

# E&U 2020 - 1 - Consultation Proposed Regulatory Accounts Rules

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Launch Date: 10 March 2020

Closing Date for comments: 10 April 2020



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## A. Introduction

1. The Utility Regulation and Competition Office (the ‘Office’) is the independent regulator for the electricity, information and communications technology (‘ICT’), water, wastewater and fuels sectors in the Cayman Islands. The Office also regulates the use of electromagnetic spectrum and manages the .ky Internet domain.
2. Different decisions by the Office will affect persons and organisations throughout the country in different ways. It is therefore important that the Office makes regulatory decisions with the appropriate input from persons with sufficient interest or who are likely to be affected by the outcome of such decisions. Consultation is an essential aspect of regulatory accountability and transparency and provides the formal mechanism for these persons to express their views in this manner. The requirement for the Office to consult is mandated in its enabling legislation.
3. Under its enabling and foundational legislation, the Office has several principal functions. One of these principal functions is to protect the short and long-term interests of consumers in relation to utility services. The Office may do so by making administrative determinations, decisions, orders and regulations.
4. The purpose of this consultation paper is to seek the views of operators, the general public, and other interested parties, regarding the Office’s final draft administrative determination in the form of the Proposed Regulatory Accounts Rules (Electricity Sector) (*‘the final draft Rules’*).

## B. Legal Framework

5. The Office is guided by its statutory remit in developing the final draft Rules, notably the provisions outlined in Part B of the final draft administrative determination paper attached and marked as “Appendix”.
6. Section 6(2)(d) of the Utility Regulation and Competition Law (as revised from time to time) (the ‘URC Law’) states that the Office, in performing its functions and exercising its powers under the URC Law or any other Law, may “*make administrative determinations, decisions, orders and regulations*”.
7. Section 7(1) of the URC Law requires the Office, before issuing an administrative determination which in the reasonable opinion of the Office is of public significance, “... *to allow persons with sufficient interest or who*

*are likely to be affected a reasonable opportunity to comment on the draft administrative determination.”*

8. It is the position of the Office that it retains the right to propose amendments to the final draft Rules when appropriate but not so frequent so as to render the obligations of Licensees in relation to the Office’s expectations regarding accounts separation arbitrary, but in any event only after consultation.

## C. Final Draft Determination and Proposed Regulatory Accounts Rules (Electricity Sector)

9. The final draft determination paper and the final draft Rules are attached to this consultation document and are summarised in the paragraphs below. The Office strongly encourages respondents to read the final draft Rules prior to submitting comments, or to answering the consultation questions in the next section, as this summary is not intended to be exhaustive.
10. The attached final draft Rules consist of six (6) rules, two (2) schedules and nine (9) appendices which address:
  - The accounting records that must be kept;
  - the requirements and format for reporting to OfReg, as well as the timing of the reports;
  - how cost and revenues must be allocated, including those between regulated and non-regulated services or products;
  - the requirements related to reporting of business functions/segments transactions;
  - the audit requirements; and
  - the principles that must be observed and implemented to satisfy the functional and structural unbundling requirements including obligations related to discrimination in the provision of services, the use of customer-related information, the disclosure of information relating to electricity networks and generation facilities, the cross-subsidisation of non-regulated activities, business separation and common directors, officers and employees.
11. The main objective of the final draft Rules is to outline the Office’s expectations and Licensees’ obligations regarding the separation of accounts. The final draft Rules will apply to Electricity Sector Licensees.



## D. Consultation Questions

12. Based on the above, the Office invites all interested parties to submit their comments, with supporting evidence, on the following question:

**Question 1:** Do you have any or additional comments on the proposed Regulatory Accounts Rules.

**Question 2:** Please provide your views on any other matters you consider relevant to this Consultation.

## E. How to Respond to This Consultation

13. This consultation is conducted in accordance with the Consultation Procedure Guidelines determined by the Office and found on the Office's website.<sup>1</sup>
14. The Office considers that because the final draft Rules are published as part of this consultation, this consultation will be conducted as a single-phase consultation over a period of thirty (30) days. As noted above, section 7(1) of the URC Law states that prior to issuing an administrative determination of public significance, the Office shall “*issue the proposed determination in the form of a draft administrative determination.*” The Office considers the attached final draft Rules to be a “*draft administrative determination*” for the purposes of section 7(1).
15. All submissions on this consultation should be made in writing and must be received by the Office by 5 p.m. on 10 April 2020 at the latest.
16. The Office will post any comments received within the stated deadline on its website by 5 p.m. on 24 April 2020.
17. Submissions may be filed as follows:

By e-mail to:  
[consultations@ofreg.ky](mailto:consultations@ofreg.ky)

<sup>1</sup>  
<http://www.ofreg.ky/upimages/commonfiles/1507893545OF20171DeterminationandConsultationProcedureGuidelines.pdf>

Or by post to:  
Utility Regulation and Competition Office  
P.O. Box 10189  
Grand Cayman KY1- 1002  
CAYMAN ISLANDS

Or by courier to:  
Utility Regulation and Competition Office  
3<sup>rd</sup> Floor, Alissta Towers  
85 North Sound Rd.  
Grand Cayman  
CAYMAN ISLANDS

18. If a respondent chooses to file any information in confidence with OfReg, it should, *at the time of making its filing*, also file redacted versions for the public record along with the reasons for each confidentiality claim and the other requirements for confidentiality claims as specified in section 107 of the URC Law.
19. If a respondent chooses to apply to the Office for an extension of the time to file comments or reply comment, it must do so no less than four (4) days before the day of the existing deadline, include a complete and detailed justification for the request, and copy all other respondents (if known) *at the same time* as it applies to the Office. The other respondents (if applicable) may comment on the application for an extension within two (2) days of submission of the application, copying all other respondents *at the same time*. The Office reserves the right not to accept applications for extensions that do not satisfy these requirements. However, at no time will the Office accept an application for an extension submitted after the deadline in question has passed.
20. Upon issuing a Determination, the Office will consult with the Cabinet to approve the final draft Rules. Upon approval, the Office will arrange for publication of the final draft Rules in the Cayman Islands Gazette and enforce accordingly.



