



BERMUDA

REGULATORY AUTHORITY (LARGE SCALE SELF-SUPPLY LICENCE) INTERIM
GENERAL DETERMINATION 2021

BR 46 / 2021

The Regulatory Authority, in the exercise of the power conferred by sections 62 and 66 of the Regulatory Authority Act 2011 and sections 6, 14, 17, 20 and 24 of the Electricity Act 2016, makes the following Interim General Determination:

Citation

1 This Interim General Determination may be cited as the Regulatory Authority (Large Scale Self-Supply Licence) Interim General Determination 2021.

Interpretation

2 In this Interim General Determination, unless the context otherwise requires, terms shall have the meaning given in the Regulatory Authority Act 2011, the Electricity Act 2016, and the Schedule to this Interim General Determination.

General purpose

3 This Interim General Determination establishes the form, on an interim basis, of the Large Scale Self-Supply Licence pursuant to section 24(1) of the Electricity Act 2016.

Determination

4 (1) This Interim General Determination is made pursuant to the Consultation entitled "Large Scale Self-Supply Licence Consultation document" dated 1 March 2021.

(2) The Authority determines that the form of Large Scale Self-Supply Licence set forth in the Schedule is consistent with the purposes of the Electricity Act 2016.

Terms and conditions of Interim General Determination

5 (1) The Schedule to this Interim General Determination has effect.

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(2) The Schedule is published on the Regulatory Authority's website (www.ra.bm), and is also available for inspection at the offices of the Authority (1st Floor, Craig Appin House, 8 Wesley Street, Hamilton HM 11) during ordinary business hours.

Effective date and expiration of Interim General Determination

6 This Interim General Determination shall become effective on the day it is published in the Official Gazette and shall expire on 31 May 2021.

Signed this 5th day of April 2021

Chairman, Regulatory Authority

[Operative Date: 06 April 2021]

**SCHEDULE TO REGULATORY AUTHORITY
(LARGE SCALE SELF-SUPPLY LICENCE)
INTERIM GENERAL DETERMINATION 2021**

This Interim General Determination is made by the Authority pursuant to sections 62 and 66 of the Regulatory Authority Act 2011 (“RAA”) and establishes the form of the Bulk Generation Licence. The adoption and implementation of this Bulk Generation Licence is in accordance with sections 6, 14, 17, 20 and 24 of the Electricity Act 2016 and the general powers granted to the Authority under section 13 of the RAA and in accordance with the procedures established for this purpose in sections 61 and 62 of the RAA.

1 Interim Determination

(1) Pursuant to section 62 of the RAA and in accordance with sections 6, 14, 17, 20 and 24 of the EA using the general powers granted to the Authority under section 13 of the RAA and in accordance with the procedures established for this purpose in section 62 of the RAA, the Authority hereby determines as follows.

(2) The form of Large Scale Self-Supply Licence set forth in the Annex is consistent with the purposes of the Electricity Act 2016, including to seek to—

- (a) ensure the adequacy, safety, sustainability and reliability of electricity supply in Bermuda;
- (b) encourage electricity conservation and the efficient use of electricity;
- (c) promote the use of cleaner energy solutions and technologies;
- (d) provide sectoral participants and end-users with non-discriminatory interconnection to transmission and distribution systems;
- (e) protect the interests of end-users with respect to prices and affordability, and the adequacy, reliability and quality of electricity service; and
- (f) promote economic efficiency and sustainability in the generation, transmission, distribution and sale of electricity.

2 Waiver of provisions of Regulatory Authority (Application Process for Electricity Licences) General Determination 2017

For the purposes of applying for Large Scale Self-Supply Licence during the currency of this Interim General Determination, the Authority may waive by order any provision of the Regulatory Authority (Application Process for Electricity Licences) General Determination 2017 in considering any application submitted.

ANNEX

DATED

[###]



LARGE SCALE SELF-SUPPLY LICENCE

granted to

Licensee:

Address:

Licence Number:

Issue Date:

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

The Regulatory Authority of Bermuda (the "RA"), in exercise of the powers conferred to it by the Electricity Act 2016 (the "EA") hereby grants to [###], having its registered office [###], a licence (the "Licence"), to engage in the Large Scale Self-Supply 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 [###] 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 has the same meaning as in section 2(1) of the EA.

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

"**Condition**" means a condition of this Licence.

"**Control**" has the same meaning as in section 30(2) of the EA, and cognate terms shall be construed accordingly.

"**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 including the Clean Air Act 1991 and any amendments.

"**General Determination**" has the meaning defined in the RAA.

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

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

"**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 its 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.

"Large Scale Self-Supply" means the generation and own consumption of electricity using a system with an installed capacity at or above the Licence Threshold.

"Large Scale Self-Supply Business" means the authorised business of the Licensee relating to the Large Scale Self-Supply pursuant to this Licence.

"Large Scale Self-Supply Standards" means service standards set out by the RA from time to time relating to the Large Scale Self-Supply generation and own consumption of electricity pursuant to this Licence.

