



REGULATORY
AUTHORITY

Bermuda

Consultation:

**Development of TD&R
Electricity License for
Bermuda**

Consultation Document

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1 INTRODUCTION

1. The Electricity Act 2016 ("EA") received Royal Assent on 27th February 2016. The EA came into operation on 28th October 2016 pursuant to the Electricity Act 2016 Commencement Day Notice 2016 (BR 101/2016). The EA repealed the Energy Act 2009.

2. The Regulatory Authority of Bermuda ("Authority") is the sole body responsible for regulation of the electricity sector and its overarching responsibilities are to:

- regulate tariffs and the quality of service provision to end users;
- ensure that access to electricity infrastructure by current and prospective generators is transparent, fair, reasonable, and non-discriminatory; and
- investigate and respond to complaints from end users as regards the provision of electricity.

3. Section 17 of the EA provides that no person shall engage in the following regulated activities unless authorised by a licence granted by the Authority:

- (a) the transmission and distribution of electricity;
- (b) generation of electricity (unless generation is below the specified licence threshold), large scale self-supply of electricity;
- (c) retail of electricity;
- (d) sale of electricity; and
- (e) wholesale purchase of electricity.

4. Pursuant to Sections 20 and 24 of the EA, the Authority intends, by Administrative Determination, to grant three types of electricity licenses:

- (a) one¹ TD&R Licence that authorises the holder to transmit², distribute³ and retail⁴ electricity and to purchase electricity from Bulk Generation Licensees⁵ and distributed generators⁶;
- (b) a Bulk Generation Licence that authorises the holder to engage in bulk generation of electricity; and

¹ See Section 20 (2) of EA.

² Convey electricity at or above 22 kilovolts.

³ Convey electricity below 22 kilovolts

⁴ Sell power to commercial, residential and industrial customers (i.e. end-users).

⁵ Persons who are generating electricity using a system with an installed capacity at or above a specified threshold/licence threshold (as prescribed in Regulations made by the Minister).

⁶ Means end-users who generate electricity using a system with an installed capacity below the licence threshold.

(c) a Large Scale Self-Supply⁷ Licence that authorises the holder to engage in large scale self-supply of electricity.

5. Section 24(1) of the EA provides that the TD&R Licence shall be in the form and include the terms as indicated in Schedule 1 of the EA. Accordingly, the Minister may use this Consultation Document and the TD&R Licence as the basis for Schedule 1 of the EA.

6. The purpose of this Consultation Document is to consult on one of the electricity licenses — the TD&R Licence — which is proposed to be issued to Bermuda Electricity Light Company Limited (“BELCO”). At the conclusion of the consultation process, the Authority will enact a General Determination setting forth the TD&R Licence.

⁷ Means generation using a system that is not interconnected to any part of the transmission or distribution network.

2 CONSULTATION PROCEDURE

7. This consultation is being undertaken in accordance with Sections 69 to 73 of the RAA. The procedure and accompanying timelines (as set out in Section 70 of the RAA), under which this consultation is taking place has been set out in Part 1 below.

8. Written comments should be submitted before 5:00 PM (Bermuda time) on 29 May 2017.

9. The Authority invites comments from members of the public, electricity sectoral participants and sectoral providers, and other interested parties. The Authority requests that commenting parties, in their responses, reference the numbers of the relevant questions, as set forth in this Consultation Document, to which they are responding. A complete list of questions presented by this Consultation Document appears in Section 5.

10. Responses to this Consultation Document should be filed electronically in MS Word or Adobe Acrobat format. Parties filing comments should go to the Authority's website, www.rab.bm, follow the link to the Consultations and Response page, and click the "Click here to submit a response" icon which appears at the top of the page. All comments should be clearly marked "Response to Consultation Document: Comments on TD&R Electricity Licence" and should otherwise comply with Rules 18 and 30 of the Authority's Interim Administrative Rules, which are posted on the Authority's website.

11. The Authority intends to make responses to this Consultation Document available on its website. If a commenting party's response contains any information that is confidential in nature, a clearly marked "Non-Confidential Version," redacted to delete the confidential information, should be provided together with a complete version that is clearly marked as the "Confidential Version." Redactions should be strictly limited to "confidential information," meaning a trade secret, information whose commercial value would be diminished or destroyed by public disclosure, information whose disclosure would have an adverse effect on the commercial interests of the commenting party, or information that is legally subject to confidential treatment. The "Confidential Version" should highlight the information that has been redacted. Any person claiming confidentiality in respect of the information submitted must provide a full justification for the claim. Requests for confidentiality will be treated in the manner provided for in Rule 30 of the Authority's Interim Administrative Rules.

12. The principal point of contact at the Authority for interested persons for this Consultation Document is Nigel Burgess. He may be contacted by email, referencing "Comments on TD&R Electricity Licence" at electricity@RAB.bm or by mail at:

Nigel Burgess
Regulatory Authority
1st Floor, Craig Appin House
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Hamilton, Bermuda

13. In this Consultation Document, except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them by the EA, the RAA and the Interpretation Act 1951.

14. This Consultation Document is not a binding legal document and does not contain legal, commercial, financial, technical or other advice. The Authority is not bound by this Consultation Document, nor does it necessarily set out the Authority's final or definitive position on particular matters. To the extent that there might be any inconsistency between the contents of this Consultation Document and the due exercise by the Authority of its functions and powers, and the carrying out of its duties and the achievement of relevant objectives under law, such contents are without prejudice to the legal position of the Authority.

3 LEGISLATIVE FRAMEWORK RELATING TO ELECTRICITY LICENCES

15. The Regulatory Authority Act 2011 ("RAA") established a cross-sectoral independent and accountable regulatory authority "to protect the rights of consumers, encourage the deployment of innovative and affordable services, promote sustainable competition, foster investment, promote Bermudian ownership and employment and enhance Bermuda's position in the global market".

16. In June 2015, the Ministry of Economic Development of Bermuda (the "Ministry") published the National Electricity Sector Policy (the "Policy Document"). The Policy Document set out the groundwork for the institution of the subsequent Electricity Act and the desired structure of the Bermudian electricity sector.

17. The Electricity Act 2016 ("EA") received Royal Assent on 27th February 2016. The EA came into operation on 28th October 2016 pursuant to the Electricity Act 2016 Commencement Day Notice 2016 (BR 101/2016). The EA repealed the Energy Act 2009.

18. The Minister responsible for energy is the Minister for Economic Development (the "Minister"). The Minister can issue Ministerial declarations that establish policies for the electricity sector⁸ and can also issue Ministerial directions to the Regulatory Authority of Bermuda (the "Authority") regarding any matter within his authority as regards the electricity sector⁹. In formulating Ministerial directions, the Minister shall set priorities and resolve tradeoffs or conflicts that arise from the purposes of the EA in a way that he thinks best serves the public interest¹⁰.

19. The EA grants various functions to the Authority. Section 14 of the EA provides that the function of the Authority is generally to monitor and regulate the electricity sector. Section 14(2)(c) provides that the functions of the Authority shall include, amongst other things, the making of Administrative Determinations¹¹ to provide for the control and conduct of the provision of electricity services including the grant, renewal, modification, suspension or revocation of licenses.

20. In accordance with the Policy Document, the reformed electricity sector in Bermuda will introduce competition between existing generation facilities, prospective third-party bulk generators (i.e., IPPs), distributed generators (DGs), and other demand-side resources. In order to ensure that greater efficiency is achieved while maintaining an appropriate level of overall system reliability it is therefore necessary to ensure that the costs and benefits of all competing resources are considered when developing future investment plans to ensure that these plans are efficient. Since the TD&R Licensee will

⁸ Section 7(2) of EA.

⁹ Section 8(3) of EA.

¹⁰ Section 9 of EA.

¹¹ Defined in the Regulatory Authority Act 2011 (the "RAA") as including a General Determination, order (issued by Authority), direction of the Authority, decision issued by Authority or other written determination by which the Authority establishes the legal rights and obligations of one or more Sectoral Participants (i.e. person who provides, uses or seeks to use a good or service in the energy sector but does not include the Authority) but does not include an advisory guideline (i.e. written statement issued by Authority that provides Authority's views regarding a specific matter but is not legally binding) or an adjudicative decision and order (means decision and order following an adjudication conducted in accordance with Sections 74 to 83 of the RAA). General Determination is defined as a statutory instrument made pursuant to Section 62 of RAA that is applicable to all Sectoral Participants or categories of Sectoral Participants as fall within the scope of the Statutory Instrument.

from time to time be required to evaluate a diverse set of competing proposals for how to meet future demand it is important that the Authority ensures that all relevant market participants will be treated equally and are able to access the grid on transparent, fair, reasonable, and non-discriminatory terms.