# APPENDIX

## FINAL DRAFT ADMINISTRATIVE DETERMINATION AND FINAL REGULATORY ACCOUNTS RULES

# E&U 2020 - 1 – Final Draft Determination Proposed Regulatory Accounts Rules

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**UTILITY REGULATION AND COMPETITION OFFICE  
THE CAYMAN ISLANDS**

Publication Date: [X] [X] 2020





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## A. Introduction

1. The Utility Regulation and Competition Office (the 'Office' or 'OfReg') is the independent regulator established by section 4(1) of the Utility Regulation and Competition Law (as revised) (the 'URC Law') for the electricity, information and communications technology, water, wastewater and fuels sectors in the Cayman Islands. The Office also regulates the use of electromagnetic spectrum and manages the .ky Internet domain.
2. The Office has several principal functions under the URC Law, including the promotion of innovation and facilitating economic and national development. The protection of the short-and long-term interests of consumers is also another principal function of the Office, in relation to the markets and sectors for which it has responsibility. Under the various sectoral laws, the Office also has additional specific functions. The Office, in relation to sectoral providers, is responsible of ensuring that utility services are satisfactory and efficient. The Office achieves this function by supervising, monitoring and regulating any sectoral provider in accordance with the URC Law and sectoral legislation. As the Office is responsible for the electricity sector including the production, distribution, and supply of electricity, it was determined that it was necessary to prepare and consult on a proposed regulatory accounting process in relation to the electricity sector.
3. Accordingly, on 20 September 2019, the Office published the E&U 2019 – 3 – Consultation on the proposed Regulatory Accounts Rules. The consultation paper, which included the proposed Regulatory Accounts Rules (the "Proposed Rules"), outlined the legal basis for the separation of accounts, the procedural approach, applicable principles, and specified the scope of activities necessary for the preparation of the accounts. The Proposed Rules, as attached, were prepared in accordance with the Office's powers and function to make rules relating to financial reports to be submitted by licensees under section 89(3)(l) of the Electricity Sector Regulation Law (2019 Revision) ('ESR Law'); and to recommend to Cabinet rules and regulation.
4. The Office received one response to the Consultation submitted by the Caribbean Utilities Company Ltd. (CUC), the monopoly Licensee for Transmission & Distribution (T&D), and also holder of a non-exclusive generation licence.

## B. Legal Framework

5. The Office is guided by its statutory remit in developing the Proposed Rules notably the provisions which follow.
6. Pursuant to section 6(1) of the URC Law, the Office regulates prescribed utility services in the Cayman Islands. Section 6(1) provides, inter alia, that the principal functions of the Office in the markets and sectors for which it has responsibility, are:

“

  - a) to promote objectives set out in any Policy;
  - b) to promote appropriate effective and fair competition;
  - c) to protect the short- and long-term interests of consumers in relation to utility services and in so doing
    - i. [...];
    - ii. ensure that utility services are satisfactory and efficient and that charges imposed in respect of utility services are reasonable and reflect efficient costs of providing the services;
    - iii.[...]; and
  - d) to promote innovation and facilitate economic and national development.”
7. In addition, specific to the electricity sector, section 9(2)(a) to (f) of the ESR Law states inter alia, that without prejudice to subsection (1), the principal functions of the Office shall include:
  - a) “[...];
  - b) [...];
  - c) to monitor and regulate the rate, price, terms and conditions of electricity generated by Generators and supplied to T&D licensees for reward;
  - d) [...];
  - e) [...];
  - f) to solicit additional generation capacity and conduct the generation solicitation process.”
8. The generation of electricity may be carried out by several players in the industry, including the Licensees. However, Condition 2 of Licensees’ transmission and distribution (“T&D”) licence states that: *“licensees have the exclusive right to transmit, distribute and supply electricity throughout*

*the Cayman Islands for reward and to construct, reconstruct, replace or modify a T&D system for those purposes.”* In addition, pursuant to the T&D Licences, the Licensee may purchase some or all of its power requirements from Generation Licensees other than itself pursuant to the PPAs.

9. In relation to Licensees’ accounts, section 29 of the ESR Law requires licensees to furnish to the Office annually reports relating to their activities during the respective year in such form and including such content as the Office may require. Section 29(2) states:

*“a) on an annual basis within three months of its financial year end, audited financial statements prepared in accordance with appropriate generally accepted accounting principles or otherwise as prescribed by regulations made hereunder; and*

*b) within thirty days of each quarter end, unaudited detailed management financial accounts showing sufficient and relevant detail so as to allow for the Office to calculate and agree the amount of the prescribed licence and regulatory fees.”*

10. Section 89(3)(l) of the ESR Law provides that the Office may make rules relating to the financial reports to be submitted by licensees. In addition, pursuant to the respective conditions of the T&D Licences, Licensees are required to:

*“...comply with its obligations regarding the maintenance of accounts and the provision of accounting and other information to the Authority contained in the Law.”*

11. Section 6(2)(d) of URC Law states that the Office, in performing its functions and exercising its powers under the URC Law or any other Law, may “*make administrative determinations, decisions, orders and regulations*”.

