

DATED

2017



**BULK GENERATION LICENCE - RENEWABLE
ENERGY**

granted to

[Insert name of Licence holder]

Licensee:

Address:

Licence Number:

Issue Date:

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BELCO: In its letter of 29th May 2017 in which BELCO responded to “Consultation:Development of the Bulk Generation Electricity Licence for Bermuda and Renewable Energy for Bermuda” dated 8th May 2017, BELCO’s view is that there does not need to be a different licence for renewable bulk generation licensees (given that the renewable bulk generation licence is substantially the same as the bulk generation licence). BELCO think there should be one bulk generation licence template for both renewable and non-renewable resources –and any required distinctions should be reflected in the relevant power purchase agreement.

Authority’s Response: The nature of fuel (whether diesel or gas oil or LNG) is different to renewables, as is the generation and provision of electricity from such different sources. As such,generation licences for electricity supplied from renewable and non-renewable sources, will have varying conditions (and related obligations). Therefore, there is a separate renewable bulk generation licence for renewable generating plants. Furthermore, the Authority notes that under Section 23(4) of the EA the Authority is entitled to grant different classes of electricity licence. Section 48 of the RAA states that the Authority, shall, by general determination establish the procedures and criteria under which Authority will grant individual licences, class licences, licence exemptions. In determining whether to grant an individual licence, a class licence or licence exemption, the Authority must comply with any requirements and consider any factors specified in sectoral legislation and give due consideration to the costs and benefits of each option. Whilst the bulk generation and renewable bulk generation licences may be substantially similar, , there are variances.–A generic form of generation licence in relation to non-renewable and renewable generation plant would not be appropriate for regulating such renewable generating plants.

Tynes Bay: In its letter dated 29 May 2017 where it responds to the Consultation Paper in relation to the Bulk Generation Licence, Tynes Bay says that a new category licence for supplier of last resort needs to be added for the security of energy supply. Opening Bermuda up to competitive power generation presents a sizeable risk to the long term generating capacity of the island. Power generation requires large scale and long term capital investment – if that return on investment is not guaranteed via some kind of regulation through a known customer base, then the uncertainty will lead to entities not investing in new equipment (and if that continues for 15 to 20 years this wold result in blackouts and brown outs for the grid). Therefore a generator

of last resort needs to be designated to provide full scale back up capacity for whatever new entities might enter the power generation market.

Authority Response:the Authority notes that the EA does not specify a 'supplier of last resort' .

BELCO say the inclusion of more specificity in a licence:

- (i) leads to reduced clarity and increased likelihood for deviation from legislative aims through paraphrased legal requirements;
- (ii) will help alleviate instances of the disproportionality, discrimination and subjectivity prohibited under the EA and the RAA;
- (iii) will help avoid unnecessary costs which are ultimately imposed on BELCO's retail customers (as more burdensome obligations increase costs of regulatory process and this will result in significant upward per capita impact on each customer's bill);
- (iv) will avoid repeated modification. BELCO does not think the licence is "an ever-changing document" and instead should change as little as possible as investors rely on this document (and especially given the need for investment to maintain the TD&R system and bulk generation to ensure security of electricity supply in Bermuda). If the licence were to change, this will lead to uncertainty, costs of capital will increase and thus customer bills will increase;
- (v) Section 26 of EA sets out only seven conditions that may be included in licences generally – and additional conditions can only be included with the consent of the Minister. Furthermore, under section 50 of the RAA, licence conditions must be "objective, proportionate, not unreasonably discriminatory and specified expressly in the authorization". BELCO say the Authority has included a number of conditions which need not appear;
- (vi) will not provide Authority room to exercise its powers effectively and efficiently (as the Authority will be constrained by specific mandates enshrined in licences).

Authority's Response: It is usual for energy industries in multiple jurisdictions to be regulated by Government policy and legislation. An act of Parliament/statute enacted by a national parliament covers major legislative items, e.g. establishing independent regulators, the granting of licences by such regulators in accordance with the provisions of the relevant legislation and providing regulators with powers and the ability to take enforcement actions. The electricity licences will contain those conditions that they are required to contain under legislation and will provide the detail and granularity by which the regulator will regulate industry players consistent with the general principles etc. set out in the legislation. Orders and regulations (e.g. general determinations and administrative determinations in the case of Bermuda) set out the means for meeting the requirements set out in legislation. It is important that there is a seamless "connection" between the enabling legislation, the electricity licences and any regulations, orders, and determinations in order to facilitate and ensure clarity and certainty, as this will lead to the correct conditions for investment and, ultimately, lower the cost of regulation which then gets passed through to electricity consumers.

Most importantly, where a regulator is acting independently of political or other third party interference, the regulator often has powers to make subordinate regulations that are required to clarify conditions and allow regulation to transform alongside the market. The idea that all conditions should be specified in such circumstances is incorrect. The market will obtain necessary protection and predictability through the

modification process and the fact all such supplemental sub-conditions or rules must align with the legislative principles/legislation.

Furthermore, a licence with less conditions and obligations will not be clearer and more certain than a licence with the full and necessary range of license conditions, which specifically set out exactly how the relevant sectoral participants in Bermuda will be regulated, with references back to the enabling legislation and relevant regulations/administrative and general determinations. This will lead to more certainty and, ultimately, lower cost of capital. This is the approach the Authority has taken. Indeed, Section 26 of the EA sets out specific conditions that the electricity licences must include. Section 26(3) of the EA provides for additional conditions to be included if the Minister consents to their inclusion – the Authority will be seeking the Minister's approval of all conditions not specified in Section 26 of the EA. Section 26(4) provides that any condition imposed by the Authority must be objective, proportionate and not unreasonably discriminatory – the provisions of this Licence are objective, proportionate and not unreasonably discriminatory given BELCO's monopoly position as the only electricity supplier in Bermuda.

