ii) authorises the purchase of power at the feed-in tariff approved by the Authority pursuant to section 36;
 - (iii) authorises generation below the licence threshold;
- (c) any permission required under the Development and Planning Act 1974 and the Building Act 1988 and any other relevant legislation has been obtained; and
- (d) the equipment that the applicant intends to use for generation complies with the Grid Code.

(2A) During any period in which there is no Integrated Resource Plan approved by the Authority under section 44(2), subsection (2)(a) shall not apply.

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(3) In this section, “third party” means a distributed generator who has a valid Standard Contract for the generation of renewable energy and its sale to the TD&R Licensee.

[Section 49 subsection (2A) inserted by 2018 : 41 s. 2 effective 30 July 2018]

Effect of Standard Contract

50 The Standard Contract authorises a distributed generator to generate electricity without a licence for a term stated in the Contract—

- (a) in accordance with the terms and conditions of the Standard Contract; and
- (b) subject to compliance with this Act and any other relevant legislation, the Building Act 1988 and any codes establishing standards for electrical systems, and any other relevant legislation.

PART 10

MONITORING COMPLIANCE; ENFORCEMENT

Dominant position

51 (1) Pursuant to section 20(2), the TD&R Licensee is deemed to occupy a dominant position in the electricity sector.

(2) Any Bulk Generation Licensee that generates 30 per cent or more of the electricity required by the TD&R Licensee is deemed to occupy a dominant position and shall continue to occupy such dominant position until such time as the Authority determines otherwise.

(3) For the purposes of this section—

- (a) sections 59 and 85 of the Regulatory Authority Act 2011 shall apply subject to any modifications that the Authority may deem appropriate and efficient; and
- (b) the Authority may impose ex ante remedies as provided in that Act.

Monitoring compliance

52 (1) Subject to subsection (2), the Authority shall use its information-gathering powers under the Regulatory Authority Act 2011, including those conferred by sections 60, 61, 62 and 89 to 92 of that Act to—

- (a) monitor compliance with this Act;
- (b) perform routine benchmarking of the transmission, distribution, and retail performance of the TD&R Licensee against international peers to ensure that the service standards remain in line with industry best practice; and
- (c) perform routine benchmarking of the electricity generation performance of Bulk Generation Licensees against international peers to ensure that the service standards remain in line with industry best practice.

(2) In accordance with section 61(5) of the Regulatory Authority Act 2011, the Authority may consider and rely on international best practices, benchmarks and data from countries that the Authority concludes are relevant to Bermuda, in the absence of sufficient evidence that is specific to Bermuda.

Enforcement

53 (1) For the purpose of the electricity sector, “enforcement proceedings” means proceedings in accordance with—

- (a) section 93 of the Regulatory Authority Act 2011; and
- (b) subsections (2) and (3).

(2) The Authority shall only issue a decision and order suspending or revoking a licence under section 31 after—

- (a) in accordance with section 51 of the Regulatory Authority Act 2011;
- (b) after conducting an investigation as provided by section 84(2) of the Regulatory Authority Act 2011;
- (c) after determining, under that section, that it is appropriate to initiate enforcement action under section 93 of the Regulatory Authority Act 2011, instead of referring the matter to the Director of Public Prosecutions; and
- (d) after conducting enforcement proceedings in accordance with section 93 of the Regulatory Authority Act 2011.

(3) In enforcement proceedings conducted for the purposes of subsection (2), the Authority may—

- (a) take any enforcement action that it has the power to take in section 93(5) of the Regulatory Authority Act 2011; or
- (b) acting under section 95 of the Regulatory Authority Act 2011, accept an undertaking in lieu of taking enforcement action.

PART 11

MISCELLANEOUS

Regulations

54 (1) The Minister, after consultation with the Authority, may make such regulations for the purposes of this Act respecting such matters as may be expedient for the purposes of this Act.

(2) Regulations made under this section are subject to the negative resolution procedure.

Engaging in regulated or prohibited activity contrary to section 18 or 19

55 (1) A person who contravenes section 18 or 19 commits an offence and is liable—

- (a) on summary conviction to a fine of \$25,000 or imprisonment for two years or to both; and
- (b) on conviction on indictment to a fine of \$50,000 or imprisonment for five years or to both.

(2) In the case of either subsection (1)(a) or (b), in the event of a continuing offence, the Court may impose a further fine of \$5,000 for every day during which the offence continues.