12. Section 7(1) of the URC Law requires the Office, before issuing an administrative determination which in the reasonable opinion of the Office is of public significance, “*... to allow persons with sufficient interest or who are likely to be affected a reasonable opportunity to comment on the draft administrative determination.*”

13. It is the position of the Office that it retains the right to amend the Proposed Rules when appropriate but not so frequent so as to render the electricity sector licensing framework arbitrary, but in any event, only after consultation.

## C. Comments Received and Office's Response

14. CUC's response included the following preface:

*"We refer to the E&U 2019 - 3 – Consultation launched by OfReg on September 20 2019. Please find below the subject consultation response from CUC.*

*Under Part F – Consultation Questions, the Consultation invites interested parties to comment (paragraph 37), particularly with respect to a list of questions (paragraph 38). CUC provides substantive comments in the following Preface section. While the prescribed questions are also addressed, each response thereto is wholly conditioned by the comments in the Preface section.*

*Preface: For much of its history, CUC was regulated under an exclusive license arrangement. This arrangement was appropriate and effective for our small island utility. The electricity service on Grand Cayman was then and continues to be a model for the whole Caribbean region. Rather than simply renew that exclusive license, however, the Cayman Islands Government initiated negotiations with CUC in 2004 with the understanding that (a) CUC was not broken and therefore did not need to be fixed, and (b) Government wanted to introduce competition for generation. Upon culmination of this negotiation in 2008, new licenses were issued to CUC, a new regulatory structure was implemented, and a new regulatory body was created.*

*The Proposed Rules will require Licensees to prepare an additional set of accounts and reports to the Office. In order to be in a position to prepare those accounts at year end Licensees will have to keep additional records and employ additional permanent staff. They will also have to engage specialist accountants and auditors to prepare and review an additional set of accounts and reports at year end. CUC estimates that the additional annual cost to CUC of producing the Regulatory Accounts proposed by the Office will be over \$400k. other Licensees will have their own additional costs. These costs will ultimately be passed on to all consumers of electricity in Grand Cayman.*

*We note also that in order to review and comprehend the new accounting reports required by such new regulation, the Office itself will undoubtedly expand its use of consultants or permanent staff, or both and that cost too will ultimately be passed on to all consumers of electricity.*

*It is likely, if this regime is implemented, that the new reports will lead to dialogue between the Office and Licensees over the content and implications of the reports, which will lead to yet further costs for both the Office and Licensees.*

*Pursuant to section 6 [c] of the URC Law (2019 Revision) one of the principal functions of the Office is “to protect the short and long term interests of consumers in relation to utility services and in so doing: ... (ii) ensure that utility services are satisfactory and efficient and that charges imposed in respect of utility service are reasonable and reflect efficient costs of providing the services ... “*

*The consultation document explains that the Office is attracted to regulatory accounting having regard to its use elsewhere and track record as a regulatory tool (§22). CUC is aware that the regulation envisioned by this Consultation has been implemented in many advanced regulatory structures world-wide. In many markets it is not only appropriate and necessary but also cost-effective – typically, the size of the service territory and the number of service providers are both huge compared to Grand Cayman. In those markets, standardisation of reporting requirements enables a regulatory body to efficiently monitor an endless stream of generation additions, transmission extensions, wholesale and retail rate case filings, resource plans and territorial issues. Regulatory accounting is a sophisticated regulatory tool, but it comes at a cost. That cost is reasonable and efficient in much larger service territories but is unreasonable and inefficient in a service territory as small and with as few consumers as Grand Cayman.*

*Now with this Consultation, OfReg intends to advance its regulatory oversight to levels that were not even imagined during the negotiation of the new law and licenses. While the proposed framework may be appropriate in some jurisdictions, we do not see in the Consultation any evidence that such a framework in Grand Cayman would be an efficient or cost-effective approach and the consultation does not contain any explicit evaluation of cost benefit. The only thing that is clear is that the proposal will undoubtedly increase already significant existing costs of regulator administration and compliance for consumers.*

*As the Office is aware, the pricing of electricity is currently controlled by a price capping mechanism in CUC’s T&D license that will remain in effect until 2032. Under the current regulatory structure, Grand Cayman benefits from continuation of CUC’s outstanding service in a regulated environment.*

*The Consultation does not demonstrate (or even suggest) that this is inadequate or does not work or that changes to the industry warrant such a significant change in regulatory reporting.*

*To be clear, CUC is not opposed to utility regulation. However, the benefits of regulation must not outweigh its costs, each as considered from the consumers' perspective. The new regulation envisioned by this Consultation will definitely add to costs for the consumers. But we fail to see commensurate benefits to consumers."*

- 15. Question 1:** Do you agree that the accounts of the bulk generation and T&D licensed business units should be separated from each other, from the accounts of the unregulated business units of Licensees (if applicable), and from the accounts of related parties?

*"No. While this may be appropriate in other larger, more advanced regulatory environments, we do not agree that it is appropriate for Grand Cayman.*

*Our view is that this approach will only increase the cost of electricity in Grand Cayman. CUC's current cost structure provides the most significant price benefits to consumers in a small island grid such as ours. See our comments in the Preface.*

*This pricing benefit is best evidenced in the results of the 2014 generation expansion bid where CUC's bid was 22% lower than the next lowest priced bidder."*

#### **16. Office Response**

The Office notes CUC's response. However, the Office also notes that the submission of regulatory accounts is common practice in small jurisdictions such as Bermuda, Guernsey, Jersey, and Jamaica. These four jurisdictions are comparable small island jurisdictions, which do not benefit from the economies of scale of larger jurisdictions.