With regards to modifications to the licences, Section 29 of the EA entitles the Authority to modify licences of its own motion. The Authority has a duty under Section 14 of the EA to monitor and regulate the electricity sector and in so doing, has the ability under Section 29 to modify electricity licences. The Authority is constrained by the requirements of the EA and principles of administrative law. As such, the Authority will only be able to modify licences consistent with the EA and RAA.

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

The Regulatory Authority of Bermuda (the "**Authority**"), in exercise of the powers conferred to it by the Electricity Act 2016 (the "**EA**") hereby grants to [*insert name of person to whom licence is granted*] having its registered office at [*insert address of registered office*] (the "**Licensee**"), a licence (the "**Licence**"), to engage in the Bulk Generation of Renewable Energy [at the generation station(s) identified in Schedule 1 and hereinafter referred to as the "**Generation Facilities**" up to a maximum installed capacity of [*insert maximum installed capacity***] subject to the terms of this Licence, the EA, the Regulatory Authority Act 2011 ("**RAA**") and any Regulations, General Determinations, Administrative Determinations, Adjudicative Decisions, Orders and Directions made or issued in accordance with the EA and the RAA.

Tynes Bay: In its response to the “Consultation: Development of Bulk Generation Electricity Licence for Bermuda” dated 8 May 2017, Tynes Bay said “renewable” (used in the context of the definition of Merit Order) was not defined. Furthermore, in some jurisdictions, Waste to Energy is considered to be renewable.

Authority Response: A definition of “Renewable Energy” has been inserted into the Licence and replicated in the Bulk Generation Electricity Licence.

1 DEFINITIONS AND INTERPRETATION

1.1 In this Licence, unless the context otherwise requires:

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

"Ancillary Services" means:

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

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

"Authority" means the Regulatory Authority of Bermuda.

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

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

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

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

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

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

"Controls" means:

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

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

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

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

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

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

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

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

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

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

"Generation Unit" means any plant or apparatus for the generation of electricity including a facility comprising one or more generation units.

"Government" means the Government of Bermuda.

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

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

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

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

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

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

"Law" means the laws of Bermuda.

BELCO: BELCO stated that "provision of law", "Law" and "law" are used interchangeably and suggested all be replaced with "provision of law".

Authority's Response: The Authority has changed all references "provision of law" and "law" to "Law".

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

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

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

"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 TD&R Licensee in accordance with its TD&R 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.

BELCO: BELCO assert that this definition is not correct as the primary factor in determining merit order is least cost. Any other order will, among other outcomes, raise rates. If the Minister wishes to subsidize renewable resources

as a matter of policy, he or she has the power to do so, but such a "trade-off" decision cannot be made by the Authority through a licensing condition but by ministerial directions (see Sections 9 of EA and 40(2)(b) of the EA). Given the impact on costs and reliability, BELCO disagrees with this definition, as it requires across the board prioritization of renewable resources in the absence of a Ministerial direction pursuant to Section 9 of the EA. In any event, the substance of what should be the merit order for dispatch is beyond the licensing function, and should properly be determined by BELCO in the Grid Code required under the EA.

Authority's Response: The Minister will need to provide consent to the Conditions set out in this Licence. If the Minister grants consent, ministerial directions will be issued to this effect.

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

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

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

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

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

"Power Purchase Agreement" means (i) where the Licensee is BELCO, terms will apply between BELCO's Bulk Generation Business and the TD&R Licensee on substantially the same basis as the agreements described in part (ii) of this definition; or (ii) where the Licensee is not BELCO, an agreement between the TD&R Licensee and the 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 and/or the sale and purchase of the whole or any part of the Output by the TD&R Licensee from the Licensee.

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

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

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

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

"Relevant Asset" means any asset which is necessary to enable the Licensee to comply with its obligations under the EA, the RAA and this Licence and including those assets which form part of the Generation Facilities owned and operated by the Licensee, including any interest in land upon which any such asset is situated and which has a value in excess of 1% of the accounting value of property, plant and equipment (as applicable).

BELCO: BELCO say this is so broadly defined that it does not make sense.

Authority's Response: See the Authority's amendments above and response at Condition 19.4 where there would be threshold for pre-notification of intent to dispose of assets.

"Renewable Energy" means any naturally occurring source of energy that is not derived from fossil or nuclear fuel and is not depleted when used and shall include energy from wind, solar, geothermal, hydrothermal and ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas and biogases .

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

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

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

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

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

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

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

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

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

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

1.2 For the purposes of interpreting this Licence:

- (a) unless a different definition is provided in this Licence, words or expressions shall have the meaning assigned to them in the EA, the RAA and Interpretation Act 1951, irrespective as to whether the term is capitalised.
- (b) where there is any conflict between the provisions of this Licence and the EA or RAA, the provisions of the EA or RAA as the case may be shall prevail. For the avoidance of doubt the provisions of the EA shall take precedence over the provisions of the RAA pursuant to Section 3(3) of the EA;
- (c) references to Conditions, Schedules, and Annexes are to Conditions, Schedules and Annexes of the Licence, as modified from time to time in accordance with the Licence and the EA;
- (d) headings and titles used in this Licence are for reference only and shall not affect its interpretation or construction;
- (e) references to any Law or statutory instrument include any modification, re-enactment or legislative provisions substituted for the same;
- (f) expressions cognate with those used in this Licence shall be construed accordingly;
- (g) words importing the singular shall include the plural and vice versa, and words importing the whole shall be treated as including a reference to any part unless explicitly limited;
- (h) reference to a person includes an individual, firm, partnership, joint venture, company, corporation, body corporate, unincorporated body of persons or any state or any agency of a state or any other legal entity; and
- (i) unless the contrary intention appears, words importing the masculine gender include the feminine.

