



# **Large Scale Self-Supply Licence Preliminary Report**

Preliminary Report

Matter Number: 20210222

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## 1 INTRODUCTION

1. The purpose of this Preliminary Report, Preliminary Decision and Order (the “Preliminary Report”) is for the Regulatory Authority of Bermuda (the “RA”) to:

- (i) present its preliminary position on the Large-Scale Self-Supply Licence;
- (ii) invite public comments on the Preliminary Report; and
- (iii) issue an Administrative Determination (“AD”) at the end of the consultation process setting forth the Large-Scale Self-Supply Licence.

2. 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 The EA repealed the Energy Act 2009.

3. The Regulatory Authority of Bermuda (“RA”) is the sole body responsible for the 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.

4. Section 17 of the Electricity Act 2016 (“EA”) provides that no person shall engage in the following regulated activities unless authorised by a licence granted by the RA:

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

5. Pursuant to Sections 20, 24 and 26 of the EA, the RA has granted, by Administrative Determination, two types of electricity licences:

- (a) a single TD&R Licence<sup>1</sup> that authorises the holder to transmit<sup>2</sup>, distribute<sup>3</sup> and retail<sup>4</sup> electricity and to purchase electricity from Bulk Generation Licensees<sup>5</sup> and distributed generators<sup>6</sup>; and
- (b) multiple Bulk Generation Licences that authorise the holders to engage in bulk generation of electricity.

6. Pursuant to Sections 20 to 26 of the EA, the RA intends to set forth the Large-Scale Self-Supply Licence, to grant by Administrative Determination that authorises the holder to engage in large scale self-supply of electricity.

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<sup>1</sup> See Section 20 (2) of EA.

<sup>2</sup> Convey electricity at or above 22 kilovolts.

<sup>3</sup> Convey electricity below 22 kilovolts.

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

<sup>5</sup> 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).

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

## **2 BACKGROUND AND CONSULTATION PROCEDURE**

### **2.A Background**

7. The RA initiated the consultation by publishing the Large Scale Self-Supply Licence Consultation Document, (the “Consultation Document”) on 1 March 2021 that invited responses from members of the public, electricity sectoral participants, and other interested parties.

8. The Consultation Document asked the following questions:

- (1) Are there any provisions in the Large Scale Self-Supply Licence which you think ought to be modified?
- (2) Are there any Conditions that should be added that are not currently included?
- (3) Do you consider that the Large Scale Self-Supply Licensee should be required to hold separate financial accounts related to its generation business?
- (4) Do you consider that another generation licensee should be allowed to operate the Large Scale Self-Supply generation facilities?
- (5) Should the Large Scale Self-Supply Licence application be required to specify the level of redundancy to be provided?
- (6) Do you have an opinion on what issues should or should not be addressed in the Large Scale Self-Supply Standards (to be issued by the RA)?
- (7) What length of notice period should the Large Scale Self-Supply Licensee be required to provide before it can surrender the Licence?
- (8) Do you consider that there should be a “supplier of last resort”? If so, please outline the circumstances under which the supplier of last report should apply and give your views on which entity/ies it would be.
- (9) Should the Large Scale Self-Supply Licensee be required to provide surety to cover site remediation in the case of insolvency? If so, who should be the responsible body to undertake that remediation in the case of insolvency?

9. The RA received a single (1) written response to the Consultation Document from Bermuda Electric Light Company (“BELCO”).

10. The RA initially intended to set the Large Scale Self Supply License template by General Determination (“GD”). However, it has decided to instead set it by AD. This decision was taken to avoid the additional administrative steps required by the RAA in order to make any future amendments to GD’s.

11. Section 22(1) of the EA requires that “the Authority shall determine an application in accordance with the procedure set by general determination.” This procedure has already been set by the Application Process for Electricity Licences GD dated 8<sup>th</sup> August 2017.