"Law" means the laws of Bermuda.

"Licence" means this Large Scale Self-Supply Licence granted to the Licensee by the RA pursuant to the provisions of the EA and the Schedules and Annexes hereto.

"Licensee" means *[insert name of Licence holder]*.

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

"Minister" means the Minister responsible for energy in Bermuda.

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

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

"Premises" means the property on which the Generation Facilities are situated, and any adjacent property owned by the Licensee or its Affiliate on which the generated electricity will be consumed.

"RA" means the Regulatory Authority of Bermuda.

“System” means the network and equipment necessary to provide electricity for consumption.

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, irrespective as to whether the term is capitalized in such legislation;
- (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 this 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 Large Scale Self-Supply of electricity from the Generation Facilities.

2.2 The Licensee shall not, and shall ensure 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 or provide electricity in Bermuda to any person;

- (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 to its own System; and
- (e) engage in the distribution or supply of electricity to any premises except its own Premises.

2.3 Nothing in this Licence shall relieve the Licensee of its obligations to comply with any other requirement imposed by provision of Law or 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 RA 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 RA'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) 31 May 2021; 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 RA with a written request by no later than 12 months prior to the end date of the Licence pursuant to Condition 13. Such extension request may be granted or denied by the RA acting in its sole discretion.

PART II - CONDITIONS

4 COMPLIANCE

4.1 The Licensee shall comply with:

- (a) the Conditions of this Licence, including any Schedules or Annexes 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 RA pursuant to the RAA and the EA;
- (f) any Administrative Determinations made by the RA pursuant to the RAA and the EA;
- (g) the EA;
- (h) the RAA; and
- (i) any other applicable Law, enactment, Administrative Determination, regulation or order in effect in Bermuda to which the Licensee is subject.

4.2 Where there is an irreconcilable conflict between any applicable provision of Law, regulation, Administrative 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 RA, and this Licence.

6. MODIFICATION OF THE LICENCE

6.1 The Licence may be modified:

- (a) by the RA 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 RA pursuant to section 29 of the EA and Section 51 of the RAA;
- (c) by the RA following an enforcement proceeding, pursuant to the provisions of section 93 of the RAA; or
- (d) by the RA following any change of Control of the Licensee's Large Scale Self-Supply Business pursuant to the operation of sections 21, 22 and 30 of the EA.

7 ENFORCEMENT, SUSPENSION AND REVOCATION

- 7.1 The RA may initiate enforcement proceedings pursuant to section 53 of the EA and section 93 of the RAA.
- 7.2 The RA 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 RA shall be entitled to suspend this Licence in accordance with sections 31 and 53 of the EA and section 51 of the RAA. The RA may, in its sole discretion, lift an on- going suspension and re-instate the Licence.

8 SURRENDER OF LICENCE

- 8.1 Unless the RA agrees otherwise, the Licensee shall be entitled to surrender this Licence upon giving the RA at least 1 months' notice of its intention to do so.
- 8.2 Unless the RA agrees otherwise, the Licensee shall not, during the term of its Licence, be entitled to cease fulfilling its duties in terms of its Licence.

9 PROVISION OF INFORMATION TO THE AUTHORITY

- 9.1 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 RA, furnish to the RA in such manner and at such reasonable times as the RA may reasonably require, such Information relating to the electricity sector including any Information reasonably required by the RA in order for it to comply with its obligations under section 52 of the EA.
- 9.2 Subject to the provisions of Part 8 of the RAA and any applicable General Determination by the RA, the Licensee shall permit the RA or persons designated by the RA to examine, investigate or audit, or procure such assistance as the RA may reasonably require to conduct an examination, investigation or audit of, any aspect of the Large Scale Self-Supply Business.
- 9.3 Subject to the provisions of section 92 of the RAA and any applicable General Determination by the RA, the Licensee shall permit the RA or persons designated by the RA to enter the Premises, and shall facilitate reasonable access by them to the Premises, to conduct an inspection, examination, investigation or audit of the Licensee.
- 9.4 The Licensee shall notify the RA 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.

10 ASSIGNMENT

- 10.1 This Licence shall not be transferred or assigned without the prior consent of the RA and section 30 of the EA shall apply accordingly.

10.2 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 RA.

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

11 ENVIRONMENTAL MATTERS

11.1 The Licensee shall comply with applicable Environmental Laws.

12 INDEMNIFICATION

12.1 The Licensee shall indemnify the RA 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 RA shall provide the Licensee with notice of any such actions, claims and demands, but the RA's failure to do so shall not relieve the Licensee of any obligations imposed on the Licensee by this Condition.

13 NOTICES

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

13.2 Unless the RA determines otherwise, notices from the Licensee to the RA under the Licence shall be in writing and sent by electronic mail to the Chief Executive of the RA to electricity@ra.bm.

SCHEDULE
Generation Facilities

[To be inserted]