



REGULATORY
AUTHORITY

Bermuda

Consultation:

**Development of the Bulk
Generation Electricity Licence
for Renewable Energy 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 The EA repealed the Energy Act 2009.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 Bulk Generation Licence – Renewable Energy shall be in the form and include the terms for the standard Bulk Generation Licence as indicated in Schedule 1 of the EA. Accordingly, the Minister may use the Consultation Document for the standard Bulk Generation Licence and the Bulk Generation 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 Bulk Generation Licence – Renewable Energy. The Bulk Generation Licence – Renewable Energy is a class of bulk generation licence. At the conclusion of the consultation process, the Authority will enact a General Determination setting forth the Bulk Generation Licence – Renewable Energy.

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 Bulk Generation Electricity Licence – Renewable Energy" 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 Bulk Generation Electricity Licence – Renewable Energy" at electricity@RAB.bm or by mail at:

Nigel Burgess
Regulatory Authority
1st Floor, Craig Appin House
8 Wesley Street
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 LICENSES

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 same Licensee (BELCO) will also have a Bulk Generation Licence and therefore compete directly with other generation resources, the focus of the Authority will be on, inter alia:

- establishing the requirements for a competitive tendering process for the procurement of the Bulk Generation resources; and
- 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;
- develop the requirements for the terms to be contained in the distributed generation Standard Contract as provided for in the EA to ensure that developers of distributed generation resources are able to access the TD&R Licensee's network on fair, reasonable, and non-discriminatory terms; and
- ensuring consumer interests are met through enforcement of best practice established in codes of practice for the treatment of consumers and pricing.

22. Together with the conditions imposed on the TD&R Licencee, these activities are necessary in order to maximize the potential efficiency gains from introducing competition between different generation resources.

23. This remainder of this Consultation Document explains and seeks views on the proposed terms and conditions for the Bulk Generation Licence – Renewable Energy.

4 BULK GENERATION – RENEWABLE ENERGY LICENCE

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. As noted above, the Authority has initiated this Consultation to consider the standard terms and conditions of the Bulk Generation Licence – Renewable Energy that will be issued to Bulk Generation Licensees. The draft form of the Bulk Generation Licence – Renewable Energy is attached as Appendix A to this Consultation Document.

26. 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. To deal with future implementation of the licenses in an administratively efficient manner, a number of Transitional Conditions are included as an Annex to each type of licence. These Transitional Conditions will expire by their own terms or the affirmative actions of relevant licensee and the Authority. 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.

27. 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.

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 Bulk Generation Licence – Renewable Energy on the basis that the large majority of them are self-explanatory. However we set out below the rationale for those conditions of the draft Bulk Generation Licence – Renewable Energy in regards to which, in our view, electricity sector participants in Bermuda and the general public as a whole would benefit from having a more thorough explanation.

30. Section 23(2) of the EA provides the criteria that must be met for a Bulk Generation Licence – Renewable Energy to be granted. This includes, amongst other things, that an applicant is either:

- (a) the TD&R Licensee (i.e. BELCO); or

- (b) has entered into a PPA with the TD&R Licensee (the conditions relating to the PPA can be found under section 48 of the EA).

4.1 Provision of Information to the TD&R Licensee

31. Condition 13 of the Bulk Generation Licence – Renewable Energy provides that the Bulk Generation Licensee must provide the TD&R Licensee such information as the Authority may consider necessary to enable the TD&R Licensee to perform its functions assigned to it by law or required under the TD&R Licence.

32. For example, such information may relate to, but will not be limited to, the operating capabilities of any plants operated by the Bulk Generation Licensee such as the availability, thermal efficiency, and ability to respond to changes in output required by the TD&R Licensee. Such information may also relate to, but will not be limited to, the investment and operating costs of any plants operated by, or projects (e.g., new investments, performance improvement initiatives, or asset maintenance processes) being undertaken by, the Bulk Generation Licensee.

4.2 Service Standards and Performance Standards (Financial Penalties)

33. Condition 14 of the Bulk Generation Licence – Renewable Energy provides that the Licensee will be required to comply with agreed service and performance standards (e.g. guaranteed minimum levels of availability). Its failure to meet such standards may have an impact on the TD&R Licensee's ability to:

- (a) meet its system reliability standards; and
- (b) plan efficiently for future generation investments.

34. If the Bulk Generation Licensee meets its required standards it may receive an incentive payment in accordance with the terms of its PPA. Conversely, if it fails to meet its required standards, penalty provisions under the PPA may take effect. Under Condition 14.7 of the Bulk Generation Licence – Renewable Energy, the Authority shall be entitled to impose a financial penalty and/or require that the Licensee pays compensation if the Licensee fails to meet its required service standards.

4.3 Accounting requirement

35. It will be important for the Authority to be able to analyze the investment and operating expenses of Bulk Generation Licensee separately from any other commercial activities. For example, this will allow the efficiency of operating costs (especially fuel costs) of any Bulk Generation plants operated by the Bulk Generation Licensee to be monitored over time and benchmarked against suitable international comparators.

36. 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 the Bulk Generation Licensee and its parent company; and
- (b) accounting separation between the Bulk Generation Licensee and other commercial activities that are separately licensed under the EA.

37. 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.

38. Accordingly, Condition 22 of the Bulk Generation Licence – Renewable Energy provides for separate accounting for its bulk generation activity:

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

Consolidated financial accounts must be provided in each financial year. Accounting statements must be supported with a report by the Bulk Generation Licensee'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 the Bulk Generation - Renewable Energy Licensee and third parties will apply.