2 SCOPE OF THE LICENCE

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

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

- (a) sell electricity in Bermuda to any person except to the TD&R Licensee under the terms of a Power Purchase Agreement (or in the event that BELCO is the Licensee shall not provide electricity in Bermuda to any person except the TD&R Licensee under the terms of any power purchase arrangement between it and the TD&R Licensee, such terms to be on substantially the same basis as the Power Purchase Agreement between the TD&R Licensee and third party Bulk Generation Licensees);
- (b) engage in wheeling;
- (c) purchase or otherwise acquire electricity in Bermuda for the purpose of sale or other disposition to third parties;

- (d) transmit electricity or otherwise convey electricity by any other means, except to the extent necessary to deliver electricity into the Grid System; and
- (e) engage in the distribution or supply of electricity to any premises.

Tynes Bay: If Tynes Bay is considered to be a renewable generating station and therefore licensed under this Licence, Tynes Bay say "premises" needs to be more accurately defined – as Tynes Bay currently supplies electricity directly over private wires to the Government owned Sea Water Reverse Osmosis Plant adjacent to Tynes Bay.

Authority's Response: The Authority has inserted Condition 2.4 (to which Ministerial consent will be sought) which entitles the Authority to relieve the Licensee from its obligations to comply with any provision of this Licence.

- 2.3** Nothing in this Licence shall relieve the Licensee of its obligations to comply with any other requirement imposed by provision of law or practice to obtain any additional consents, permissions, authorisations, licenses or permits as may be necessary to exercise the Licensee's right to discharge its rights and obligations under this Licence.

BELCO: BELCO says the meaning of the word "practice" is unclear.

Authority's Response: In English law, terms can be implied into a contract according to the custom/practice of the market in which the contracting parties are operating. If a custom/practice is generally accepted by those who habitually do business in the trade or market concerned, the courts can hold that this was an implied term of the contract.

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

3 TERM OF THE LICENCE

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

- (a) 25 years or such period as shall otherwise be agreed with the Authority from the Commencement Date;
- (b) the date on which the Licence is surrendered in accordance with Condition 8 of this Licence; or
- (c) the date on which the Licence is revoked pursuant to Section 31 of the EA; or
- (d) the date on which the Licence is revoked due to an Insolvency Event affecting the Licensee.

- 3.2** Provided that the Licensee is not otherwise in material breach of this Licence, the Licensee may request an extension of this Licence by providing the Authority with a written request by no later than [10] Business Days prior to the end date of the Licence

pursuant to Condition 3.1. Such extension request may be granted or denied by the Authority acting in its sole discretion.

BELCO: BELCO says that the 10-day notice period here is too short. For planning purposes (including preparation of the IRP), a third party bulk generator licensee should indicate whether it seeks renewal at least one year before its licensed term expires.

Authority's Response: We have changed this to a 12 month period.

PART II - CONDITIONS

4 FEES, AND PENALTIES

- 4.1** The Licensee shall pay to the Authority such Government Authorisation Fees as may be prescribed pursuant to Sections 25, 26 and 66(3) of the EA; Section 52 of the RAA; and the Government Fees Act 1965.
- 4.2** The Licensee shall pay to the Authority such Regulatory Authority Fees as may be prescribed pursuant to Section 44 of the RAA.
- 4.3** The Licensee shall pay to the Authority any penalties that may be imposed on the Licensee by the Authority in accordance with Section 26(1)(c) of EA and Section 94 of the RAA.
- 4.4** The Licensee shall be liable in accordance with Section 57 of the RAA for failure to pay the fees set out in Conditions 4.1 and 4.2 above of this Condition 4.
- 4.5** The Licensee shall be liable in accordance with Section 60 of the EA for failure to comply with this Licence.

5 COMPLIANCE

- 5.1** The Licensee shall comply with:
 - (a) the terms of this Licence, including any Schedules to this Licence;
 - (b) the terms of any associated licenses, authorisations and permits issued to the Licensee;
 - (c) any Regulations issued by the Minister in accordance with section 54 of EA;

BELCO: BELCO says that there is no basis in law upon which the Licence can impose a requirement that the Licensee comply with a policy. Licensees become bound by policy when such policies are made the subject of binding provisions of law.

Authority's Response: The Authority has removed this requirement.

- (d) any Ministerial directions issued by the Minister pursuant to the EA;
- (e) any General Determinations made by the Authority pursuant to the RAA and the EA;

- (f) any Administrative Determinations made by the Authority pursuant to the RAA and the EA;
- (g) the EA;
- (h) the RAA; and
- (i) any other applicable Law, enactment, determination, regulation or order in effect in Bermuda to which the Licensee is subject.

5.2 Where there is an irreconcilable conflict between any applicable 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.

6 MODIFICATION OF THE LICENCE

The Licence may be modified:

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

7 ENFORCEMENT, SUSPENSION AND REVOCATION

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

7.2 The Authority may revoke this Licence:

- (a) in accordance with the provisions of Section 31 of the EA and Section 51 of the RAA; and
- (b) in the event of an Insolvency Event affecting the Licensee.