(3) Where any person is convicted of an offence under this section the court, where it is proved to its satisfaction that the contravention includes the illegal operation or possession of any apparatus, may order the confiscation of the apparatus.

Transfer of licence without consent

56 A person who contravenes section 30 commits an offence and is liable—

- (a) on summary conviction to a fine of \$25,000 or imprisonment for two years or to both; and
- (b) on conviction on indictment to a fine of \$50,000 or imprisonment for five years or to both.

Failure to pay fees

57 (1) A licensee commits an offence who fails to pay—

- (a) Government authorisation fees in accordance with the Government Fees Act 1965 and regulations made under it; or
- (b) Regulatory Authority fees in accordance with the Regulatory Authority Act 2011 and regulations made under it.

(2) A person who commits an offence under this section is liable—

- (a) on—
 - (i) summary conviction to a fine of \$25,000;
 - (ii) conviction on indictment to a fine of \$50,000; and
- (b) to a further fine of \$5,000 per day for every day during which the offence continues;
- (c) to pay to the Authority a sum equal to twice the amount of any fee that would have been payable pursuant to the relevant section but for the commission of the offence.

Failure to comply with safety standards

58 (1) Notwithstanding any other penalty in law, a licensee commits an offence—

- (a) if that licensee does not comply with any safety standards under the Building Code or other relevant legislation relating to electricity systems;

- (b) if that licensee's apparatus causes an obstruction or impediment to the use of any public road or street by foot passengers or others, or danger to any person on such public road or street and who does not immediately remove the obstruction or repair the apparatus.
- (2) A person who commits an offence under this subsection is liable—
- (a) on summary conviction to a fine of \$25,000 or imprisonment for two years or to both; and
 - (b) on conviction on indictment to a fine of \$50,000 or imprisonment for five years or to both.

Obstruction of the Minister or Authority

59 (1) A person shall not wilfully obstruct, or knowingly fail to comply with any request, direction or instruction of, the Minister or the Authority in the exercise of their functions under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$10,000 or imprisonment for six months or to both.

Failure to comply with a licence

60 A licensee that fails to comply with its licence otherwise than by an action that constitutes another offence under this Part is liable—

- (a) on summary conviction to a fine of \$25,000 or imprisonment for two years or to both;
- (b) on conviction on indictment to a fine of \$50,000 or imprisonment for five years or to both.

Connection of equipment contrary to safety standards

61 Notwithstanding any other penalty in law, a person who connects to the grid or to any electrical system or equipment for the generation of electricity that is non-compliant with the safety standards under the Building Code or other relevant legislation commits an offence and is liable—

- (a) on summary conviction to a fine of \$25,000 or imprisonment for two years or to both; and
- (b) on conviction on indictment to a fine of \$50,000 or imprisonment for five years or to both.

Damage to or interference with licensee's plant or apparatus

62 (1) A person shall not damage or interfere with the plant or apparatus of a licensee used for or in connection with the supply of electricity.

(2) A person who contravenes subsection (1) commits an offence and is liable—

- (a) on summary conviction to a fine \$20,000 or imprisonment for one year or to both, and a further fine of \$500 per day for every day during which the offence continues; and
 - (b) on conviction on indictment, to a fine of \$150,000 or imprisonment for five years or to both, and a further fine of \$5,000 per day for every day during which the offence continues.
- (3) If the damage is done by the owner or occupier of the property to the apparatus located on the property, it is a defence for the owner or occupier to prove that—
- (a) the apparatus was placed on the land without lawful authority;
 - (b) a notice in writing had been delivered to the person at the person's last known address to remove the apparatus within sixty days of the date of the notice; and
 - (c) the person had not done so at the time of the occurrence of the damage.

Interfering with operation of plant or apparatus including by stealing electricity

- 63 (1) A person shall not interfere with the operation of the plant or apparatus of a licensee used for or in connection with the supply of electricity, including by stealing electricity.
- (2) A person who contravenes subsection (1) commits an offence and is liable—
- (a) on summary conviction, to a fine of \$20,000 or imprisonment for two years or to both; and
 - (b) on conviction on indictment, to a fine of \$50,000 or imprisonment for five years or to both.

Offences by bodies corporate, etc.