The Bermuda Electric Light Company (BELCO), which is of comparable size to CUC, is a great example as it is required to submit regulatory accounts to the Regulatory Authority of Bermuda. BELCO's regulatory accounting obligations include the separation of the accounts of the bulk generation and T&D licensed business units. In addition, the Guernsey Electricity Limited (GEL) is required to submit regulatory accounts to the Channel Islands Competition Authority (CICA), and it had been submitting

such information to its predecessor the Office of Utility Regulation (OUR) since 2003.

Furthermore, the Office does not share the view that the Proposed Rules will only increase the cost of electricity in Grand Cayman. There were no attendant increases in electricity costs in the above-mentioned jurisdictions following the introduction of the requirement for submission of Regulatory Accounts.

17. **Question 2:** Do you agree that, for every licensed business unit, the elements that need to be reported include operating costs, revenues, current assets and current liabilities, and fixed assets?

*“No. While this may be appropriate in other larger, more advanced regulatory environments, we do not agree that it is appropriate for Grand Cayman. See our comments in the Preface.”*

**18. Office Response**

The Office holds the position that in addition to the requirements for preparing accounting statements by business functions, it is also necessary to report by business segments. This is because reporting on business segments provides information on key services delivered by the utility, and will allow the regulator to establish and maintain objective reference points for evaluating information provided by licensees especially in relation to specific studies which are required by the regulator from time to time e.g. cost of service studies (COSS). The business segment reports will also provide a sound basis for setting tariffs for services such as transmission interconnection, and auxiliary connection. And it will also enable easy access to information required for data analysis, risk assessment, performance measurement and the promotion of transparency. The Office also notes that both the Regulatory Authority of Bermuda and the Office of Utilities Regulation (the OUR) of Jamaica requires BELCO and Jamaica Public Service Company Limited (JPS) respectively, to provide this information in their regulatory accounts.



19. **Question 3:** Do you agree with the approach to allocating all operating costs and revenues to the individual business units?

*“No. While this may be appropriate in other larger, more advanced regulatory environments, we do not agree that it is appropriate for Grand Cayman. See our comments in the Preface.”*

**20. Office Response**

The Office is not convinced of the correctness of this position since when a Licensee is a vertically-integrated utility, its costs and revenues are likely to be derived from a variety of functions relating to T&D, generation, and other business units. To enable it to determine adequate tariffs and monitor Licensees’ profitability, the Office requires operating costs, revenues, assets and (where relevant) liabilities of Licensees to be allocated to one of its business units. This measure is introduced by the Office for transparency purposes.

21. **Question 4:** Do you agree that assets should be allocated to the regulatory accounts of their main user, where the main user should make a transfer charge to any other business unit that also uses that asset?

*“No. While this may be appropriate in other larger, more advanced regulatory environments, we do not agree that it is appropriate for Grand Cayman. See our comments in the Preface.”*

**22. Office Response**

As in the Proposed Rules, to the extent that asset allocation between Licensees’ business units mimic asset allocation between independent parties, the Office believes that it is appropriate to allocate each asset to a single business unit. The Office also notes that where one business unit charges the other, the transfer charges are offset such that there is no net impact on consumer bills. Any existing synergies in a vertically-integrated utility would not necessarily preclude the valuation of transfer charges and transactions with related parties from being considered as valued at arm’s-length for example, a cost-based approach is generally allowable within arm’s-length pricing.

23. **Question 5:** Do you agree that current assets and current liabilities should be allocated to the business units in line with the principles of cost and revenue allocation?

*“No. While this may be appropriate in other larger, more advanced regulatory environments, we do not agree that it is appropriate for Grand Cayman. See our comments in the Preface.”*

#### **24. Office Response**

The Office considers that it is probable that most fixed assets are used within the individual business units, thus most fixed assets and the corresponding depreciation are expected to be directly attributable to individual business units. The Office also considers that current assets and current liabilities should be allocated to business units in line with the principles of cost and revenue allocation. For example, where current assets and liabilities relate to accruals or pre-payments, these should be allocated on the same basis as the costs or revenues to which they relate.

25. **Question 6:** Do you agree that long-term liabilities should be allocated to business units only if they are directly associated with a particular business unit, or are collateralised with assets that are associated with particular business units?

*“No. While this may be appropriate in other larger, more advanced regulatory environments, we do not agree that it is appropriate for Grand Cayman. See our comments in the Preface.”*

#### **26. Office Response**

The Office does not share CUC’s view and requires that Licensees provide a breakdown of long-term liabilities as stated. If a liability is not directly associated with a particular business unit, and is not collateralised with assets owned by a particular business unit, the liability does not have to be allocated to individual business units. Additionally, Licensees are required to disclose the terms and conditions of long-term liabilities including the principal amount, issuance date, interest rate, repayment date, and intended use of proceeds.

27. **Question 7:** Do you agree that, as far as is practical and proportionate, transfer charges and transactions with related parties should be valued at arm’s length?

*“No. While this may be appropriate in other larger, more advanced regulatory environments, we do not agree that it is appropriate for Grand Cayman. See our comments in the Preface.”*

#### **28. Office Response**

The Office’s position is that it is Licensees’ duty to ensure that all transfer charges and transactions with related parties should be valued at arm’s length, i.e. on the same terms that would apply between independent parties. As far as is practical and proportionate, the pricing principles should be consistent across regulated transactions.

29. **Question 8:** Do you agree that, for every licensed business unit, Licensees should provide a breakdown of operating costs and revenues by internal transactions, external transactions with related parties, and external transactions with independent parties?