12. The power to set the Large Scale Self Supply Licence by AD is set out in section 24(1) of the RAA, which states that “a licence shall be in the form, and include the terms, as set by the Authority by administrative determination in respect of that type of licence.”

13. Please note that the Regulatory Authority (Large Scale Self-Supply Licence) Interim General Determination 2021 fell away on 31<sup>st</sup> May 2021. and as such, the resulting Order and AD of this Preliminary Report will take precedence.

## **2.B Consultation Procedure**

14. This invitation to provide responses to the Preliminary Report is being undertaken in accordance with sections, 69 to 73 of the Regulatory Authority Act 2011 (“RAA”) and sections 6 and 14 of the Electricity Act (“EA”). The procedure and accompanying timelines (as set out in section 72 of the RAA), under which this consultation is taking place, are outlined in paragraphs 11 to 25 below.

15. Written comments should be submitted before 11:59pm (AST) on 6<sup>th</sup> January 2022.

16. The RA invites comments from members of the public, electricity sectoral participants, and other interested parties. The RA requests that commenting parties, in their responses, reference the number of the relevant questions, as set forth in this Preliminary Report, to which they are responding.

17. Responses to this Preliminary Report should be filed electronically in MS Word or PDF format. Parties wishing to file comments should go to the RA’s website [www.ra.bm](http://www.ra.bm) and click on the “Click Here to Respond” button on the RA’s home page:

**We invite you to RESPOND TO AN OPEN PUBLIC CONSULTATION**

[Click Here to Respond](#)

19. The RA intends to make responses to this Preliminary Report available on its website within 4 weeks of the close of the consultation. 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 RA's Interim Administrative Rules.

20. In accordance with section 73 of the RAA, any interested person may make an ex parte communication during this consultation process, subject to the requirements set forth in this paragraph 13. An ex parte communication is defined as any communication to a Commissioner or member of staff of the RA regarding the matter being consulted on in this Preliminary Report, other than a written submission made pursuant to this Section 2. Within two business days after making an ex parte communication, the person who made the ex parte communication shall submit the following to the RA: (i) a written description of the issues discussed, and positions espoused; and (ii) a copy of any written materials provided. This will be posted on the RA's website, along with a notice of the ex parte communication.

21. The principal point of contact at the RA for this Consultation Document is Nigel Burgess. He may be contacted by email, referencing "Consultation Document: Large Scale Self-Supply Licence" at [consultation@ra.bm](mailto:consultation@ra.bm) or by mail at:

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

22. In this Preliminary Report, 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.

23. This Preliminary Report is not a binding legal document and does not contain legal, commercial, financial, technical, or other advice. The RA is not bound by this Preliminary Report, nor does it necessarily set out the RA's final or definitive position on particular matters. To the extent that there might be any inconsistency between the contents of this Preliminary Report and the due exercise by the RA 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 RA.

### 3 LEGISLATIVE CONTEXT RELATING TO ELECTRICITY LICENCES

24. The 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”.

25. The EA requires the RA to monitor and regulate the electricity sector. Section 14(2)(c) provides that the functions of the RA shall include, amongst other things, the making of Administrative Determinations<sup>7</sup> to provide for the control and conduct of the provision of electricity services including the grant, renewal, modification, suspension, or revocation of licences.

26. Section 20(1)(c) of the EA states that the RA may, by administrative determination, grant a ‘Large Scale Self-Supply Licence that authorises the holder to engage in large scale self-supply of electricity’. According to section 2 of the EA, “self-supply” means generation using a system that is not interconnected to any part of the transmission and distribution network’. Furthermore, section 2 of the EA states that “large scale self-supply” means self-supply at or above the licence threshold’.

27. Section 24(1) of the EA requires to use an administrative determination to set the form of, *inter alia*, large scale self-supply licences, including the terms to be included.