21. Given that there will be one TD&R Licensee at any point in time, and it therefore would continue to be a monopoly provider of the applicable services in the electricity sector, and the fact that the TD&R licensee is required to develop the IRP, the focus of the Authority will be on, inter alia:

- regulating end user tariffs according to the efficient costs of meeting the aims and objectives set out in the Policy Document;
- establishing best practice criteria and standards with the TD&R Licensee and monitoring the TD&R Licensee's quality of service performance and incentivizing or otherwise enforcing performance improvements where necessary;
- periodically requesting, reviewing and approving, as appropriate, the IRP provided by the TD&R; and
- ensuring consumer interests are met through enforcement of best practice established in codes of practice for the treatment of consumers and pricing.

22. This remainder of this Consultation Document explains and seeks views on the proposed terms and conditions for the TD&R Licence to be granted to BELCO.

4 TRANSMISSION, DISTRIBUTION AND RETAIL LICENCE TO BE GRANTED TO BELCO

23. In order to enable the Authority to carry out its duties effectively and efficiently it will, inter alia:

- establish a system-wide quality of service performance standard that is consistent with the Policy Document and which will be the responsibility of the TD&R licensee to deliver;
- establish a retail tariff setting methodology that will be based on assessment of efficiently incurred costs using a variety of benchmarking approaches;
- develop cost accounting guidelines for BELCO's licensed entities to ensure cost transparency;
- establish requirements for the IRP and providing guidance to the TD&R licensee on the process for stakeholder engagement during the development of the IRP;
- establish requirements for the development of a grid code that will set out the terms for access to the TD&R Licensee's network;
- establish the guidelines for approval of Power Purchase Agreements between the TD&R Licensee and third-party bulk generators as well as the terms and conditions for bulk generation procurement by the TD&R Licensee from BELCO's affiliated bulk generation licensee; and
- develop guidance on the assessment of system-wide costs and benefits of alternative bulk generation, distributed generation, and demand side resources in order to ensure that the lowest cost mix of resources used to meet demand is procured.

24. The Authority anticipates certain regulations and instruments will need to be instituted to implement the electricity licenses in Bermuda. Pursuant to Section 69 of the RAA, the Authority may initiate a public consultation to adopt an Administrative Determination.

25. Compliance with licenses issued to market participants will be an on-going activity and enforcement proceedings will be initiated where necessary. The Authority notes that the electricity licenses will evolve over time. Furthermore, there may be licence conditions that can be modified or removed in the future once the grid code, supply code, service levels, and other performance standards have been implemented.

26. As mentioned earlier in this Consultation Document, Section 26 of the EA provides an exhaustive list of items which the Authority may include as conditions in any of the types of licenses specified in Section 20 of the EA without seeking the Minister's consent. Such items include a requirement that the licensee pay any fees or penalties that may be imposed by the Authority and that the licensee complies with any information request issued by the Authority relating to the electricity sector.

27. As provided for in the EA, the Authority will carry out its duties in respect of consumer protection by implementing a complaints handling procedure.

28. In developing the standard terms and conditions of the electricity licenses, the Authority considers that it is unnecessary to restate every applicable obligation contained in the EA and RAA in the draft licenses, although where it believes clarity is assisted some provisions have been included. The relevant provisions of the EA and RAA will apply to all licence holders without regard to whether they are repeated in the licenses. As a general point, the Authority has included in the licenses only those substantive provisions of the EA and RAA which direct the Authority to undertake specific tasks or which require clarification in the licenses.

29. We have not, in this Consultation Document, sought to explain each condition of the draft TD&R Licence attached at Appendix A on the basis that a large majority of them are self-explanatory. However we set out below the rationale for those conditions of the draft TD&R Licence which, in our view, electricity sector participants in Bermuda and the general public as a whole would benefit from having a more thorough explanation.

4.1 Obligations regarding Integrated Resource Plan

30. Within two years of the commencement date of the EA 2016 (by 28 October 2018) and every five years (or less, as determined by the Authority), the Authority shall issue a notice requesting an integrated resource plan (the “IRP”) from BELCO (in its capacity as the TD&R Licensee).

31. The IRP is a necessary input in achieving the following objectives of the RA, as per the EA (6):

- (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; and
- (d) to promote economic efficiency and sustainability in the generation, transmission, distribution and sale of electricity.

32. The IRP will include:

- (a) the expected demand for the period and state of BELCO’s existing resources;
- (b) a procurement plan that details how BELCO proposes to meet this demand.

33. Section 40 of the EA requires that in preparing the proposal BELCO is to consider, *inter alia*:

- (a) all resources (including generation capacity, demand side resources and retirement of generation capacity);
- (b) a range of renewable energy and efficient generation options; and
- (c) a prudent diversification of the Bermudian electricity generation portfolio; and

34. A range of financial planning information and models which will be provided to the Authority at the level of individual projects necessary to allow the Authority to assess the efficiency of the IRP, to track the delivery of individual projects, and to incentivize efficient procurement.

35. The IRP must also prioritise actions that are reasonably likely to supply electricity at the least cost, subject to any directions received from the Minister or the Authority concerning the overarching policy objectives, and indicate recommendations regarding whether any resources will be procured through competitive bidding in accordance with Section 48(7) of the RAA.

36. As regards the overarching regulatory objectives related to the promotion of renewable generation, the Authority notes that it is possible that with greater reliance on renewable generation the costs of maintaining an acceptable level of overall system reliability could increase significantly due to intermittency. The IRP will therefore need to incorporate a balanced assessment of these considerations and enable the Authority to test a range of fuel mix and generation scenarios to advise the Minister on the appropriate trade-offs.

37. The IRP proposal must also provide proposed limits for total distributed generation capacity over the planning period.

4.2 Procurement of New Generation Capacity

38. Section 46 of EA provides that the TD&R Licensee must procure resources from Bulk Generation Licensees in accordance with the approved IRP (pursuant to Section 44 of the EA).

39. The TD&R Licensee must ensure that future generation is procured in a way that meets the Government's policy objectives (i.e. affordability, reliability and sustainability) as well as the policy objective of delivering competition in the Bermudian electricity market. The procurement of new generation capacity should be consistent with the Authority's objectives as defined in the EA:

- (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; and
- (f) to promote economic efficiency and sustainability in the generation, transmission, distribution and sale of electricity.

40. The Authority considers that a net benefit test needs to be developed in order for TD&R Licensee and the Authority to fairly, consistently and properly evaluate proposed third-party investments in new generation from any independent power provider (“IPP”), distributed generator, or demand-side resource provider. In particular, such a methodology ought to ensure that any decision by the TD&R Licensee to allow access to the TD&R infrastructure is consistent with achieving a desirable level of competition and at the lowest overall cost for the electricity system. Equally, it would be important that the TD&R Licensee did not allow access to a potential access seeker if it unduly raised costs to end-users.

41. One way of achieving this would be to establish a requirement that access be provided to those generation or demand-side resources on terms which ensure that the benefits of access are greater than or equal to the costs imposed on the system overall. Put differently, this requirement would imply that only those technologies that result in net positive benefits would be granted access.

42. Under the net benefit test:

- (a) the assessment of ‘benefits’ would include the avoided fixed and variable costs of the electricity system as well as an appropriate valuation of the environmental benefits due to lower overall emissions; and
- (b) the assessment of ‘costs’ would include the incremental costs of additional network infrastructure and system balancing requirements as well as an appropriate valuation of the costs of ‘stranded’ generation capacity (that is, where the recovery of sunk costs is insufficient due to the introduction competition between generation and demand-side resources).

43. The net benefit test is based on an evaluation of the incremental benefits and costs of a scenario where access is allowed compared to a counterfactual (or ‘but-for’) scenario where access is not granted. This test would ensure that all prospective entrants and the incumbent generators are subject to an efficient competitive restraint.

44. The Authority considers the introduction of an appropriate net benefit test is preferable to the Authority running generation auctions as this is a complex procedure and requires significant resources and skills.

4.3 Service Standards and Performance Standards

45. Section 34 of the EA provides that the Authority must set standards for reliability, power quality and customer service for the supply of electricity that are in line with industry best practice. The Authority must set such standards by way of a general determination.