*“No. While this may be appropriate in other larger, more advanced regulatory environments, we do not agree that it is appropriate for Grand Cayman. See our comments in the Preface.”*

### 30. Office Response

The Office requires a breakdown of operating costs and revenues by the three stated categories: internal transactions, external transactions with related parties, and external transactions with independent parties. This measure is required by the Office for transparency purposes.

31. **Question 9:** Do you agree that third-party transactions need to be disclosed in the notes to the regulatory accounts?

*“No. While this may be appropriate in other larger, more advanced regulatory environments, we do not agree that it is appropriate for Grand Cayman. See our comments in the Preface.”*

### 32. Office Response

The Office notes CUC’s response. However, the Office holds the position that if a third-party transaction refers to a non-core activity of the generation or T&D business units, but is attributable to such units, a transaction needs to be disclosed in the notes to the regulatory accounts.

The Office acknowledges that CUC, like other small island utilities, are regulated under an exclusive licence agreement for Transmission and Distribution (T&D) and in some jurisdictions a non-exclusive generation licence. Given that T&D Licensees tend to be ‘natural’ monopolies in such jurisdictions primarily due to economies of scale, it was quite appropriate for the Cayman Islands Government (CIG) to grant an exclusive licence for that aspect of the electricity sector and a non-exclusive generation licence, and to establish a regulator to oversee the industry.

The Office holds the position that the employment of additional permanent staff and engagement of specialist accountants and auditors to prepare and review Regulatory Accounts may be exaggerated. The Office notes that GEL and BELCO did not have to pursue these options. The Office also holds the position that any competent auditor and/or accounting firm ought to have the capability to audit regulatory accounts as these are not new. CUC states that its estimate of KYD \$400,000 and other licensees’ costs to produce regulatory accounts will ultimately be passed on to all electricity

consumers in Grand Cayman. However, the Office believes that licensees should have proper management accounts and management information systems to guide their decision making and that these management tools should not be deemed regulatory costs.

CUC states that in order to review and comprehend the new regulatory accounts, the Office will undoubtedly expand its use of consultants or permanent staff, or both and that cost too will ultimately be passed on to all consumers of electricity. The Office expects that since CUC will utilise a reputable accounting firm (approved by OfReg) to do its audits and to provide an opinion, OfReg will use its own qualified internal staff to review CUC's submissions. The independent audit opinion will guarantee a higher level of assurance over CUC's compliance with the Proposed Rules issued by OfReg, thus decreasing the administrative work for OfReg staff to review. In fact, the Office was reliably informed that the former OUR of the Channel Islands did not have to expand its use of consultants or permanent staff, or both.

CUC expressed that if the Proposed Rules are implemented, that the new reports will lead to dialogue between the Office and Licensees over the content and implications of the reports, which will lead to yet further costs for both the Office and licensees. The Office agrees with CUC that further dialogue will be necessary to clarify some of the issues that will arise from implementing the Proposed Rules and as such, the Office will meet with Licensees' representatives as necessary to explore and resolve matters.

CUC aptly quoted section 6(c) of the URC Law and the Office draws CUC's attention especially to section 6(c)(ii) which reads inter alia "*ensure that utility services are satisfactory and efficient and that charges imposed in respect of utility service are reasonable and reflect efficient costs of providing the services...*". The fact is, this is exactly what the Proposed Rules are intended to do.

CUC has claimed that regulatory accounts reporting is unreasonable and inefficient in a service territory as small and as with few consumers as Grand Cayman. The Office has provided evidence to the contrary (GEL has 30,000 customers, BELCO has approximately 35,828 customers, CUC has 29,000<sup>1</sup>), and disagree with CUC's position as CUC has not provided or pointed to any qualitative or quantitative evidence to support its position.

CUC states that OfReg intends to advance its regulatory oversight to levels that were not even imagined during the negotiation of the new law and Licences. The Office disagrees that this is the case. Moreover, both the URC Law and the ESR Law give OfReg the power to require information from licensees. The Office is of the view that no explicit evaluation of cost

<sup>1</sup> As of the publication date of this Determination.

benefit is necessary as the Proposed Rules avoid inefficient economic recovery. Since the outcomes are transparency, efficiency, unfair cross-subsidisation, undue discrimination, etc., the benefits cannot be measured by monetary costs only.

CUC repeatedly claims that the Proposed Rules are more appropriate in some jurisdictions, will be inefficient or not cost-effective in Grand Cayman, and will undoubtedly increase already significant existing costs of regulatory administration and compliance for consumers. However, the Office disagrees with CUC's position as CUC has provided no qualitative or quantitative proof to substantiate these claims.

CUC mentions the Rate Cap Adjustment Mechanism (RCAM) in its T&D licence that currently applies and which will remain in effect until 2032. The RCAM is subject to 5-year reviews and is now due for a review. The adequacy and/or functionality of this price-capping mechanism will be discussed and an upcoming meeting to be held on a mutually-convenient date. The Office's Consultation was never intended to address the RCAM's adequacy or functionality and opines that this is a moot point.

Seeing that the CIG had the prescience to establish a competitive generation market and that new generation technologies are being deployed especially RE sources that can lower electricity costs for all consumers, CUC should have a reasonable expectation that Regulatory Accounts are of vital importance to OfReg and a wider group of stakeholders including customers and players in the non-regulated markets.