28. Section 26 of the EA provides an exhaustive list of requirements which the RA may include as conditions in any of the types of licences specified in Section 20 of the EA without seeking the Minister’s consent. Such items include a requirement that the licensee:

- (a) pay any fees or penalties that may be imposed by the RA;
- (b) comply with the EA and any regulations;
- (c) comply with any administrative determinations made by the RA;
- (d) comply with any information request issued by the RA relating to the electricity sector; and
- (e) participate in industry self-regulatory or co-regulatory bodies, when directed to do so by the RA.



## **4 SUMMARY & DISCUSSION OF RESPONSES TO CONSULTATION**

### **4.A Respondents**

29. The Consultation Document invited operators and the public to submit responses commenting on the proposed Large Scale Supply Licence and respond to the consultation questions outlined in the Consultation Document. The RA received a single (1) written response to the Consultation Document from Bermuda Electric Light Company ("BELCO").

30. This section provides a summary of the responses and a subsequent commentary from the RA. The proposed final decision, taking into consideration the public responses, is in the subsequent section 5.

31. The RA thanks BELCO for their response and will address relevant comments accordingly. The general points raised by BELCO are addressed in section 4.B, while BELCO's responses to the particular questions raised in the Consultation Document are addressed in section 4.C.

### **4.B Summary of General Responses**

32. BELCO requested further clarity on some issues before it can fully complete its response to the consultation. These issues are addressed in the comments below.

33. BELCO queried the RA's interpretation regarding the lack of interconnection to any part of the transmission and distribution network, and the exact nature of any electrical isolation facilities, in particular related to Question 8 of the consultation. Some comments pertain to a scenario where the Large Scale Self-Supply Generation Facilities are operated in parallel with the grid.

34. For the avoidance of doubt, the definition of Self-Supply in the EA is that "*Self-Supply*" means generation using a system that is not interconnected to any part of the transmission and distribution network.' This draft Licence therefore does not at present consider a scenario where the Licensee's premises are connected to the grid in any way. This is an important point that is relevant for multiple points raised by BELCO in the consultation.

35. BELCO suggests that as grid operator, the TD&R licensee has an interest in reviewing the technical documents / drawings of the Large Scale Self-Supply Generation Facilities to ensure that isolation facilities are satisfactory or that facilities are truly not connected to the network. It also believes that in the case of isolation facilities, the TD&R licensee should be permitted to review the test results and/or witness the commissioning of the electrical isolation facilities.

36. The RA notes the points made above, however in the light of the clarity provided in paragraph 34 above, it does not currently consider it necessary for the TD&R licensee to review the technical documents/drawings, test results or commissioning of electrical isolation facilities. These views will be kept under review and BELCO's comments taken into account should alternate Large Scale Self-Supply scenarios arise in the future.

37. BELCO considers that the TD&R licensee's role is not adequately addressed in the Consultation Document. Based on a scenario where the Large Scale Self-Supply

Generation Facilities will run in parallel to BELCO's system, the TD&R licensee would have a role. BELCO notes its role as grid operator and that this role would require knowledge of the schedule of connection / disconnection of large loads on the network.

38. The RA considers that BELCO's concern in this regard would be removed in light of the clarity provided above. The RA acknowledges that if the Large Scale Self-Supply Generation Facilities are connected to the grid in any way, or if the TD&R licensee is required to act as supplier of last resort, the TD&R licensee would require additional knowledge of the relevant loads.

39. BELCO also requests information about the types of plant that are anticipated to be eligible for Large Scale Self-Supply Licences, as different technologies will raise different issues.

40. The RA is unable to provide further information on potential applications for Large Scale Self-Supply Licences, as these could span a wide range of technologies and supply sizes.

41. BELCO notes the RA's intention to request a second integrated resource plan (IRP) in the next fiscal year, and requests information on how the Large Scale Self-Supply Generation Facilities factor into the IRP – including information on the number, size, type, and timelines for facilities coming online.

42. Relevant information on any Large-Scale Self-Supply Generation Facilities will be shared with BELCO at the appropriate time to allow it to take these into account in the IRP.