46. The TD&R Licensee should be required to comply with some measure of system reliability in order to incentivize the efficient planning of new generation asset investments. Targeting an excessively high or unduly low level of system reliability could result in greater costs to end-users in the form of idle capacity and disruptions to economic activity. Equally, there are costs imposed on users from an inefficiently low reliability standard. It is important to balance the costs and benefits associated with choosing acceptable reliability, power quality, and customer service standards.

47. The TD&R Licence provides for the Authority to obtain information from the TD&R Licensee as regards compliance with service standards set by the Authority and provides for the Authority to impose financial penalties on BELCO if it fails to comply with its required service standards.

48. As regards a system reliability and availability standard, this can be operationalized in several ways. A commonly used measure of expected system reliability in other markets is the loss of load probability (LoLP) which provides a probabilistic measure of system reliability.

49. Enforcement of the chosen reliability standard can be achieved by introducing it as a specific system design requirement in the development of the IRP and monitoring of actual system reliability (whether affected by generation capacity non-availability or network failures) to ensure that there are no material deviations from the system design requirement.

In addition to standards for system reliability which address investment planning at the generation level and network performance, the Authority considers that additional standards are required to ensure safety (e.g. occupational and customer safety performance), connection targets and customer satisfaction standards¹² ought to be defined and introduced together with appropriate incentive schemes.

50. Pursuant to Condition 14 of the TD&R Licence, BELCO shall provide to the Authority a report setting out the extent to which service standards and performance standards have been met or not met. Any non-compliance with such standards may result in financial penalties being imposed by the Authority.

4.4 Separate Accounting for BELCO TD&R and BELCO Bulk Generation Licensees

51. It will be important for the Authority to be able to analyse the investment and operating expenses of the TD&R Licensee and the BELCO Bulk Generation Licensee separately. For example, this will allow the efficiency of operating costs of generation,

¹² For example, these measures could include: average time to connect new customers, average time to answer calls at call centre, time to investigate distribution fault, time to correct distribution fault, time to make new connection, time within able to reconnect after disconnection, response to billing complaint, time to investigate voltage complaint.

transmission, distribution and retail activities to be benchmarked against suitable international comparators.

52. The Authority considers that specific licence conditions are necessary in order to ensure that robust and separate accounts are compiled so as to provide:

- (a) a distinction between the accounts of BELCO and its parent company, Ascendant; and
- (b) accounting separation between BELCO's activities that are separately licensed under the EA, that is, transmission, distribution and retail as distinct from bulk generation.

53. This will enable disaggregated cost data to be provided to the Authority periodically and so will provide a basis for cost monitoring by the Authority. This level of cost transparency is a necessary to enable the Authority to develop the full suite of regulatory controls and incentives provided for in the EA.

54. Accordingly, Condition 11 of the TD&R Licence provides for BELCO to have accounting separation between its generation and TD&R businesses:

- (a) a profit and loss account;
- (b) a balance sheet; and
- (c) a cash flow statement.

55. Consolidated financial accounts must be provided in each financial year. Accounting statements must be supported with a report by BELCO's auditors confirming their accuracy and adherence to the Authority's accounting guidelines. These accounting guidelines will include the principles of the prohibition of cross subsidies and non-discrimination between BELCO's licencees and third parties will apply.

4.5 Disposal of Relevant Assets

56. The Authority considers that certain assets of the TD&R Licensee are essential for it to perform its functions under the EA and the TD&R Licence. Accordingly, the Authority considers it is essential that the licensee does not dispose of or relinquish control over such assets, other than with the consent of the Authority.

57. Pursuant to Condition 15 of the TD&R Licence, the licensee is not permitted to create any security, dispose of, or relinquish control over any asset necessary for the undertaking of any of its obligations under the TD&R.

4.6 Ringfencing

58. The Authority considers that it should be able to impose financial restraints (e.g. on dividend payments) where there are justified concerns about the financial health of a Licensee or the condition of a Licensee's physical assets.

4.7 Non-discriminatory access to TD&R infrastructure

59. A transmission owner who also owns generation assets has the incentive to discriminate against other third party generators or providers of demand-side resources in favour its affiliated businesses. To the extent that competing generators already have access to the network, the TD&R Licensee also has the ability to discriminate by setting high access prices, reserving transmission capacity for its own generating units, or restricting access by third parties to relevant information (e.g. changes in available capacity over time). Conditions to prevent this from happening will need to be included in the TD&R Licence. Accordingly, see:

- (a) Condition 28.1 (Central Dispatch);
- (b) Condition 28.2 (Merit Order); and
- (c) Condition 13 (Prohibition on Cross Subsidies).

60. In order to proactively address any issues relating to discriminatory access to the network, a grid connections policy must also be developed.

61. This policy must consider various types of participants in the electricity market (e.g. IPPs and distributed generators as well as demand-side resource providers) and develop a methodology as to whom should bear what costs associated with grid connection in each circumstance. For example, distributed generator connections will have associated costs from metering, network connection, reinforcement as well as standby and top up power charges. This policy can be designed in conjunction with the net benefit test.

62. Condition 19 of the TD&R Licence deals with this issue and sets out that BELCO shall not discriminate as between any person/class or classes of persons in the carrying out of works for the purpose of connecting to the Grid System (the "Grid Access Services"). Any differing amounts charged by BELCO to such person/class or classes of persons, must, to the satisfaction of the Authority, reflect the difference of providing the Grid Access Services to the requisite category of person/class or classes of persons. Terms and conditions under which Grid Access Services are offered/undertaken must also reflect this difference.

4.8 Retail Tariff and Price Control/Restriction on Revenue

63. Section 35 of the EA (Retail tariff-setting principles) provides that the Authority shall determine the retail tariff in accordance with the methodology set by general determination (and in accordance with Section 35 of the EA).

64. Section 36 of the EA (Feed-in tariff setting principles) provides that the Authority shall determine the feed-in tariff in accordance with the methodology set by general determination (and in accordance with Section 36 of the EA).

65. In order to incentivize new generation and network investments, the Authority considers that the development of a tariff setting mechanism is necessary to provide investors with some assurance of regulatory stability.

Retail tariff-setting principles (Section 35 of the EA)

66. The Authority will determine the retail tariff in accordance with the methodology set in Section 35 of the EA. Such methodology, which is set by general determination, seeks to enable BELCO to generate a total revenue that recovers reasonable costs incurred to achieve standards for the supply of electricity that are in accordance with industry practice as regards:

- (a) reliability;
- (b) power quality; and
- (c) customer service.

67. The methodology permits the recovery by BELCO of:

- (a) reasonable costs of service incurred, which include:
 - (i) operating expenses;
 - (ii) fuel procured for generation;
 - (iii) generation procured; and
 - (iv) other expenses (which include fees payable to Government and the Authority); and
- (b) costs of its licensed activities.

68. The methodology also envisages the recovery of reasonable costs of:

- (a) prudent investment; and
- (b) a reasonable return on that investment which is commensurate with the return on investments for business undertakings exposed to comparable risks, the level of such return needing to be sufficiently high enough to attract the necessary financial capital.

69. In addition, end users will be provided information regarding the costs that their electricity demand imposes on BELCO's business.

70. Under the EA, BELCO is not permitted to vary the retail tariff or to charge any other tariff in respect of the retail of electricity (other than that set by general determination, as outlined above) to end users.

Feed-in setting principles (Section 36 of the EA)

71. Similar to the retail tariff, the feed-in tariff is also determined by the Authority and set by general determination. The rate set, shall seek to allow compensation for:

- (a) the actual cost of generation that BELCO avoids by purchasing electricity from distributed generation and an estimate of any other economic benefits or costs arising from distributed generation; and
- (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.

72. Pursuant to Section 37 of the EA, within 2 years from the commencement of the EA (by 28 October 2018), and every five years or less, the Authority shall conduct a review of both the retail and feed-in tariffs, such review is based on the principles on which the respective tariffs are set. The reviews may, but do not have to be, undertaken concurrently.

4.9 Obligations to enter into Power Purchase Agreements

73. Where the capacity of a generator of electricity is at or exceeds 500kW, such generator will require a Bulk Generation Licence before it is able to sell such electricity to the TD&R Licensee. In such instances, the TD&R Licensee shall be required to enter into a PPA with the Bulk Generation Licensee before it can purchase the electricity. The EA requires that the Authority must approve a PPA before it becomes effective in order to ensure that: (i) it is consistent with the TD&R Licensee's IRP, the purposes of the EA and any Ministerial directions; and (ii) it does not create risks to the power quality or reliability, or unreasonable financial risks of the TD&R Licensee.