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

7.4 In the event of any revocation of this Licence in accordance with Condition 7 of this Licence and/or any surrender of this Licence by the Licensee pursuant to Condition 8 of this Licence, the Licensee shall without delay provide all reasonable assistance and take all reasonable steps and co-operate fully with any new Bulk Generation Licensee

to transfer its assets to such new Bulk Generation Licensee as notified to the Licensee by the Authority so that 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.

BELCO: BELCO says Condition 7.4 appears to contemplate a transfer of assets without compensation which is unacceptable – as this would place severe strains on BELCO in any attempts to obtain financing on reasonable terms and conditions, and represents a disincentive to investors. BELCO says, at a minimum, any forced seizure of assets requires just compensation.

Authority's Response: This condition and obligation is consistent with the Authority's responsibilities under the EA, particularly Section 6.

8 SURRENDER OF LICENCE

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

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

9 COMPLIANCE WITH GRID CODE AND OTHER OPERATIONAL CODES

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

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

10 CENTRAL SCHEDULING AND DISPATCH

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

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

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

(b) to operate the Scheduling System.

11 ANCILLARY SERVICES

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

(a) provide to the TD&R Licensee Information as to the Ancillary Services it has available and those which it could make available; and

(b) offer on reasonable terms, such terms to be subject to the approval of the Authority, to provide Ancillary Services from any operating Generation Unit of the Licensee, to the TD&R Licensee.

11.2 The Licensee shall provide to the Authority, upon the request of the Authority, information on the provision of Ancillary Services, including details of the costs to the Licensee of providing such Ancillary Services.

11.3 The Authority may settle any terms of agreement in dispute between the TD&R Licensee and the Licensee in such manner as appears to the Authority to be reasonable in accordance with Section 58 of the RAA.

BELCO: BELCO says where it is both the TD&R and Bulk Generation Licensee, this provision will need re-working given BELCO's existence as a single corporate legal entity.

Authority's Response: The Authority does not think this is contrary to BELCO's existence as a single corporate legal entity, as the wording does not envisage separate corporate entities. BELCO as a single corporate legal entity will have two licences – the TD&R Licence where it is the TD&R Licensee; and the Bulk Generation Licence where it is the Bulk Generation Licensee.

11.4 Insofar as the TD&R Licensee wishes to proceed on the basis of the terms as approved by the Authority, the Licensee shall forthwith enter into and implement such agreements in accordance with its terms.

Tynes Bay: In its response to the Consultation: Development of Bulk Generation Electricity Licence, Tynes Bay says “ancillary services” needs to be clearly defined. The Licence currently defines “ancillary services” as: (i) such ancillary services as the Licensee may be required to have available in association with any Generation Unit pursuant to a Power Purchase Agreement; and (ii) such ancillary services as are identified by the TD&R Licensee as being necessary for the performance by it of its statutory or licence duties pursuant to the Grid Code or any other technical code. Tynes Bay only does waste disposal – and (as the Authority understands it) would not be able to provide any services that the TD&R Licensee would require to maintain grid stability and security e.g. frequency response, reserve, reactive power etc.

Authority's Response: If Tynes Bay are found to be a renewable generation plant and therefore licensed under this Licence, it could seek to invoke Condition 2.4 of this Licence.

12 PROVISION OF INFORMATION TO THE AUTHORITY

12.1 The Licensee shall, in accordance with Section 26(1)(f) of the EA, the provisions of Part 8 of the EA and any General Determination by the Authority, furnish to the Authority in such manner and at such reasonable times as the Authority may reasonably require, such Information relating to the electricity sector including any Information reasonably required by the Authority in order for it to comply with its obligations under Section 52 of the EA.

BELCO: BELCO wants the Authority to require only material Information and to set out a materiality threshold.

Authority's Response: The threshold is set out in Section 91 (Part 8) of the RAA (the Authority can issue order requiring person to furnish such information that Authority can "reasonably require").

- 12.2** Subject to the provisions of Part 8 of the RAA and any applicable General Determination by the Authority, the Licensee shall permit the Authority or persons designated by the Authority to examine, investigate or audit, or procure such assistance as the Authority may reasonably require to conduct an examination, investigation or audit of, any aspect of the Bulk Generation Business.
- 12.3** Subject to the provisions of Section 92 of the RAA and any applicable General Determination by the Authority, the Licensee shall permit the Authority or persons designated by the Authority to enter the Licensee's premises, and shall facilitate reasonable access by them to the premises used by the Licensee, to conduct an inspection, examination, investigation or audit of the Licensee.
- 12.4** The Licensee shall notify the Authority as soon as possible upon becoming aware that it is in a position in which it may potentially breach any Condition set out in this Licence.

BELCO: BELCO argues that this provision is not required given Condition 25.2 of the Licence (which provides for BELCO to notify the Authority of; (i) any fact or event likely to affect materially the Licensee's ability to comply with any licence condition, or (ii) an insolvency related fact or (iii) Insolvency Event of BELCO/Affiliate or (iv) any preparatory steps taken that might lead to an Insolvency Event). BELCO believes that it is unnecessary that the Licence include multiple provisions that the Licensee should notify the Authority of a material breach or any event affecting its ability to perform its licensed operations. Beyond a reasonable reporting requirement of major activities with material impacts, this and similar reporting obligations are disproportionate and have an adverse upward impact on BELCO's cost of serving its customers and, thus, shall increase such customers' retail rates.

Authority's Response: It will be imperative that the Authority has a specific requirement that BELCO informs the Authority as soon as possible upon becoming aware that it is in a position in which it may potentially breach any Condition – especially if an insolvency event becomes possible, in order for the Authority to fulfil its duties properly and in a timely manner.