43. BELCO notes that Condition 9.3 of the draft Licence speaks of access to the licensee's premises by the RA or persons designated by the RA. In the event that the Large Scale Self-Supply Generation Facilities are operated in parallel, the TD&R licensee would require access to the Licensee's premises to ensure that inadvertent connection to the grid will not jeopardise supply or BELCO's operation of its systems.

44. The RA acknowledge that there could be circumstances where the TD&R licensee could require access to the Licensee's premises, but consider that if required, the RA would designate BELCO staff on a case by case basis.

#### **4.C Summary of Responses to Particular Questions raised by the RA**

**45. Question 1: Are there any provisions in the Large Scale Self-Supply Licence which you think ought to be modified?**

- (a) BELCO: BELCO provided a marked up version of the draft Large-Scale Self-Supply Licence ('draft Licence') containing specific comments. It also reserved the right to further response pending further information from the RA as requested elsewhere in its response.
- (b) RA: The RA has considered BELCO's useful comments on the draft Licence, and where applicable has incorporated these suggestions into the updated draft Licence. Some comments relate to the assumption of grid connection, as addressed in paragraph 34 above,

and have therefore not been incorporated into the Licence at this time.

**46. Question 2: Are there any conditions that must be added that are not currently included?**

- (a) BELCO: BELCO's response has suggested some additional conditions, in particular addressing:
  - (1) Requiring the Licensee to display a copy of the Licence, as required by other licences.
  - (2) The basis on which the RA will grant or deny permission for the replacement of generation facilities. Condition 15 does not specify this basis, as for Bulk Generation Licences, and BELCO suggest that parameters be set for a proper process.
- (b) RA: The RA has responded as follows:
  - (1) The RA agrees that displaying a copy of the Licence should be a requirement, as required for other Licensees, and has added Condition 17.2 to the draft Licence.
  - (2) The RA considers that there are a number of potential scenarios (some currently unknown) which could apply to Self-Supply Generation Facilities, and that setting parameters at this time could be unduly restrictive.

**47. Question 3: Do you consider that the Large Scale Self-Supply Licensee should be required to hold separate financial accounts related to its generation business?**

- (a) BELCO: BELCO do consider that there should be separate financial accounts, on the basis of consistency amongst licensees.
- (b) RA: The RA consider that this requirement can be decided on a case-by-case basis, as provided under Condition 16.1(b). The decision will be influenced by a number of factors such as the proposed size of supply, operator of the Generation Facilities, and duration of the Licence.

**48. Question 4: Do you consider that another generation licensee should be allowed to operate the Large Scale Self-Supply generation facilities?**

- (a) BELCO: BELCO do not currently envisage any objection, while noting that it may not fully appreciate any potential impact. It has requested further clarity from the RA on what is envisaged.
- (b) RA: The RA was interested in views on issues such as whether there could potentially be perceived conflict of interest should another Licensee also operate the Large Scale Self-Supply generation

facilities. The RA does not currently have views either supporting or not supporting such a scenario.

**49. Question 5: Should the Large Scale Self-Supply Licence application be required to specify the level of redundancy to be provided?**

- (a) BELCO: BELCO request further clarity from the RA as to what is envisaged, for example whether this redundancy considers energy storage technologies. BELCO will respond on this issue once there is further clarity.
- (b) RA: The RA's question was based on the premise that the Large Scale Self-Supply would not be connected to the grid, and that as such the Licensee would be required to provide some level of redundancy. It queried whether this redundancy should be specified, or whether it would be left to the discretion of the Licensee. The RA's position is that it would consider this issue on a case-by-case basis at the time of application.

**50. Question 6: Do you have an opinion on what issues should or should not be addressed in the Large Scale Self-Supply Standards (to be issued by the RA)?**

- (a) BELCO: BELCO notes that section 34 of the EA provides that service standards are to be set by General Determination. It further notes that the RA has undertaken a consultation and issued a General Determination on the service standards. BELCO queries whether the RA intends a further consultation process to set separate standards for Large Scale Self-Supply Licensees, in which case it will participate in the consultation process. It does not have a comprehensive view of all issues which should be addressed in relation to standards to apply to Large Scale Self-Supply Licensees.
- (b) RA: The RA will consider in due course whether separate service standards will be developed for Large Scale Self-Supply Licensees or whether the existing Service Standards will be applicable.