4.10 Obligation to enter into Standard Contracts

74. Where the capacity of a generator of electricity is below 500kW, the TD&R Licensee shall enter into a Standard Contract with such generator. In accordance with Sections 49 and 50 of the EA, the Standard Contract must (i) conform to a form set by the Authority by way of administrative determination and (ii) authorise the purchase of electricity by the TD&R Licensee at the feed-in tariff rate approved by the Authority (pursuant Section 36 of the EA). Condition 27.1 of the TD&R Licence provides for this obligation.

4.11 Performance monitoring

75. The Authority considers that it would be necessary to impose sanctions on the TD&R Licensee if it persistently fails to meet service and performance standards. Furthermore, given BELCO's position as a transmission, distribution and retail monopoly, the Authority will need to be able to intervene in certain circumstances where BELCO continues to fail to meet Licence Conditions and/or material performance standards at a fundamental level.

76. Accordingly Condition 7 of the TD&R Licence provides that the TD&R Licensee furnish to the Authority any information relating to the electricity sector (in accordance with the provisions of Part 8 of the RAA).

77. In addition, Condition 7 obliges the TD&R Licensee to permit the Authority and/or its representatives to examine, investigate or audit any aspect of the TD&R Licensee's business. Condition 7 therefore allows the Authority to both monitor the TD&R

Licensee's stewardship of its TD&R assets and perform inspections for the purposes of verifying TD&R Licensee's compliance with the TD&R Licence and applicable laws and in doing so permits the Authority to exercise regulatory monitoring functions.

78. Additionally, Condition 9 provides that if BELCO were to become insolvent the Authority shall be entitled to revoke its Licence. Furthermore BELCO must provide reasonable assistance to any new provider of transmission, distribution and retail electricity services as notified to BELCO by the Authority.

4.12 Consumer protection

79. The EA requires that the Authority protects the interests of end users with respect to prices and affordability as well as the adequacy, reliability, and quality of electricity services. Accordingly, the TD&R Licence contains conditions concerning the requirement for the TD&R Licensee to, inter alia:

- (a) undertake metering efficiently and to prepare customers' bills that are accurate and easy to understand;
- (b) provide a written statement (or Service Agreement) of the terms and conditions for the provision of electricity services;
- (c) provide access historic consumption data to customers free of charge upon request; and
- (d) comply with any codes of practice issued by the Authority through a General Determination.

5 CONSULTATION QUESTIONS

80. Interested parties are invited to comment on the structure of the proposed licenses, in particular in relation to the following questions.

- Are there any provisions in the Licence which you think ought to be modified? Please include any reasoning and evidence in your answers.
- Are there any Conditions that should be added that are not currently included? Please include any reasoning and evidence in your answers.
- What system reliability standards ought to be imposed on BELCO, any why? Are current levels of system reliability acceptable for Bermuda's electricity users?
- Apart from system reliability standards, what other service performance standards ought to be imposed on BELCO, any why?
- How should BELCO tender for new generation capacity?
- What methodology should the Authority use to calculate the retail tariff and the feed in tariff?
- What provisions should be set out in Standard Contracts between BELCO and distributed generators?
- What obligations should be imposed on BELCO as regards its commercial and marketing practices so as to ensure consumers are protected?
- What restrictions should be placed on BELCO's disclosure and use of personal data?

81. Interested parties are invited to raise any matters not addressed herein that the Authority should consider in developing the electricity licenses.

6 TERMS AND CONDITIONS OF THE ELECTRICITY LICENSES

82. The Authority has initiated this Consultation Document to consider the terms and conditions that should be included in the TD&R Licence that is proposed to be issued to BELCO.

83. The Authority has prepared this Consultation Document and the proposed standard terms and conditions that appear in the draft licenses attached as Appendix A hereto. At the conclusion of the consultation process, the Authority will enact a General Determination setting forth the TD&R Licence.

84. The Authority invites comments on the draft TD&R Licence. In particular, the Authority invites comment on whether the proposed standard terms and conditions comply with Sections 24 and 26 of the EA and Section 50 of the RAA. The Authority also invites interested parties to comment on additional or different terms and conditions that may be necessary.

85. In developing the terms and conditions for the TD&R License, the Authority has, in line with best practice, accepted that it is unnecessary to restate every applicable obligation contained in the EA and RAA in the draft licenses, although where it assists with clarity some provisions have been included. The relevant provisions of these Acts will apply to all licence holders without regard to whether they are repeated in the licenses. Generally speaking, the Authority has included in the licenses only those substantive provisions of the Acts which direct the Authority to undertake specific tasks or which require clarification in the licenses.

SCHEDULE 1

**LIST OF EXISTING SECTORAL PROVIDERS/PROPOSED ELECTRICITY LICENSEES
(TD&R)**

- **BELCO**

APPENDIX A

DATED

2017



**TRANSMISSION, DISTRIBUTION AND RETAIL
LICENCE**

granted to

**BERMUDA ELECTRIC LIGHT COMPANY LIMITED
("BELCO")**

Licensee:

Address:

License Number:

Issue Date:

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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 authority conferred by the Electricity Act 2016 ("**EA**"), and Bermuda Electric Light Company Limited ("**BELCO**") having fulfilled the criteria set out in Section 23 of the EA, hereby grants to BELCO ("**the Licensee**"), a licence ("**this Licence**") to transmit, distribute and retail electricity within the territorial limits of Bermuda subject to the terms of this Licence, the EA, the Regulatory Authority Act 2011 ("**the RAA**") and any Regulations, General Determinations, Adjudicative Decisions, Orders and Directions made or issued in accordance with these Acts.

1 DEFINITIONS

In this Licence, unless the context otherwise requires:

"**Affiliate**" in relation to the Licensee means any entity that the Licensee directly or indirectly Controls, is Controlled by, or is under common Control with another legal person.

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

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

"**Bulk Generation**" means as defined in the EA.

"**Bulk Generation Licence**" means a licence granted by the Authority under the EA in respect of Bulk Generation.

"**Bulk Generation Licensee**" means any person who is granted a Bulk Generation Licence by the Authority.

"**Central Dispatch**" means the process of scheduling and issuing direct instructions for the dispatch of available Generation Units by the 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**" a condition of this Licence [including any provisions set forth in the Annexes to this Licence].

"**Control**" means:

- (a) the power, whether held directly 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

(b) shall, in any event, be deemed to exist in any case involving the ownership of 25 per cent or more of the shares, stock or other securities or voting rights, including through an agreement or arrangement of any type,

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 Licensee to Bulk Generation Licensees in respect of their 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.

"**Distributed Generator**" means as defined in the EA.

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

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

"**End-User(s)**" means as defined in the EA.

"**Feed-in Tariff**" means as defined in the EA.

"**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 date on which this licence is revoked or terminated in accordance with its terms until the succeeding 31 December.

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

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

"**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 a code developed by the Licensee with the approval of the Authority as more particularly described in the EA and pursuant to the terms of this Licence.

"Grid Connection Policy" means the policy referred to in Condition 20.

"Grid System" means (i) the Transmission System; and (ii) the Distribution System of the 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 an "act of bankruptcy" as set forth in the Bankruptcy Act 1989.

"Integrated Resource Plan" or "IRP" means the document to be developed and provided by the Licensee and approved by the Authority in accordance with Sections 40 to 45 of the EA.

"Interim Grid Code" means the grid code referred to in Condition 22.2 of this Licence which contains existing codes, standards and practices governing the Grid System.

"Law" or "law" means the laws of Bermuda.

"Large Scale Self Supply Licence" means a licence granted under Sections 20 and 25 of the EA.

"Large Scale Self Supply Licensee" means any person that is granted a Large Scale Self Supply Licence by the Authority.

"Licence" means this Transmission, Distribution and Retail Licence granted to the Licensee by the Authority pursuant to the provisions of the EA and any Schedule thereto.

"Licensee" means BELCO, a company established in 1904, the governing acts of which were most recently consolidated in the Bermuda Electric Light Company Act 1951 and whose registered office is at 27 Serpentine Road, Pembroke HM 07, Bermuda.