## D. Determination

33. The Office, after consideration of the response, made the following determination. The Office will recommend that Cabinet enact the Proposed Rules whereby Licensees are directed to submit Regulatory Accounts in a format that is transparent, cost-based and non-discriminatory in accordance with the Office's powers and function to make rules relating to financial reports to be submitted by licensees under section 89(3)(l) of the ESR Law.
34. Regulatory accounts provide an analysis of information derived from financial records to reflect as closely as possible the performance of parts of a business as if they were operating as separate business units. The information in turn is a valuable tool in demonstrating that there is no undue discrimination between the dominant operators' own downstream arm and competing operators or between one competitor and another when providing similar services. This is relevant in the Cayman Islands electricity sector insofar as it is possible for there to be new entrants into the

generation market, for example the proposed Waste-to-Energy plant and other utility-scale renewable energy (RE) plants.

35. Moreover, the information in the regulatory accounts also helps in demonstrating the existence or absence of any unfair cross-subsidisation of competitive or non-regulated services from the monopoly part of the business. This is of importance to a wider group of stakeholders including customers and players in those non-regulated sectors. In addition, the information underpins prices charged by the regulated entity, a matter of interest to all electricity customers.
36. The Office believes that having Licensees submit regulatory accounts would provide stakeholders beyond the Office with the information to assess these issues and, insofar as new entrant generators are concerned, it will assist in demonstrating the absence (or detecting the presence) of anti-competitive behaviour at levels of disaggregation applicable to the relevant retail and wholesale markets, thus supporting and promoting the development of a competitive regime in the generation market.
37. Furthermore, the Office notes that the requirement for submission of Licensees' Regulatory Accounts is in line with international best regulatory practice, is done in similar sized jurisdictions, and will also assist in demonstrating that Licensees' charges are cost based, transparent and non-discriminatory, and reasonable for a monopoly service provider.
38. In conclusion, the Office believes it is appropriate to require Licensees to submit Regulatory Accounts.
39. The Office will consult with the Cabinet and upon receipt of the Cabinet's approval of the Proposed Rules, will arrange for the publication of the same in the Cayman Islands Gazette. Upon publication, the Proposed Rules will come into effect and will require that Licensees to provide regulatory accounts. The Office is cognisant of the impact that this may potentially have on the cost of regulation, and will consult with the Cabinet accordingly in regard to the timeframe of the initial fulfilment of the obligations.

**APPENDIX**  
**FINAL REGULATORY ACCOUNTS RULES**



## **Accounts Separation Rules for Licensees (Electricity Sector)**

In exercise of the powers conferred upon the Utility Regulation and Competition Office by section 6(1) of the Office of Utility Regulation and Competition Law (as revised), section 9(2) of the Electricity Sector Regulation Law (2019 Revision), the following Rules are hereby made: -

### **1. Citation**

These Rules may be cited as the Accounts Separation Rules for Licensees (Electricity Sector).

### **2. Purpose of the Rules**

2.1 Section 29 requires Licensees to furnish to the Office annually reports relating to their activities during the respective year in such form and including such content as the Office may require.

2.2 Pursuant to the respective Conditions of Licensees' T&D licences, "Financial statements shall be prepared in accordance with generally accepted accounting principles (GAAP), or such other generally accepted accounting principles as Licensees may select with the Authority's approval."

Further, the respective Conditions of Licensees' T&D licence also states "Licensees shall provide basic audited financial statements on an annual basis prepared in accordance with appropriate GAAP and un-audited detailed financial statements, on a quarterly basis, in the general format required for its annual accounts."

2.3 These Rules are designed to ensure the availability of the information required for the effective regulation of Licensees that are a vertically



integrated utility, and to establish the framework for the functional and structural unbundling of the business activities in the electricity power industry. The objectives of the Rules are to:

- i. ensure that the services provided by Licensees with respect to the use of the T&D system or other approved internal services are done on similar terms to equivalent services they would provide for themselves;
- ii. ensure that the costs of generating units installed by Licensees under competitive tender are accounted for separately from the facilities they own;
- iii. ensure that the purchasers of special services from Licensees are not required to pay more than a reasonable cost for the services used;
- iv. monitor compliance of vertically integrated companies with respect to the prohibition of cross-subsidisation of their products or services; and
- v. establish regulatory reference points that may be used to objectively assess the information provided by Licensees in relation to special studies which may be required periodically. These studies may include, but are not restricted to, investigations into the cost of service, discriminatory pricing, predatory pricing and other forms of anti-competitive behaviour.

### **3. Content of the Rules**

Therefore, the Rules prescribes:

- a. the accounting records that must be kept;
- b. the requirements and format for reporting to OfReg, as well as the timing of the reports;
- c. how cost and revenues must be allocated, including those between regulated and non-regulated services or products;
- d. the requirements related to reporting of business functions/segments transactions;
- e. the audit requirements; and

- f. the principles that must be observed and implemented to satisfy the functional and structural unbundling requirements including obligations related to discrimination in the provision of services, the use of customer-related information, the disclosure of information relating to electricity networks and generation facilities, the cross-subsidisation of non-regulated activities, business separation and common directors, officers and employees.

#### 4. Definitions

**“Accounts separation”** means the de-construction and disaggregation of a company's accounts in a form that enables the costs and revenues associated with each production and/or service unit to be identified, functionalised and allocated appropriately.

**“Accounts Separation Statements”** means the statements prepared by Licensees in accordance with Rules 5 and 6.

**“Accounting and Cost Allocation Manual” or “ACAM”** means an indexed compilation and documentation prepared by Licensees and approved by OfReg, that catalogues the accounting policies and principles employed in the preparation of the company's Accounts Separation Statements.

**“Auditor”** means a qualified accountant authorised to independently and objectively examine the financial records to ensure that they are compliant with generally accepted accounting principles.