- 12.5** The Licensee shall place a complete copy of this Licence on the Licensee's website or, if no such website exists, in a conspicuous place in the Licensee's principal place of business such that it is readily available for inspection free of charge by members of the general public during normal office hours.

13 PROVISION OF INFORMATION TO TD&R LICENSEE

The Licensee shall furnish to the TD&R Licensee, in such manner and at such times as the Authority may direct, such information as the Authority may consider necessary to enable the TD&R Licensee to perform the functions assigned to it by law or its TD&R Licence.

14 SERVICE STANDARDS AND PERFORMANCE STANDARDS

BELCO: BELCO says this Condition seeks to circumvent the general determination process by including non-licence issues in this Licence. BELCO says the issue of service standards and performance standards is an important one which needs to be addressed. It should, however, be addressed through a separate general determination accompanied by proper and thorough public consultation. The text of a licence should contain, as a condition, the duty of the licensee to comply with all such general determinations, as provided in Section 26(1)(c) of the EA – but the details and content of these separate general determinations are not themselves licensing conditions, and that this public consultation cannot substitute for the thorough, public and expert vetting that each of these general determinations needs going forward.

Authority's Response: The Authority agrees that the details and content of the applicable service standards should be set out following public consultation for relevant General Determinations. Condition 14.2 is necessary to ensure the reporting of those services standards (which are set out by General Determination).

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

the Licensee still fails to meet its required service standards, the Authority shall be entitled to:

- (a) impose a financial penalty as determined by the Authority on the Licensee in respect of its failure to comply with its required service standards; and/or
- (b) require that the Licensee pay compensation as determined by the Authority in respect of its failure to comply with its required service standards pursuant to the terms of this Licence.

14.8 The Authority shall review the service standards referred to in this Condition 14 which the Licensee is required to comply with when conducting any tariff review pursuant to Section 37 of the EA.

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

15 APPOINTMENT OF OPERATOR

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

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

Tynes Bay: Tynes Bay says it wants to know what standard the Authority will apply to determine the competency of a person to operate and whether this applies to a company which may be outsourced to run a facility, or, just to individuals.

Authority's Response: The Authority has amended the Bulk Generation Electricity Licence to include a definition of "person" (which includes companies and also individuals). The Authority has also replicated this amendment in this Licence at Condition 1.2 (h). The Authority has also (in both the Bulk Generation Electricity Licence and this Licence) inserted a provision that the Authority cannot refuse to give its approval to a person who is competent to the standard of a Reasonable and Prudent Operator (which is defined as a person who exercises that degree of skill, diligence, prudence and foresight which could reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances).

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

16 CHANGE IN CONTROL OF LICENSEE

- 16.1** The Licensee shall not complete any proposed change in Control of the Licensee without first obtaining the prior written authorisation of the Authority in accordance with section 30 of the EA and Section 87 of the RAA, which shall not be unreasonably withheld.
- 16.2** The Licensee shall be liable in accordance with Section 56 of the EA if it contravenes this Condition.

17 ASSIGNMENT

- 17.1** This Licence shall not be transferred or assigned without the prior consent of the Authority and Section 30 of the EA 2016 shall apply accordingly.
- 17.2** The Licensee shall not sub-license, assign or grant any right, interest or entitlement in the Licence nor transfer the Licence to any other Person, including an Affiliate of the Licensee without the prior written authorization of the Authority.
- 17.3** The Licensee shall be liable in accordance with Section 56 of the EA if it contravenes this Condition.

18 ENVIRONMENTAL MATTERS

The Licensee shall comply with Environmental Laws.

19 DISPOSAL OF RELEVANT ASSETS

BELCO:

BELCO (i) says it does not disagree with the concept of regulatory review of the disposal of the Licensee's assets critical to performing licensed operations. It says it makes sense to provide notice to the Authority where it is intended to dispose of assets critical to the Licensee's operations (for example, in the case of planned decommissioning). As written, however, this Condition contemplates that BELCO will notify the Authority when it intends to dispose of any assets and given that "Relevant Asset" is defined so broadly (i.e. any asset necessary to enable BELCO to comply with its licence obligations) that it is almost nonsensical. Surely, the Authority did not intend that BELCO is to report when it intends to dispose of a ballpoint pen;

(ii) argues that aside from simply being an unachievable and disproportionate obligation, this Condition constitutes discriminatory micromanagement of the business of the Licensee which is inappropriate and not within the scope of the Authority's mandate. Further, the Licensee's attempt to comply with this burden would result in delay and would require additional reporting and administrative processing resources (all of which would result in the imposition of unnecessary costs on BELCO's customers by increasing their rates); and

(iii) says if a condition regarding disposal of assets is retained, BELCO recommends that the Condition adopt language used in other jurisdictions to establish a materiality threshold and require reporting of disposal above a certain dollar value (for example \$2 million) or a certain percentage of the then

current net value of the property, plant and equipment of the Licensee and employed by the Licensee in the operation of the TD&R system. Alternatively, the term "necessary" could be changed to "critical", to clarify that regulatory reporting and/or approval is only required for disposal of major assets that materially affect the Licensee's ability to perform.

Authority's Response:

In relation to:

(i) – this point lacks rationale and relevance – a ballpoint pen is not a necessary asset so as to enable BELCO to comply with its licensed conditions; and

(ii) and (iii) above, the Authority agrees it would be acceptable to determine a threshold for pre-notification of intent to dispose of assets – e.g. a threshold could be expressed as 1 % of the accounting value of property, plant and equipment. Accordingly, the Authority has amended the definition of Relevant Asset to reflect this.