- 64 (1) Where an offence under this Act committed by a body corporate is proved—
- (a) to have been committed with the consent or connivance of an officer of the body corporate; or
 - (b) to be attributable to any neglect on his part,

the officer as well as the body corporate commits the offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) In this section, "officer", in relation to a body corporate, means any director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body corporate and includes any person purporting to act in any such capacity.

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Repeal of Energy Act 2009

65 (1) The Energy Act 2009 is hereby repealed.

(2) Notwithstanding subsection (1), any matters relating to the electricity sector (except those that are referred to in section 68), that are pending before the Minister or the Energy Commission as at the date of commencement of this Act, or the relevant Part thereof, shall be transferred to the Authority for resolution in accordance with the procedures established by the Regulatory Authority Act 2011, subject to any modifications that the Authority may deem appropriate and efficient, depending on the status of each case.

Special provisions: existing sectoral providers

66 (1) A person that immediately before the date when Part 4 comes into operation, was lawfully generating, transmitting, distributing or retailing electric power may continue to do so without a licence under this Act—

- (a) during the period of six months beginning with that date;
- (b) if within that period the person complies with subsection (3).

(2) A person that immediately before the date when Part 4 comes into operation, was lawfully engaged in bulk generation or large scale self-supply of electricity, may continue to do so—

- (a) during the period of six months beginning with that date;
- (b) if within that period the person complies with subsection (3).

(3) A person to whom subsection (1) or (2) applies shall be granted a TD&R Licence or a Bulk Generation Licence, as the case may be, if within the period specified in those subsections that person—

- (a) pays the Government authorisation fees required under section 25(1)(a);
- (b) submits the information and documents required under section 21(1) to the extent and in the manner required by written instructions from the Authority; and
- (c) submits any further information requested under section 22(2).

(4) Where immediately before the commencement date of section 49, a person was lawfully generating electric power as a distributed generator under the authority of a valid contract with the Utility, that person may continue to do so without a Standard Contract—

- (a) during the period of six months beginning with that date;
- (b) if, before the expiration of that period, the person seeks the approval of the Authority for a Standard Contract.

(4A) For the avoidance of doubt, all persons continuing to operate pursuant to subsections (1), (2) and (4) are subject to monitoring and regulation by the Regulatory Authority.

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(5) For the purposes of subsection (4)(b), the Authority may require modifications to any prior interconnection agreement referred to in subsection (4) in order to bring such contract into conformity with this Act.

(6) The Minister may by order extend the time limit imposed pursuant to this section for further periods not exceeding 18 months in aggregate to enable compliance.

(7) An order made by the Minister under subsection (6) shall be subject to the negative resolution procedure.

[Section 66 subsection (4A) inserted and subsection (6) amended by 2017 : 37 s. 4 effective 27 October 2017]

Consequential amendment of Regulatory Authority Act 2011

67 The Regulatory Authority Act 2011 is amended as follows—

- (a) in section 19—
 - (i) in subsection (2), by deleting “three” and substituting “five”;
 - (ii) in subsection (3)(b.) by deleting the words “three years” and substituting the words “not less than one year and not exceeding three years”;
- (b) in section 21—
 - (i) by inserting after subsection (9) the following subsection—

“(9A) Where there is a vacancy on the Board that is in the process of being, or is about to be, filled pursuant to subsection (1), the Selection Committee may, on its own initiative, appoint a person who has held office as a Commissioner to serve as a Commissioner for a period not exceeding three months from the date of the appointment or until a new Commissioner has been appointed, whichever is the earlier.”
 - (ii) in subsection (10), by inserting after the words “subsection (9)” the words “or (9A)”.
- (c) in the Schedule, by deleting the full stop at the end of item 1, and adding the following item “2. Electricity.”.

Transitional: existing tariff reviews

68 Notwithstanding section 65(1), any notice of intention to vary a price or charge given to the Energy Commission in accordance with that Act and pending before the Minister or the Energy Commission immediately before the commencement date of this Act or the relevant provision hereof shall be transferred to the Authority for resolution in accordance with the procedures established by the Regulatory Authority Act 2011, subject to any modifications that the Authority may deem appropriate and efficient, depending on the status of each case.

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Binding on Crown

69 This Act binds the Crown.

Commencement

70 (1) This Act shall come into operation on such day as the Minister may by notice in the Gazette appoint.

(2) The Minister may appoint different days for different provisions of this Act.

[Assent Date: 27 February 2016]

[Amended by:

2017 : 37

2018 : 41

2019 : 21]