**“Authority”** means the former Electricity Regulatory Authority established under the *Electricity Regulatory Authority Law (2010 Revision)*;

**“Board of Directors”** means the governing body of Licensees, which has the ultimate decision-making authority.

**“Business functions”** shall be defined as specified in Appendix 1 hereof.

**“Business segment”** means the functional component of the utility that provides a single product or service or a group of related products and services and is subject to risks that are different from those faced in other functional components of the business.

**“Cost Allocations”** means the methods or ratios used to allocate costs. A cost allocator can be based on the origin of costs, as in the case of cost drivers; cost-causative linkage of an indirect nature; or one or more overall factors (also known as general allocators).

**“Common cost”** means costs which cannot be directly assigned to a particular product or service that are of joint benefit between regulated and non-regulated business units.

**“Cost driver”** means any factor which causes a change in the cost of an activity and which can be directly traced to the origin of the costs themselves.

**“CPI”** means the All Items Consumer Price Index published by the Economics and Statistics Office of the Cayman Islands,

**“Direct cost”** means a cost associated with inputs that can be traced directly and unambiguously to a specific good or service and which are recorded against the relevant product or service in the operator’s accounting system.

**“Directly Attributable cost”** means a cost which is directly and unambiguously related to a service or product but is not recorded in the financial accounts against the product or service to which it is related.

**“Distribution system”** means the component of the T&D system that is dedicated to the carriage of electricity at comparatively low voltage levels and delivering it to consumers. Distribution system includes poles, transformers, lines, insulators and other equipment on the T&D system that permits the transportation of power below 69KV.

**“Electricity Law” or “EL”** means the Electricity Law (as revised), and any subsidiary legislation enacted thereunder and in force, as amended from time to time.

**“Electricity Sector”** means energy industry which provides for the electrification needs of the economy through the generation, transmission and distribution of electricity via the T&D system .

**“Electricity Sector Regulation Law or (the “ESR Law”)** means the Electricity Sector Regulation Law (as revised) and any subsidiary legislation enacted thereunder and in force, as amended from time to time.

**“Fixed cost”** means a cost that remains unchanged irrespective of the output level or sales revenue of a firm although, in the long run, no costs are fixed.

**“Fully Distributed cost”** means a method in which the cost of a product or service is determined by allocating to it direct costs, indirect costs and non-attributable common costs, so that no costs are left unallocated.

**“General Information Sheet”** means a document, submitted along with the Accounting Separation Statements, which is signed by the Chief Executive Officer (or equivalent) of Licensees and approved by a resolution of the Board of Directors that sets out information on the companies within the Corporate Group which owns the utility along with charts on the ownership structure and relevant transactions within the group.

**“Generator”** means a person possessing a valid Licence to generate and deliver electricity to a T&D Licensee.

**“Immaterial”** means not material.

**“Indirectly Attributable cost”** means a cost which is shared by more than one service or product, but can be allocated between services on a non-arbitrary basis.

**“Joint cost”** means a cost that cannot be traced directly to any particular good or service, but can be linked to the cost of inputs associated with a well-defined set of the goods and services produced by the firm.

**“kWh”** means Kilowatt-hour, which is the unit of energy used to measure electricity consumption.

**“Licence”** means a licence granted to a person by the Cabinet or by the Office under this Law and includes any renewal thereof or modification thereto.

**“Licensee”** means a person to whom a Licence is granted.

**“MWh”** means Megawatt-hours, which is the unit of energy used for electricity production or consumption. A MWh is the product of electrical power and time.

**“Management Responsibility Statement”** means a declaration signed by the President and/or Chief Executive Officer of Licensees and approved by a resolution of the Board of Directors indicating that the management of the company accepts full responsibility for the accuracy of the information presented in the relevant Accounting Separation Statements.

**“Material or Materiality”** An item is material if its omission, misstatement or nondisclosure has the potential to prejudice the understanding of the financial position of the Licensee, gained by an assessment of financial information relating to the Licensee.

**“MW”** means Megawatt, which is the unit of electrical power equivalent to one million watts.

**“Non-regulated”** means that which is not subject to regulation by regulatory authorities.

**“Office” or “OfReg”** means the Utility Regulation and Competition Office established under section 4 of the Utility Regulation and Competition Law (as revised) and amendments thereto.

**“O&M”** means the operation and maintenance of the utility plant as a part of the process of generating, transmitting, distributing and supplying electricity.

**“Person”** includes any individual, body corporate (either aggregate or sole), partnership, entity or association, undertaking, club, society or other body of one or more persons.

**“PPA”** or **“power purchase agreement”** means an agreement made or terms and conditions agreed between a Generator and a T&D Licensee approved by the Office whereby the T&D Licensee contracts to purchase or acquire electricity generated by a Generator as specified in the agreement or terms and conditions.

**“Regulated”** means that which is subject to regulation by regulatory authorities.

**“Regulatory Accounts”** means Accounts prepared under bases and principles and incorporating information specified by, or agreed with, the Regulators.

**“Related Party”** means a person or an entity that is related to the reporting entity:

- A person or a close member of that person’s family is related to a reporting entity if that person has control, joint control, or significant influence over the entity or is a member of its key management personnel.
- An entity is related to a reporting entity if, among other circumstances, it is a parent, subsidiary, fellow subsidiary, associate, or joint venture of the reporting entity, or it is controlled, jointly controlled, or significantly influenced or managed by a person who is a related party.

**“Shared Costs”** are those costs that cannot be directly attributed to the provision of a particular category of utility services, but which are allocated between different categories of utilities services.

**“Statement of Mean Capital Employed”** means a statement which sets out the arithmetic average values of capital over the reporting period for the relevant business segments.