- 19.1** Subject to Condition 19.3, the Licensee shall obtain the prior written consent of the Authority in order to Dispose of any Relevant Asset and/or to create security over any Relevant Asset and/or to relinquish Control over any Relevant Asset, such consent shall not be unreasonably withheld.
- 19.2** Subject to the provisions of any applicable General Determination, the Licensee shall give to the Authority not less than 2 months' prior written notice of its intention to create any security or effect a Disposal of or relinquish control over any Relevant Asset, together with such reasonable further information as the Authority may request relating to such asset or the circumstances of such intended Disposal or relinquishment of control or to the intentions.
- 19.3** Notwithstanding paragraphs 19.1 and 19.2, the Licensee may effect a Disposal of or relinquish operational control over any Relevant Asset where:
- (a) the Authority has issued instructions for the purposes of this Condition containing a general consent (whether or not subject to conditions) to:
 - (i) transactions of a specified description; and/or
 - (ii) the Disposal of or relinquishment of operational control over Relevant Asset(s) of a specified description; and
 - (b) the Disposal or relinquishment of operational control in question is effected pursuant to a transaction of a description specified in the instructions or the Relevant Asset in question is of a description so specified and the Disposal or relinquishment of operational control is in accordance with any conditions to which the consent is subject.
- 19.4** Notwithstanding paragraph 19.1, the Licensee may Dispose of or relinquish operational control over any Relevant Asset specified in any notice given under paragraph 19.2 in circumstances where:

- (a) the Authority confirms in writing that it consents to such Disposal or relinquishment (which consent may be made subject to the acceptance by the Licensee or any third party in favour of whom the Relevant Asset is proposed to be Disposed or operational control is proposed to be relinquished of such conditions as the Authority may specify); or
- (b) the Authority does not inform the Licensee in writing of any objection to such Disposal or relinquishment of control within the notice period referred to in paragraph 19.2 (subject to the provisions of any General Determination).

20 REPLACEMENT OF GENERATION FACILITIES

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

BELCO: BELCO says that Condition 20 suggests that a licensee can "replace" generation facilities. This ability makes sense for BELCO given its status as the provider of last resort. Such a condition cannot, however, provide an end run for third party providers around the contents of an approved IRP. Condition 20.2 appears to recognize this point, but Condition 20.4 then appears to contemplate a cost-benefit analysis which could result in a replacement of third party generating facilities outside the parameters of an existing IRP. Condition 20.4 also speaks in terms of a "return," making the meaning of this paragraph unclear and further suggesting that the Authority is contemplating a mechanism to approve new third party generation outside the IRP process (inconsistent with the EA). If the purpose of this Condition is not to circumvent the IRP process, but simply to allow a licensee to re-build licensed facilities that are destroyed through an unanticipated disaster prior to the end of a licensing term, then such an allowance might best be included not as a licence condition, but rather as a term in an individual power purchase agreement ("PPA"), using targeted language limiting reconstruction to such disaster circumstances.

Authority's Response: Firstly, the Authority notes that, under the EA, Belco is not designated as a provider of 'last resort' for electricity. Secondly, BELCO seem to be saying that no third party providers can provide generating capacity unless they are contemplated in the IRP and that BELCO should not face any competition from third parties for replacement generation. However, this Condition is intended to make replacement of generation facilities subject to the net benefit test (as set out in TD&R Licence) – that is, subject to competition from third party providers of generation and/or demand-side

resources. While the IRP may provide the justification for capacity retirements and new investments (including replacements), circumstances may arise that were not anticipated in the IRP. Plant retirements (planned or unplanned) present an opportunity for new entrants to provide the replacement capacity, subject to an assessment of the net benefits relative to other options available at that time. By publishing the IRP, third party providers will be able to anticipate the need for new capacity or replacement capacity up to 5 years in advance so will have the opportunity to put together proposals for new generation or demand-side resources. BELCO's proposal for replacement capacity can then be assessed against these rival proposals under the net benefit test. See amendments to Condition 20.4.

21 PROHIBITION ON CROSS SUBSIDIES

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

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

22 ACCOUNTING REQUIREMENTS

BELCO: BELCO says that until cost allocation methodologies are agreed upon, certain costs may be deemed cross-subsidies under the shared service arrangement of which BELCO is a part. BELCO believes that the shared services arrangement provides a cost-saving benefit for its customers as its functional staff would likely be unchanged in size if they were dedicated BELCO employees, yet a portion of their time is allocated to BELCO's parent and affiliates. Furthermore, as workloads significantly increased with respect to regulatory requirements and capital planning in 2016, BELCO's parent essentially provided cross subsidies to BELCO as it maintained its fixed charge methodology based on its annual budget. Given these realities, BELCO looks forward to working with the Authority to minimize such subsidies.

Authority's Response: There is no evidence to support the cost saving position proposed by BELCO, and, also, a lack of past transparency which needs addressing. However, the Authority has inserted a reference to this Condition in the Transitional Provisions (see Annex below), which facilitates transitional arrangements until the Authority approves an accounting specific methodology in relation to BELCO's business.

Tynes Bay: Tynes Bay says separation of accounting will prove challenging for a government owned and operated waste to energy facility - as many of the resources utilised by the plant are pooled e.g. accounting, stores, purchasing, vehicle maintenance, human resources etc. Therefore, in order for Tynes Bay to be fully compliant it may need to be separated as a quango so that all the costs are accurately measured.

Authority's Response: Tynes Bay as Licensee could seek to invoke Condition 2.4 of this Licence.