4.4 Incentives for efficient procurement, operation, and maintenance of new generation investment

39. The TD&R Licensee is required to efficiently procure new generation capacity in accordance with the approved IRP. In order to enable the TD&R Licensee to meet its obligations it is therefore necessary for the Bulk Generation Licence – Renewable Energy to enable the TD&R Licensee to incentivize the Bulk Generation Licensee to deliver its investment projects efficiently. The Authority considers that these incentives are best implemented in the PPA as specific obligations, incentives (financial or otherwise), or other contractual terms.

4.5 Disposal of Relevant Assets

40. The Authority considers that the assets of the Bulk Generation Licensee are essential for the TD&R Licensee to perform its functions under the EA and to meet the Electricity sector policy objectives more generally. 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.

41. Pursuant to Condition 19 of the Bulk Generation Licence – Renewable Energy, the Bulk Generation Licensee is not permitted to create any security, dispose of, or relinquish control over any asset or liabilities necessary for the undertaking of any of its obligations under the Bulk Generation Licence – Renewable Energy.

4.6 Ringfencing

42. 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 Performance monitoring

43. The Authority considers that it would be necessary to impose sanctions on the Bulk Generation Licensee if it persistently fails to meet service and performance standards that are contained either in the Bulk Generation Licence – Renewable Energy.

44. Accordingly Condition 12 of the Bulk Generation Licence – Renewable Energy provides that the Bulk Generation Licensee furnish to the Authority any information required in light of the conditions of the Bulk Generation Licence – Renewable Energy and the PPA and at such times as the Authority considers necessary or required for the purpose of the Authority performing its functions under the EA and RAA.

45. In addition, Condition 12 obliges the Bulk Generation Licensee to permit the Authority and/or its representatives to examine, investigate or audit any aspect of the Bulk Generation Licensee's business. Condition 12 therefore allows the Authority to both monitor the Bulk Generation Licensee's stewardship of its generating assets and perform inspections for the purposes of verifying Bulk Generation Licensee's compliance with the Bulk Generation Licence – Renewable Energy and applicable laws and in doing so permits the Authority to exercise regulatory monitoring functions.

46. The Bulk Generation Licence – Renewable Energy provides that if the Licensee persistently fails to comply with the service standards set out in Condition 14 of the Bulk Generation Licence – Renewable Energy the Authority shall be permitted to impose a financial penalty and/or require that the Licensee pays compensation.

Additionally, Condition 7 provides that if the Bulk Generation Licensee were to become insolvent the Authority shall be entitled to revoke its Licence. Furthermore, the Bulk Generation Licensee must provide reasonable assistance to any new provider of Bulk Generation services as notified to the Bulk Generation Licensee by the Authority.

5 CONSULTATION QUESTIONS

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

- Are there any provisions in the Bulk Generation Licence – Renewable Energy 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 obligations, performance standards, or incentives (financial or otherwise) should be included in the PPA between the Bulk Generation Licensee and TD&R Licensee?

48. 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

49. The Authority has initiated this Consultation Document to consider the terms and conditions that should be included in the Bulk Generation Licence – Renewable Energy.

50. 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 Bulk Generation Licence – Renewable Energy.

51. The Authority invites comments on the draft Bulk Generation Licence – Renewable Energy. 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.

52. In developing the terms and conditions for the Bulk Generation – Renewable Energy 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 (Renewable Energy)

- [TBD]

APPENDIX A

DATED

2017



**BULK GENERATION LICENCE - RENEWABLE
ENERGY**

granted to

[Insert name of Licence holder]

Licensee:

Address:

Licence 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 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 electricity at the generation station(s) identified in Schedule 1 and hereinafter referred to as the "**Generation Facilities**" up to a maximum installed capacity of ** subject to the terms of this Licence, the EA, the Regulatory Authority Act 2011 ("**RAA**") and any Regulations, General Determinations, Administrative Determinations, Adjudicative Decisions, Orders and Directions made or issued in accordance with the EA and the RAA.

1 DEFINITIONS AND INTERPRETATION

1.1 In this Licence, unless the context otherwise requires:

"**Affiliate**" in relation to the Licensee 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 provisions set forth in the Schedules 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.

"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. [For avoidance of doubt, a Generation Unit does not include a distributed generation system].

"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 an "act of bankruptcy" as set forth in the Bankruptcy Act 1989.

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

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

"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 of an agreement between the Licensee and the TD&R 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.

"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.

"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.

["Wheeling" means the transmission and distribution of power not procured by the TD&R Licensee over the TD&R Licensee's Transmission System and/or Distribution System and "Wheel" shall be construed accordingly.]

"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 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.

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;
 - (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.
- 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.

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.

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;

- (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 RAA and the EA;
- (g) any Administrative Determinations made by the Authority pursuant to the RAA and the EA;
- (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.

5.2 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.

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
- (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. 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 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.

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.
- 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.

12 PROVISION OF INFORMATION TO THE AUTHORITY

- 12.1** 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 material 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.
- 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.
- 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

- 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 regarding any interventions made to rectify any service deficiencies during the last year;
 - (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 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, 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.

- 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

- 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 reasonable return resulting from the replacement of the Generating Facilities is commensurate with the return as against other available options in the market (with a comparable risk profile) for replacing the Generation Facilities.
- 20.5** The Licensee's Proposal shall be granted or denied by the Authority acting in its sole discretion.

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

- 22.1** The first financial year of the Licensee shall run from the Commencement Date to [●] and thereafter each financial year shall run from 1January 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 annual accounts as required pursuant to the Companies Act 1981.
- 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.

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

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 Licensee 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

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

- 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 the Power Purchase Agreement, 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, 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.

SCHEDULE 1
Generation Facilities

[details to be inserted]