"Merit Order" means an order for ranking available Generation Units 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 give due consideration to incremental power purchase costs, incremental transmission losses, total system technical constraints and other technical and operational considerations; and shall otherwise be determined by the Licensee in accordance with this Licence, in relation to Generation Units which are connected to its Grid System, and which 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.

"Natural Disaster Contingency Fund" means a sinking fund collected from End-Users, of an amount to be determined by the Authority to be used by the Licensee to effect repairs to the Grid System following the occurrence of any natural disaster in Bermuda.

"Net Benefit Test" means a test to uniformly evaluate (i) proposed third party investments; and (ii) investments by the Licensee's Generation Business in new generation in Bermuda as more particularly described in [Annex [] to this Licence].

"Notice" means (unless otherwise specified) notice given in accordance with Condition 37 of this Licence.

"Output" means the electricity generated at the generation facilities of any Bulk Generation Licensee and delivered to the Grid System.

"Power Purchase Agreement" means an agreement between the 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.

"Protected Information" means any personal data identified in accordance with Section 39 of the EA, any other applicable provision of law and any General Determinations made pursuant to Section 39 of the EA.

"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 to the Authority under Condition 5 of this Licence.

"Relevant Asset" means any asset which is necessary to enable the Licensee to comply with its obligations under the EA, RAA and this Licence and including those assets which form part of the Licensee's Grid System including any interest in land upon which such asset is situated.

"representation" includes any objection or other proposal made in writing.

"Retail Business" means the business of the 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 and, for the avoidance of doubt, shall include, amongst other things, the following activities (i) invoicing End-Users; (ii) protecting the rights of End-Users; and (iii) safeguarding Protected Information.

"Retail Tariff" means the tariff at which the Licensee sells electricity to its End-Users, as determined by the Authority in accordance with any General Determination made by the Authority under Section 35 of EA.

"Scheduling System" means a system prepared by the 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.

"Service Agreement" means an agreement as more particularly described in Condition 29.3.

"Separate Business" means each of the Generation Business, and the TD&R Business of the Licensee taken separately from one another and from any other business of the Licensee or any Affiliate or related undertaking of the Licensee (including the Controlling Interest Holder of the Licensee) and **"Separate Businesses"** shall be construed accordingly.

"Standard Contract" means as defined in the EA.

"Transmission and Distribution Business" means the Transmission Business and the Distribution Business of the Licensee taken together.

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

"Transmission Business" means the business of the Licensee in or ancillary to the planning and development, and the construction and maintenance, of the Licensee's Transmission System, including providing connections to the Licensee's Transmission System but shall not include any other business of the Licensee.

"Transmission System" means the system of high voltage electric lines and electrical plant and meters owned by the 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.

2 INTERPRETATION

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 the 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 take precedence over the provisions of the RAA pursuant to Section 3(3) of the EA;
- (c) references to Conditions and Annexes are to Conditions and Annexes of this Licence, as modified from time to time in accordance with this 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 provisions of 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; and
- (h) unless the contrary intention appears, words importing the masculine gender include the feminine.

3 SCOPE OF THE LICENCE

- 3.1 This Licence grants the Licensee the right to transmit, distribute and retail electricity within Bermuda and to purchase or acquire electricity from Bulk Generation Licensees and Distributed Generators, including the right to engage in any other activities which directly support, and which are necessary as regards, its right to transmit, distribute and retail electricity within Bermuda.
- 3.2 This Licence does not grant the Licensee the right to engage in any other activities without first obtaining the approval of the Authority in respect of any such additional activities.
- 3.3 Nothing in this Licence shall relieve the Licensee of the obligations to comply with any other requirement imposed by provision of law or practice to obtain any additional consents, permissions, authorisations, licences or permits as may be necessary to exercise the Licensee's right to discharge its obligations under the Licence.

4 TERM OF THE LICENCE

- 4.1 This Licence shall continue in full force and effect unless revoked in accordance with Condition 9 of this Licence or surrendered in accordance with Condition 10 of this Licence. In the event of revocation by the Authority, this may apply with immediate effect (subject to rights of appeal), or, on any notice period the Authority may specify. In the event of surrender, the Authority may require a period of up to 5 years' notice of the surrender taking effect.

- 4.2 A decision by the Authority to revoke this Licence shall be appealable pursuant to Section 33 of the EA.

PART II - CONDITIONS

5 FEES AND PENALTIES

- 5.1 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.
- 5.2 The Licensee shall pay to the Authority such Regulatory Authority Fees as may be prescribed pursuant to Section 44 of the RAA.
- 5.3 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)(a) of EA and Section 94 of the RAA.
- 5.4 The Licensee shall be liable in accordance with Section 57 of the EA for failure to pay the fees set out in paragraphs 5.1 and 5.2 of this Condition 5.
- 5.5 The Licensee shall be liable in accordance with Section 60 of the EA for failure to comply with this Licence.

6 COMPLIANCE

- 6.1 The Licensee shall comply with:
- (a) the terms of this Licence, including any Annexes to this Licence;
 - (b) the terms of any associated licences, authorisations and permits issued to the Licensee;
 - (c) any regulations issued by the Minister in accordance with Section 54 of the EA;
 - (d) any policies issued by the Minister pursuant to the EA;
 - (e) any Ministerial directions issued by the Minister pursuant to the EA;
 - (f) any General Determinations made by the Authority pursuant to the EA and the RAA;
 - (g) any Administrative Determinations made by the Authority pursuant to the EA and the RAA;
 - (h) the EA;
 - (i) the RAA; and

- (j) any other applicable Law, enactment, determination, regulation or order in effect in Bermuda to which the Licensee is subject.

6.2 Where there is an irreconcilable conflict between any applicable provision of law, 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.

7 INFORMATION, AUDITS AND INSPECTION

7.1 The Licensee shall, in accordance with Sections 26(1)(f) and 52 of the EA, furnish to the Authority, in such manner and at such reasonable times as the Authority may require, such Information relating to the electricity sector in accordance with the provisions of Part 8 of the RAA and as further set forth by the Authority by General Determination.

7.2 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 Licensee's TD&R Business.

7.3 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.

7.4 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.

7.5 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.

8 MODIFICATION OF THE LICENCE

8.1 This 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.

9 ENFORCEMENT, SUSPENSION AND REVOCATION

- 9.1 The Authority may initiate enforcement proceedings pursuant to Section 53 of the EA and Section 93 of the RAA.
- 9.2 The Authority may revoke this Licence:
 - (a) in accordance with the provisions of Section 31 of the EA; and
 - (b) in the event of any Insolvency Event affecting the Licensee.
- 9.3 The Authority shall be entitled to suspend this Licence in accordance with Sections 31 and 53 of the EA. The Authority may, in its sole discretion, lift an on-going suspension and re-instate the Licence.
- 9.4 In the event of any revocation of this Licence in accordance with Condition 9 of this Licence and/or any surrender of this Licence by the Licensee pursuant to Condition 10 of this Licence, the Licensee shall without delay provide all reasonable assistance and take all reasonable steps and co-operate fully with any new provider of transmission, distribution and retail electricity services in Bermuda to transfer its assets to such new provider as notified to the Licensee by the Authority so 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.

10 DISCONTINUANCE OF SERVICE, SURRENDER OF LICENCE

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

11 ACCOUNTING REQUIREMENTS

- 11.1 The purpose of this Condition is to ensure that the Licensee (and any Affiliate or related undertaking of the Licensee including the Controlling Interest Holder) 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.
- 11.2 The Licensee shall in respect of each of its Generation Business and TD&R Business maintain appropriate management accounts and/or operating accounts that will enable the Authority to assess the Licensee's financial standing, performance and transparency across its business units.
- 11.3 Annually, the Licensee shall in respect of each of its Generation Business and TD&R Business, prepare from such accounting records:

- (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 showing separately in respect of each of the Generation Business and the TD&R Business details of the amounts of any revenue, cost, asset, liability, reserve or provision, which has been either:
 - (i) received by each of the Generation Business and TD&R Business from any 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;
 - (ii) charged from each of the Generation Business and TD&R Business to any other business (whether or not a Separate Business and including to the Controlling Interest Holder) together with a description of the basis of that charge; or
 - (iii) determined by apportionment or allocation between each of the Generation Business and the TD&R Business and any other business (whether or not a Separate Business and including the Controlling Interest Holder) together with a description of the basis of the apportionment or allocation; and
 - (b) 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.
- 11.4 The Licensee shall procure, in respect of the accounting statements prepared in accordance with this Condition, 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.
- 11.5 The Licensee shall deliver to the Authority a copy of the Auditors' report referred to in paragraph 11.4 and the accounting statements referred to in paragraph 11.3 as soon as reasonably practicable.
- 11.6 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 paragraph 11.3 from those applied in respect of the previous financial year, unless the Authority has previously issued instructions for the purposes of this Condition instructing the Licensee to change such bases in a manner set out in the instructions or the Authority gives its prior written approval to the change in such bases. The Licensee shall comply with any instructions issued for the purposes of this Condition. 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.