- 22.1** The first financial year of the Licensee shall run from the Commencement Date to [●] and thereafter each financial year shall run from 1 January to the following 31 December.
- 22.2** The remaining conditions of this Condition apply for the purposes of ensuring that the Licensee maintains accounting and reporting arrangements which enable separate accounts to be prepared for each Separate Business and which show the financial affairs of each such Separate Business.
- 22.3** The Licensee shall:
- (a) keep such accounting records in respect of its Bulk Generation Business as are required to be kept in respect of such business by any provision of law;
 - (b) keep such accounting records as are instructed to be kept in respect of any instructions issued by the Authority; and
 - (c) keep such accounting records for its Bulk Generation Business separately identifiable from those of its Separate Businesses and the accounting records of the Controlling Interest Holder.
- 22.4** Annually, the Licensee shall, in respect of its Bulk Generation Business, prepare:
- (a) accounting statements comprising a profit and loss and other comprehensive income statement, a statement of financial position, a statement of changes in equity and a cash flow statement, together with notes thereto, and in appropriate detail the amounts of any revenue, cost, asset, liability, reserve or provision, which has been either:
 - (i) received by the Bulk Generation Business from any of other business (whether or not a Separate Business and including from the Controlling Interest Holder) together with a description of the basis of such revenue, cost or liability received; or
 - (ii) charged from the Bulk Generation Business or to any other business (whether or not a Separate Business and including the Controlling Interest Holder) together with a description of the basis of that charge; or
 - (iii) determined by apportionment or allocation between the Bulk Generation Business and any other business of the Licensee (whether or not a Separate Business and including the Controlling Interest Holder) together with a description of the basis of the apportionment or allocation,
 - (b) only where the Licensee is BELCO, each financial year, sufficient accounting information in respect of each of the Licensee's Generation Business and TD&R Business to allow for reconciliation against the licensee's consolidated financial statements.
- 22.5** The Licensee shall procure, in respect of the accounting statements prepared in accordance with this Condition in respect of a financial year, a report by the Auditors addressed to the Authority stating whether in their opinion those statements have been

properly prepared in accordance with this Condition and give a true and fair view of the revenues, costs, assets, liabilities, reserves and provisions of, or reasonably attributable to, the Separate Business to which the statements relate.

- 22.6** The Licensee shall deliver to the Authority a copy of the Auditor's report referred to in Condition 22.5 and the accounting statement referred to in Condition 22.4 (a) as soon as reasonably practicable.
- 22.7** The Licensee shall not in relation to the accounting statements in respect of a financial year change the bases of charge, apportionment or allocation referred to in Condition 22.4(a) from those applied in respect of the previous financial year, unless the Authority shall previously have issued directions for the proposes of this Condition directing the Licensee to change such bases in a manner set out in the directions or the Authority gives it prior written approval to the change in such bases. The Licensee shall comply with any directions issued for the purposes of this Condition.
- 22.8** If the Licensee changes the bases of charge, apportionment or allocation from those adopted for the immediately preceding financial year, it shall show a reconciliation of the revised and prior-year methodologies.
- 22.9** Accounting statements in respect of a financial year prepared under Condition 22.4(a) shall, so far as reasonably practicable and unless otherwise approved by the Authority having regard to the purposes of this Condition:
- (a) have the same content and format (in relation to each Separate Business) as the annual accounts of the Licensee (and any affiliate or related undertaking of the Licensee) prepared under the Law and conform to the best commercial accounting practices and to the accounting standards or such other standards as may be notified to the Licensee by the Authority from time to time; and
 - (b) be published with the Licensee's consolidated financial statements.
- 22.10** References in this Condition to costs or liabilities of, or reasonably attributable to, any Separate Business shall be construed as excluding taxation, capital liabilities which do not relate principally to a particular Separate Business and interest thereon; and references to any accounting statement shall be construed accordingly.
- 22.11** Without prejudice to any other provision of this Condition, the Licensee shall, on request, give the Authority access to the Licensee's accounting records, policies and statements referred to in this Condition.

23 OPERATIONAL REPORTING REQUIREMENTS

- 23.1** On or before the final business day of January, April, July, and October of each calendar year, the Licensee shall submit to the Authority a quarterly report containing monthly operating statistics for the prior Quarter required by the Authority.
- 23.2** These Quarterly reports shall include, at a minimum:
- (a) energy produced (in MWh) by each generating unit within the licensed Generating Facilities;
 - (b) energy supplied (in MWh) to the network of the TD&R Licensee;

- (c) peak demand (in MW) imposed by the Transmission System and Distribution System on the Licensee;
- (d) the maximum available generating capacity (in MW) of the Licensee's Generating Facilities at the time of peak demand on the Transmission System and Distribution System;
- (e) spent lubricant (in [xx units]) disposed of or recycled; and
- (f) safety and environmental incident reports.

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

Tynes Bay: Tynes Bay said its generating facilities do not use internal combustion engines for power and so monthly reporting requirements on consumed lubricants seems administratively excessive – e.g. lubricants could also include greases for pumps and auxiliaries which are consumed at a very slow rate, same for lubricants utilized in turbines, which generally do not consume the lubricant oil. It suggested that it should only report on the amount of lubricant consumed by generating facilities which use internal combustion engines only.

Authority Response: Any Licensee under this Licence could seek to invoke Condition 2.4 in relation to this provision.

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

24 NO ABUSE OF DOMINANT POSITION

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

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

25 FORCE MAJEURE; OTHER EVENTS

BELCO: BELCO wants force majeure events to include Licence modifications without the Licensee's consent.