**51. Question 7: What length of notice period should the Large Scale Self-Supply Licensee be required to provide before it can surrender the Licence?**

- (a) BELCO: BELCO will require adequate notice if it is anticipated that, after surrender of the Large Scale Self-Supply Licence, BELCO will be accepting the load on its grid. BELCO note that it will be difficult to specify a particular notice period, as this will be affected by various factors such as the size of the load and the location. It suggests that rather than a notice period being enshrined in the Licence, the condition should reflect that BELCO will work with the Licensee to determine the applicable period.
- (b) RA: The RA agrees with the position put forward by BELCO and has adjusted Condition 8 accordingly.

**52. Question 8: Do you consider that there should be a “supplier of last resort”? If so, please outline the circumstances under which the supplier of last resort should apply and give your views on which entity/ies it would be?**

- (a) BELCO: BELCO states that it has always maintained that it is, and should be, the supplier of last resort. However, it notes that in the case of Large Scale Self-Supply Licensees, being supplier of last resort would mean that BELCO would be required to carry reserve plant capacity to supply the aggregate load demand of all Large Scale Self-Supply Licensees in the event that those Licensees cease self-supplying generation. Requiring BELCO to carry this reserve capacity would impact on other issues covered in the consultation, such as the notice period BELCO would require in order to pick up non-grid load.
- (b) RA: The RA notes that this issue is related to Question 5 (specifying the level of redundancy required). Requiring BELCO to be the supplier of last resort has implications for the reserve plant and network capacity BELCO would require. The RA does not envisage specifying a supplier of last resort at this time.

**53. Question 9: Should the Large Scale Self-Supply Licensee be required to provide surety to cover site remediation in the case of insolvency? If so, who should be the responsible body to undertake that remediation in the case of insolvency?**

- (a) BELCO: BELCO considers that such surety should be provided to ensure that any site remediation can be addressed, addressing the environmental impact. It considers that such surety should be provided to the RA.
- (b) RA: The RA notes that the approach to insolvency is consistent with that taken in the Bulk Supply Licences. Condition 22 provides for the RA to request surety to cover site decommissioning. The RA considers that in the event, it would decide which body would be best placed to undertake the site remediation.

## **5 TERMS AND CONDITIONS OF THE LARGE SCALE SELF-SUPPLY LICENCE**

54. As noted above, the RA initiated this consultation to consider the standard terms and conditions of the Large Scale Self-Supply Licence that will be issued to Large Scale Self-Supply Licensees. The draft form of the Large Scale Self-Supply Licence (amended based on the response to the consultation) is attached as an Annex to Appendix A to this Preliminary Report. The RA notes that the Large Scale Self-Supply Licence will be established via an Administrative Determination in order to avoid the additional administrative steps required by the RAA in order to make any future amendments to GD's.

55. Compliance with licences issued to market participants will be an on-going activity and enforcement proceedings will be initiated where necessary. The RA notes that the electricity licences will evolve over time. There may be licence conditions that can be modified or removed in the future as the electricity sector in Bermuda evolves.

56. The RA invites comments on the Preliminary Report, on the Draft Administrative Determination in Appendix A and Draft Large Scale Self-Supply Licence contained within the Annex.

57. In developing the standard terms and conditions of the Large Scale Self-Supply Licence, the RA considers that it is unnecessary to restate every applicable obligation contained in the EA and RAA in the draft licence. The relevant provisions of the EA and RAA will apply to all licence holders without regard to whether they are repeated in the licences. As a general point, the RA has included in the licences only those substantive provisions of the EA and RAA which direct the RA to undertake specific tasks, or which require clarification in the licences.