- 11.7 Accounting statements in respect of a financial year prepared under paragraph 11.3 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 of the Generation Business and the TD&R Business of the Licensee) as the annual accounts of the Licensee (and the Controlling Interest Holder) prepared under the any provision of 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 annual accounts as required pursuant to the Companies Act 1981.
- 11.8 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.
- 11.9 Without prejudice to any other paragraph of this Condition, the Licensee shall, on request, give the Authority access to the Licensee's accounting records, policies and statements referred to in this Condition.

12 AVAILABILITY OF RESOURCES

- 12.1 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 TD&R Business; and
 - (b) comply with its obligations under this Licence and the EA.
- 12.2 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 [•] 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 TD&R Business for a period of 12 months from the date of this certificate. However, they would like to draw attention to the following factors which may cast doubt on the ability of the Licensee to carry on the TD&R 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 TD&R Business for a period of 12 months from the date of this certificate."

12.3 The Licensee shall submit to the Authority together with the certificate referred to in paragraph 12.2 of this Condition a statement of the main factors which the directors of the Licensee have taken into account in giving that certificate.

12.4 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 12.2.

12.5 The Licensee shall use its best endeavours to obtain and submit to the Authority with each certificate provided for in paragraph 12.2 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.

12.6 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.

12.7 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 12.6; 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.

13 PROHIBITION OF CROSS-SUBSIDIES

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

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

13.2 The Licensee shall procure that it shall not give any cross-subsidy to or receive any cross subsidy from the Controlling Interest Holder.

14 SERVICE STANDARDS & PERFORMANCE STANDARDS

14.1 The Licensee shall comply with any applicable service standards including standards relating to power reliability, power quality and customer service standards set out in any General Determinations made pursuant to Section 34 of the EA.

14.2 The Licensee shall report to the Authority in accordance with the provisions of any General Determination regarding the same but in any event provide:

- (a) details regarding any interventions made to rectify any service deficiencies during the last year; and
- (b) details as to which service standards and performance standards it has complied with and which standards it has failed to meet.

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 the Grid System in accordance with the provisions of Section 20(3) of the EA and applicable standards as set forth in the Grid Code, relevant codes of practice and General Determinations.

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 to its End-Users 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 DISPOSAL OF RELEVANT ASSETS

15.1 Subject to Condition 15.4, 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.

15.2 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.

15.3 Notwithstanding paragraphs 15.1 and 15.2, 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.

15.4 Notwithstanding paragraph 15.1, the Licensee may Dispose of or relinquish operational control over any Relevant Asset specified in any notice given under paragraph 15.2 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 15.2 (subject to the provisions of any General Determination).

16 RESTRICTION ON USE OF CERTAIN INFORMATION

- 16.1 The Licensee shall procure that the Licensee shall not obtain any unfair competitive advantage from the Licensee's possession of Protected Information.
- 16.2 The Licensee shall implement such measures and procedures and take all such other steps as required by provisions of law and any General Determination in accordance with Section 39 of the EA.
- 16.3 The Licensee shall:
 - (a) procure and furnish to the Authority, in such manner and at such times as the Authority may require, such Information as the Authority may consider necessary concerning the performance by the Licensee of its obligations under paragraphs 16.1 and 16.2; and
 - (b) procure that access to any premises of the Licensee shall be given at any time and from time to time to any nominated person(s) for the purpose of investigating whether the Licensee has performed its obligations under paragraphs 16.1 and 16.2.
- 16.4 This Condition is without prejudice to the duties at law of the Licensee towards outside persons.
- 16.5 Where the Licensee receives Protected Information in its capacity as the Licensee it shall take all reasonable precautions against the risk of failure to restrict the use of that information to the sole purpose it was originally provided including:
 - (a) putting restrictions on the communication of such information to any person engaged in any business of the Licensee;
 - (b) putting restrictions on the access by such persons referred to in paragraph (a) above to:
 - (i) premises or parts of premises occupied by persons engaged in the Licensee's TD&R Business; and
 - (ii) recorded information relating to Licensee's TD&R Business; and
 - (c) taking measures to prevent (so far as the Licensee can so require) any person who has ceased to be engaged in the TD&R Business from being engaged in the Licensee's Generation Business, without approval from the Authority.

17 NATIONAL DISASTER CONTINGENCY FUND

- 17.1 The Licensee shall, from the revenues paid to it pursuant to Condition 26 of this Licence set up a Natural Disaster Contingency Fund in an amount to be determined by the Authority and which must be available at any time during the term of this Licence such fund to be provided for as part of the design of the tariff methodology set by General Determination pursuant to Section 35(1) of the EA.

18 BASIS OF CHARGES FOR CONNECTION TO GRID SYSTEM

Preparation of statements on basis of charging for connection to Licensee's Grid System

- 18.1 The Licensee shall within [] months from the Commencement Date prepare a statement, approved by the Authority, setting out the basis upon which charges will be made for connection to the Licensee's Grid System. Such statement shall be in such form and will contain such detail as shall be necessary to enable any person to make a reasonable estimate of the charges, to which it would become liable, for connection to the Licensee's Grid System and shall include the information set out in Condition 18.2 below.
- 18.2 Except to the extent that the Authority shall otherwise specify, the statement referred to in paragraph 18.1 shall include:
- (a) a schedule listing those items (including the carrying out of works and the provision and installation of electric lines or electrical plant or meters) of significant cost liable to be required for the purpose of connection (at entry or exit points) to the Licensee's Grid System for which connection charges may be made or levied and including (where practicable) indicative charges for each such item and (in other cases) an explanation of the methods by which and the principles on which such charges will be calculated;
 - (b) the methods by which and the principles on which any charges will be made in respect of extension or reinforcement of the Licensee's Grid System rendered necessary or appropriate by virtue of providing connection to any person seeking connection;
 - (c) the methods by which and the principles on which connection charges will be made in circumstances where the electric lines or electrical plant to be installed are of greater size or capacity than that required by the person seeking connection;
 - (d) the methods by which and the principles on which any charges (including any capitalised charge) will be made for maintenance and repair required of electric lines, electrical plant or meters provided and installed for making a connection to the Licensee's Grid System;
 - (e) the methods by which and the principles on which any charges will be made for the provision of special metering or telemetry or data processing equipment by the Licensee for the purposes of enabling any person which is bound to comply with

the Grid Code to comply with its obligations in respect of metering thereunder, or for the performance by the Licensee of any service in relation thereto;

- (f) the methods by which and principles on which any charges will be made for disconnection from the Licensee's Grid System and the removal of electrical plant, electric lines and ancillary meters following disconnection.; and
- (g) such other matters as shall be specified in instructions issued by the Authority from time to time for the purposes of this Condition.

18.3 Connection charges for those items referred to in paragraph 18.2 shall be set at a level which will enable the Licensee to recover:

- (a) the appropriate proportion of the costs directly or indirectly incurred in carrying out any works, the extension or reinforcement of the Licensee's system and the provision and installation, maintenance and repair and, following disconnection, removal of any electric lines, electrical plant, meters, special metering, telemetry, data processing equipment or other items; and
- (b) a reasonable rate of return on the capital represented by such costs.

19 NON-DISCRIMINATION REGARDING CONNECTION TO THE GRID SYSTEM

In the carrying out of works for the purpose of connection to the Grid System, the Licensee shall not unduly discriminate, as between:

- (a) any persons or class or classes of persons; or
- (b) the Licensee (in the provision of connections by the Licensee as part of the TD&R Business) and any person or any class or classes of persons; or
- (c) the Licensee's TD&R Business and the Licensee's Generation Business,

except insofar as any difference in the amounts charged, or any other terms or conditions of such provision or carrying out of works, reflects to the satisfaction of the Authority, the difference between the costs of such provision to one person or class of persons or other circumstances of carrying out such connection to one person or class of persons.