Authority's Response: Section 29 of the EA allows the Authority to modify the Licence of its own motion OR with the consent of the Licensee.

BELCO: BELCO also want force majeure to include (i.e. Licensee's obligations will be suspended if):

- (a) any action or failure to act without justifiable cause by any competent authority, other than a court or tribunal (i.e. Authority);
- (b) expropriation or compulsory acquisition of the whole or any material part of the Licensee's assets (e.g. by Minister in event of step-in situation); and
- (c) any future governmental action that effectively prohibits the Licensee's ability to conduct its business, including enactment of a provision of law, regulation, general determination, administrative determination or order by a competent authority effectively prohibiting the Licensee from conducting its business, other than as a result of the Licensee's breach of the terms of this Licence as originally issued."

Alternatively, the following can be added to the list of events currently included:

"requirements, actions or failure to act on the part of governmental authorities; adoption or change in any law, regulation, statute, rule or regulation imposed by governmental bodies, including, without limitation, a change in the interpretation thereof; or any lawful order by any court or administrative agency (so long as the Licensee has not applied for or assisted in the application for such court or governmental action)."

Authority's Response: In such events, the Licensee may argue that it is a cause beyond its reasonable control in order to obtain force majeure relief (see Condition 35.1 above) and each case will turn on its own individual circumstances. In addition, if the Authority acts without justifiable cause, the Licensee has an action via judicial review as remedy.

25.1 If the Licensee is prevented from complying with this Licence by acts of God, war, warlike operations, civil commotion, major strikes or any other significant or protracted industrial action, fire, tempest or any other causes beyond the Licensee's reasonable control;

- (a) the Licensee shall notify the Authority, as promptly as reasonably practicable, of the obligations of the Licence with which the Licensee cannot comply, the expected duration of the event of force majeure, and the measures the Licensee is taking to overcome the consequences of the event of force majeure; and
- (b) the Authority shall suspend such obligations of the License as the Authority concludes the Licensee cannot comply with for as long as the event of force majeure continues.

25.2 In addition to events of force majeure, the Licensee shall notify the Authority of any fact or event likely to affect materially the Licensee's ability to comply with any Condition of this Licence, or an insolvency-related fact or Insolvency Event in respect of the Licensee or any Affiliate, or any preparatory steps being taken that might lead to an Insolvency Event, immediately upon becoming aware of such fact or event.

26 INDEMNIFICATION

BELCO: BELCO argues that this Condition 34 should be removed – as BELCO is not aware of any analogous provisions in any other jurisdiction requiring licensees to indemnify the regulator and government and not customers. Failing removal, BELCO

would not object to Condition 34.1 provided that the Authority shall only indemnify the Authority in respect of injury or death for which BELCO has been found liable in a court of law and all appeals have been exhausted.

Authority's Response: The Authority is not operating any asset. If any person/customer suffers property damage, injury, death as a result of some action of BELCO but brings an action against Authority, BELCO ought to indemnify Authority for all costs in relation to such claims.

BELCO: BELCO argue that Condition 34.2 should be removed as the Authority and the Government of Bermuda are customers like any other this is discriminating in favour of the Government.

Authority's Response: The Authority has deleted that provision.

- 26.1** The Licensee shall indemnify the Authority against all actions, claims and demands which may be brought or made by any person in respect of any injury or death of any Person or damage to any property arising from any act of the Licensee permitted or authorized by the Licence. The Authority shall provide the Licensee with notice of any such actions, claims and demands, but the Authority's failure to do so shall not relieve the Licensee of any obligations imposed on the Licensee by this Condition.
- 26.2** The Licensee shall indemnify the Authority/Government of Bermuda for the reasonable costs of repairing, restoring or replacing any services used by the Government that are damaged, interrupted or otherwise interfered with, either directly or indirectly, by the Licensee.

27 INSURANCE

- 27.1** Subject to Conditions 27.2 and 27.3 below, the Licensee shall obtain and maintain insurance coverage for:
- (a) physical damage to the generating facilities and ancillary equipment and structures; and
 - (b) business interruption.
- 27.2** The Licensee is released from the obligation to maintain insurance under Condition 27.1 if provision for the liability is made through any of the following alternatives, subject to the approval of the Authority:
- (a) self-insurance which refers to the Licensee's financial capacity to meet any liability to a third party in respect of which the Licensee does not otherwise have insurance; or
 - (b) a special tariff factor in the tariff methodology through which a factor in the tariff is applied for a time approved by the Authority after the disaster until the system is re-built providing the financing and re-building are be done under the supervision of the Authority.
- 27.3** The Licensee shall not be required to obtain and maintain insurance if it is not on economic terms. The Licensee shall as soon as reasonably possible inform the Authority if it is of the opinion that such insurance is not on economic terms. The

Authority will consider the Licensee's opinion and if it agrees that the Licensee's opinion is reasonable, confirm to the Licensee that the insurance may be foregone until such time as it may again become available on economic terms.

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

28 OUTSOURCING

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

29 SITE DECOMMISSIONING

BELCO: BELCO says that this Condition is appropriate for third party bulk generators but not for BELCO as it is unable to enter into a PPA with itself. BELCO is unable to provide a surety to itself.

Authority's Response: See the Authority's changes above.

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

30 NOTICES

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

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

BELCO: BELCO want a provision dealing with notices from BELCO to Authority.

Authority's Response: The Authority has inserted wording to this effect.

ANNEX

TRANSITIONAL CONDITIONS

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

[x]

SCHEDULE 1
Generation Facilities

[details to be inserted]