20 REQUIREMENT TO OFFER TERMS

Offer of terms for Connection

20.1 The Licensee shall, within twelve months from the grant of this Licence, prepare and submit its Grid Connection Policy in accordance with the requirements of this Condition 20 to the Authority for approval by the Authority. Upon approval by the Authority of such Grid Connection Policy, the Licensee shall implement and comply with such policy.

- 20.2 From the Commencement Date until the Authority's approval pursuant to paragraph 20.1 of this Condition 20, the Grid Connection Policy shall be the [] which existed and which the Licensee maintained immediately prior to the Commencement Date. Within [] days from the Commencement Date, the Licensee shall submit such existing Grid Connection policy to the Authority.
- 20.3 The Grid Connection policy to be submitted by the Licensee pursuant to paragraph 20.1 shall:
- (a) include conditions in accordance with Section 47(3)(a) of the EA;
 - (b) take account of Section 47(3)(b) and (c) of the EA;
 - (c) comply with the Grid Code;
 - (d) comply with any code of practice issued by the Authority;
 - (e) set out in detail the terms on which access to the Grid System will be provided to Distributed Generators;
 - (f) set out in detail the basis on which the Licensee shall offer to enter into agreements for connection to its Grid System with any person requesting connection; and
 - (g) set out (in detail) the information to be provided by the Licensee by those persons seeking connection.
- 20.4 For the purpose of determining an appropriate proportion of the costs directly or indirectly incurred in carrying out works under an agreement for making a connection or modification to an existing connection in accordance with Condition 18.3 of this Licence, the Licensee shall have regard to:
- (a) the benefit (if any) to be obtained or likely in the future to be obtained by the Licensee or any other person as a result of the carrying out of such works (or of such other matters) whether by reason of the reinforcement or extension of the Licensee's Grid System or the provision of additional entry or exit points on such system or otherwise; and
 - (b) the ability or likely future ability of the Licensee to recoup a proportion of such costs from third parties.
- 20.5 The Licensee shall not be obliged pursuant to this Condition to offer to enter or to enter into any connection agreement if to do so would involve the Licensee breaching Condition 6 of this Licence.

21 FUNCTIONS OF THE AUTHORITY

- 21.1 If, after a period which appears to the Authority to be reasonable for the purpose, the Licensee has failed to enter into an agreement with any person entitled or claiming to be entitled thereto pursuant to a request for connection to the Licensee's Grid System, the

Authority may, on the application of that person or the Licensee, and in accordance with the provisions of Sections 57 and 58 of the RAA, settle any terms of the agreement in dispute between the Licensee and that person in such manner as appears to the Authority to be reasonable having (insofar as relevant) regard in particular that such person should pay to the Licensee, the whole or an appropriate proportion (as determined in accordance with Conditions 18.3 and 20.4).

- 21.2 If either party to an agreement for connection to the Licensee's Grid System proposes to vary the contractual terms of such agreement in any manner provided for under such agreement, the Authority may, at the request of the Licensee or other party to such agreement, settle any dispute relating to such variation in accordance with the provisions of Sections 57 and 58 of the RAA.

22 GRID CODE

- 22.1 The Licensee shall within twelve months of the grant of this Licence, in consultation with Sectoral Participants and Sectoral Providers liable to be materially affected thereby, prepare and submit to the Authority for its approval a Grid Code.
- 22.2 From the Commencement Date the Authority's approval of the Grid Code, pursuant to Condition 22.1 the Licensee shall adhere to the standards which the Licensee applied immediately prior to the Commencement Date ("**the Interim Grid Code**"). Within [] days from the Commencement Date, the Licensee shall submit such Interim Grid Code to the Authority.
- 22.3 Upon approval by the Authority of the Grid Code, the Licensee shall implement and comply with such Grid Code.
- 22.4 The Grid Code shall:
- (a) cover all material technical aspects relating to connections to and the operation and use of the Grid System or (insofar as relevant to the operation and use of the Grid System) the operation of electric lines and electrical plant connected to the Grid System;
 - (b) contain rules and procedures governing generation dispatch and maintenance scheduling, taking into consideration various operating considerations, including but not limited to least cost, planned generator maintenance, operating reserves (both on-peak and off-peak) and subject to the terms and conditions of executed Power Purchase Agreements; and
 - (c) contain rules and procedures that provide for the safe and reliable operation of the Grid System including the conditions under which the Licensee shall operate the Grid System and under which Bulk Generation Licensees shall operate their licensed generating plant under both normal and abnormal operating conditions.; and
 - (d) be designed so as:

- (i) in relation to the Licensee's Grid System:
 - (A) to ensure that all Bermuda residents are provided with access to a supply of electricity pursuant to Section 20(3) of the EA;
 - (B) to 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 pursuant to Section 20(3) of the EA;
 - (C) to give effect to the purposes of the EA as set out in Section 6 of the EA; and
 - (D) comply with any Administrative Determination by the Authority pursuant to Section 14 of the EA.

22.5 Within two years from the grant of this Licence and thereafter, every five years or less as determined by the Authority, (including upon the request of the Authority), the Licensee shall (in consultation with Sectoral Participants and Sectoral Providers liable to be materially affected thereby) periodically review the Grid Code and its implementation. Following any such review, the Licensee shall send to the Authority:

- (a) a report on the outcome of such review;
- (b) any proposed revisions to the Grid Code from time to time as the Licensee (having regard to the outcome of such review) reasonably thinks fit for the achievement of the objectives referred to in paragraph 22.4(d); and
- (c) any written representations or objections from any Sectoral Participants and Sectoral Providers (including any proposals by such persons for revisions to the Grid Code not accepted by the Licensee in the course of the review) arising during the consultation process and subsequently maintained.

22.6 Revisions to the Grid Code proposed by the Licensee and sent to the Authority pursuant to paragraph 22.5 shall require to be approved by the Authority. Any revisions to the Grid Code proposed by the Licensee shall be filed by the Licensee with the Authority and the Authority shall respond within 90 days of the date of filing by the Licensee.

22.7 Having regard to any written representations or objections referred to in paragraph 22.5(c), and following such further consultation (if any) as the Authority may consider appropriate, the Authority may issue instructions requiring the Licensee to revise the Grid Code in such manner as may be specified in the instructions, and the Licensee shall forthwith comply with any such instructions.

22.8 The Authority shall be entitled, in order to implement the requisite arrangements referred to in Condition 22.4(d) to issue instructions to the Licensee requiring the Licensee to revise the Grid Code in such manner and with effect from such date as may be specified in the instructions, and the Licensee shall comply with any such instructions.

- 22.9 The Licensee shall give or send a copy of the Grid Code to the Authority and the Minister.
- 22.10 The Licensee shall give or send a copy of the Grid Code to any person requesting the same and shall be entitled to charge such persons a price not exceeding the reasonable cost of duplicating the Grid Code.
- 22.11 The Licensee shall publish a redacted version of the Grid Code on its website in order to provide sufficient information so as to allow Distributed Generators to connect to the Grid System.
- 22.12 In preparing, implementing and complying with the Grid Code (including in respect of the scheduling of maintenance of the Grid System and any generation set or associated power station equipment or combination of generation sets or associated power station equipment) the Licensee shall not :
- (a) unduly discriminate against or in favour of any person or class or classes of persons;
 - (b) unduly prefer the Licensee in the conduct of its Generation Business; or
 - (c) restrict or prevent competition in generation.
- 22.13 The Licensee shall keep and maintain such records concerning its implementation of and compliance with the Grid Code as are in accordance with such guidelines as the Authority shall from time to time have given to the Licensee and are, in the opinion of the Authority, sufficient to enable the Authority to assess whether the Licensee is complying with its obligations under this Condition.
- 22.14 The Authority may from time to time (following consultation with the Licensee and Sectoral Participants and Sectoral Providers) issue instructions relieving the Licensee of its obligations to implement or comply with, or to enforce against any other person any provision of, the Grid Code in respect of such parts of the Licensee's Grid System to such extent as may be specified in the instructions.

23 OBLIGATIONS REGARDING INTEGRATED RESOURCE PLAN AND PROCUREMENT OF NEW GENERATION

- 23.1 The Licensee shall comply with Sections 40 to 45 of the EA as regards the Integrated Resource Plan proposal and the Integrated Resource Plan.
- 23.2 The Authority shall be entitled to require the Licensee to clarify any matters set out in the Integrated Resource Plan proposal submitted by the Licensee to the Authority pursuant to Section 41 of the EA and the Licensee shall provide any such Information to the Authority within a reasonable timescale having regard to the complexity of the request.
- 23.3 Following approval of the final draft Integrated Resource Plan by the Authority in accordance with Section 44(2) of the EA, where the Licensee requires to procure new generation capacity in accordance with such approved Integrated Resource Plan, the Licensee shall:

- (a) notify the Authority of the size and timing of such future additional generation requirements;
- (b) solicit bids from its Generation Business and other prospective generators and demand side resource providers in respect of such required additional generation capacity;
- (c) following receipt of bids under (b) above, conduct a detailed evaluation and assessment of all bids received under (b) above in accordance with the Net Benefit Test; and
- (d) following its assessment and evaluation under (c) above, submit a report to the Authority which contains (i) detailed information on what bids were received and the proposed costs submitted by each bidder; (ii) a detailed assessment of each bid as against the Net Benefit Test including with reasoned analysis and conclusions and (iii) the Licensee's recommendation on which bidder should be chosen as the successful bidder.

23.4 If the Authority becomes aware of any circumstance where it is reasonable to believe that the Licensee has not procured sufficient future generation or that the Licensee's approach is not in the public interest, then the Authority shall be entitled to procure additional generation on behalf of the Licensee and the IRP shall be amended under Section 46 of the EA.

24 OBLIGATION TO ENTER INTO POWER PURCHASE AGREEMENTS

24.1 The Licensee shall enter into an Authority approved Power Purchase Agreement with a Bulk Generation Licensee for which the payments shall be passed through to End-Users pursuant to the Retail Tariff set in accordance with Section 35 of the EA.

24.2 The Licensee shall ensure that the terms of any Power Purchase Agreements that will apply between its Generation Business and its TD&R Business are substantially similar to the terms of its Power Purchase Agreements that will be applied with other Bulk Generation Licensees.

25 OBLIGATION TO ENTER INTO STANDARD CONTRACTS WITH DISTRIBUTED GENERATORS

The Licensee shall enter into a Standard Contract with a Distributed Generator in accordance with Sections 49 and 50 of the EA. Any Standard Contract shall comply with the Standard Contract template set by Administrative Determination by the Authority pursuant to Section 49 of the EA.

26 RETAIL TARIFF & RESTRICTION ON LICENSEE'S REVENUE

26.1 The Licensee shall sell electricity to its End-Users at the Retail Tariff set by the Authority in accordance with a methodology determined by the Authority pursuant to a General Determination by the Authority.

- 26.2 The methodology referred to in Condition 26.1 shall be determined in accordance with those principles set out in Section 35 of the EA and shall include the establishment of a Natural Disaster Contingency Fund.
- 26.3 The Licensee shall be entitled to pass through the charges set out in Section 35(3) of the EA ("**the Pass-through Charges**").
- 26.4 These Pass-Through Charges will be shown as separate items on consumer bills (as permitted in accordance with the EA and the RAA).
- 26.5 If the Licensee persistently fails to comply with the service standards required pursuant to this Licence and/or fails to procure required additional generation capacity in accordance with the Integrated Resources Plan and Condition 23 of this Licence, the Authority shall be entitled to require that the revenues payable to the Licensee pursuant to this Condition 26 of this Licence shall be retained .
- 26.6 The Authority shall conduct a review of the Retail Tariff in accordance with the provisions of Section 37 of the EA.

27 FEED-IN TARIFF

- 27.1 The Licensee shall pay Distributed Generators the Feed-In Tariff set by the Authority in accordance with a methodology determined by the Authority pursuant to a General Determination.
- 27.2 The methodology referred to in Condition 27.1 shall be determined in accordance with those principles set out in Section 36 of the EA.
- 27.3 The Authority shall conduct a review of the Feed-In Tariff in accordance with the provisions of Section 37 of the EA.

28 CENTRAL DISPATCH AND MERIT ORDER

28.1 Central Dispatch

The Licensee shall schedule and issue direct instructions for the dispatch of all available Generation Units of each Bulk Generation Licensee in accordance with the Grid Code.

28.2 Merit Order

The Licensee shall establish as part of the Grid Code, and shall operate, a merit order system for Generation Units in Bermuda subject to Central Dispatch. The Licensee's merit order system shall comply with the requirements of Section 20(3) of the EA.

- 28.3 The Licensee shall provide to the Authority such information as the Authority shall request concerning the Licensee's Dispatch Instructions, and/or Scheduling System and/or Merit Order system or any aspect of its operation.

28.4 For the purposes of this Condition, the reference to optimal in Section 20(3) of the EA, in the absence of any contrary provision set out in any Administrative

29 DUTY TO OFFER AND SUPPLY UNDER SERVICE AGREEMENTS

29.1 When the Licensee supplies electricity to its End-Users, it must do so under a Service Agreement.

29.2 A Service Agreement must include terms and conditions that are appropriate for a business that is providing transmission, distribution and retail services to an international standard with appropriate service levels and including metering obligations by the Licensee.

29.3 The form of Service Agreement used by the Licensee must be approved by the Authority within twelve months from the Commencement Date.

30 END-USER BILLS

30.1 In accordance with Section 14(2)(c)(ii) and Section 26 (1)(d) of the EA within 6 months from the grant of this Licence, the Licensee shall submit to the Authority for approval the form of End-User bill that is proposing to send to End-Users.

30.2 The Licensee shall comply with any Administrative Determination made by the Authority pursuant to Section 14(2)(c)(ii) in relation to the form and content of End-User bills.

31 CODES OF PRACTICE

The Licensee shall comply with any codes of practice issued by the Authority pursuant to any General Determination made by the Authority under Section 38 of the EA in relation to the commercial and marketing practices of the Licensee to protect the rights of End-Users.

32 ASSIGNMENT, OUTSOURCING AND MORTGAGES

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

32.2 The Licensee may utilize the services of third parties on an ongoing basis in the provision of TD&R services (i.e., the Licensee may "outsource" certain of its TD&R functions), without relieving the Licensee of its obligations under the Licence. The procurement of such outsourced services shall be subject to the Authority's approval. Any such approval shall be based on the cost-effectiveness of the outsourced services, how it was procured and with whom, and the fitness and propriety of the relevant third parties and shall not be unreasonably withheld.

32.3 The Licensee shall not sub-licence, 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 written authorisation of the Authority.

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

33 CHANGE OF CONTROL

33.1 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 consent shall not be unreasonably withheld.

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

34 INDEMNIFICATION

34.1 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.

34.2 The Licensee shall indemnify the Authority/Government of Bermuda for the reasonable costs of repairing, restoring or replacing any services used by the Government of Bermuda that are damaged, interrupted or otherwise interfered with, either directly or indirectly, by the Licensee.

35 FORCE MAJEURE; OTHER EVENTS

35.1 If the Licensee is prevented from complying with the 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 License as the Authority concludes the Licensee cannot comply with for as long as the event of force majeure continues.

35.2 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.

36 NO ABUSE OF DOMINANT POSITION

- 36.1 The Licensee occupies a dominant position in accordance with the RAA and Section 51 of the EA.
- 36.2 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.

37 NOTICES

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

38 INSURANCE REQUIREMENTS

- 38.1 The Licensee shall obtain and maintain insurance coverage for:
- (a) physical damage to the Grid System and ancillary equipment and structures; and
 - (b) third party liabilities.
- 38.2 Such insurance shall be on terms approved by the Authority (including but without limitation, with respect to type, cover, level, and identity of insurer) with any modification as may be required pursuant to paragraph 38.4
- 38.3 The Licensee shall, except as the Authority may otherwise consent, procure that every insurance policy maintained pursuant to this Condition 38 shall bear an endorsement to the effect that 30 days' notice shall be given to the Authority by the insurer or insurance broker of any lapse or cancellation of, or material change to, the policy.
- 38.4 Where the Authority notifies the Licensee that the Authority requires any modification of the insurance approved by the Authority pursuant to Condition 38.3, the Licensee shall, no later than 60 days (or such longer period as the Authority may approve) from the date of the notice, procure that such modification is made.
- 38.5 The Licensee is released from the obligation to maintain insurance under this Condition 38 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.
 - (b) special tariff factor, applied for a time approved by the Authority after a disaster until assets affected are re-built, provided that the financing and re-building are be done under the supervision of the Authority.