**“Subsidisation”** means the recovery of costs from one class of customers or business unit that are attributable to another.

**“Terms of reference”** means a set of instructions or guidelines given to a consultant, auditor or any other person contracted to do a specific investigation or project. It describes the purpose, scope, structure and deliverables associated with the assignment.

**“Transfer price”** means the accounting value assigned to a product sold in a transaction between divisions of a company, or companies belonging to the same corporate group.

**“T&D licence”** means a Licence which permits the Licensee, *inter alia*, to purchase, transmit and distribute electricity for delivery to consumers for reward, and includes a Licence to construct, reconstruct, replace or modify transmission and distribution facilities for those purposes.

**“T&D system”** means the T&D network of a T&D Licensee for the transport of electricity from the generating station of a Generator to consumer meters and consists of structures, lines, underground conduit, conductors, transformers, relays, switchgear and associated equipment. The transmission and distribution system does not include equipment or plant employed in power generation, general administration or customer service.

**“Term, Condition or Requirement”** means a term or condition of a Licence or a requirement imposed upon a Licensee by the Office or under this Law .

**“Transmission and Distribution or “T&D””** means the transport of electricity by means of a T&D system for delivery to consumers for reward.

**“Un-attributable common cost”** means a cost which is incurred but cannot be assigned directly or indirectly to any specific product or service. Un-attributable common costs are generally allocated on the basis of a general allocator.

**“URC Law”** means the Utilities Regulation and Competition Law, (2019 Revision) and subsequent amendments thereto.

**“Variable cost”** means a cost that varies with the changes in the output or sales of a firm.

**“Vertically Integrated Utility”** means a company that provides a utility service for which the business structure is such that it controls every aspect of the supply chain related to the product or service it produces. A vertically integrated electric utility possesses responsibility for the generation, transmission, distribution and supply of electricity to the end user.

## **5. General Principles for Accounts Separation**

The following allocation principles will be used where products or services are provided in a vertically-integrated regulated utility and its non-regulated businesses.

### **5.1. Cost Accounting Methodology**

5.1.1. The model that defines the approach to accounts separation is based on the principle of cost causation. Cost causation involves the proper identification and quantification of the costs of inputs

such that they can be properly linked to the goods and services produced by a company. In addition to accounting for direct costs, the utility's accounts shall show costs that include an assignment and allocation of joint and common costs (i.e. fully distributed costs).

## 5.2. General Allocation Principles

5.2.1. In the process of accounts separation, the allocation of costs shall be defined by the following principles:

- a) *Cost Basis*: Subject to variations permitted or directed by OfReg, separated accounts shall be prepared on the historical cost accounting basis in accordance with the relevant Condition of the T&D Licence. The value of assets that are subjected to fair value accounting treatment, shall be adjusted from time to time to reflect their current value pursuant to generally accepted accounting standards subject to the framework of the T&D Licence.
- b) *Cost Causality*: Revenue recovery is based on the principle of cost causality. This involves the categorisation of the cost incurred in the business, in relation to the activities performed and the assets utilised in the production process, so that they might be incorporated into the pricing of the specific goods and services to which they are attributed. The cost causality principle is generally regarded as an effective approach to tariff design as it transmits price signals that encourages rational decision making in relation to present and future consumption and production of the commodity in question. In order to help inform pricing decisions and highlight areas of concern in relation to cross subsidies or transactions with affiliated entities, the accounts should show the costs for activities and services that include an assignment and/or allocation of joint and common costs.
- c) *Procedural Consistency*: The cost allocation basis and assumptions employed shall be reasonable and shall be applied in a predictable manner. Parameters used to allocate costs should be validated via historical data, usage pattern, organisational research, plant studies or some other valid empirical device. The criteria used must be maintained annually to make the results comparable. Changes in allocation parameters and assumptions may be implemented if and only if



the observed differences are material and are validated by clear evidence and sound arguments.

- d) *Methodological Fairness*: The attribution of cost shall be impartial and should not be designed such that it gives Licensees the opportunity to cross-subsidise their costs throughout their various businesses. The cost allocation process should therefore exclude cross-subsidies and care should be taken to ensure that costs are not misallocated.
- e) *Statistical Representativeness*: In the process of determining the accounting for joint and common costs, based on sampling, the assignment and allocation factors may be derived from generalisations about the population. The samples should be impartial and of a size that conforms with sound statistical analysis.

### 5.3 General Accounting Policies

5.3.1 The Accounts Separation Statements prepared by Licensees, must:

- a) comply with the Accounting and Cost Allocation Manual (ACAM) prepared by Licensees and approved by OfReg;
- b) comply with generally accepted accounting principles (GAAP);
- c) provide information that is reliable, cost reflective and relevant and that reflects the substance of the underlying transactions and events; and
- d) capture all relevant material items and transactions.

5.3.2 The Accounts Separation Statements presented to the Office for the purpose of the Rules are an additional requirement to any other statutory financial reporting obligations of Licensees.

### 5.4 Documentation of Accounting Policies

5.4.1 Licensees must prepare an Accounting and Cost Allocation Manual (ACAM) which provides full and proper documentation of the accounting policies and principles used to prepare the Accounts Separation Statements in accordance with these Rules. Among other things, the ACAM must contain:

- a) the methodologies used to allocate costs, revenues, assets and liabilities to and between business functions and segments, including:
  - i. details of the basis, methodology(ies) and formula(e) applicable to each cost and revenue item;
  - ii the justification for the selection of the basis, methodology(ies) and formula(e); and
  - iii the quantification of the factors applied in allocating un-attributable costs and revenues. All allocation factors must be consistent with the principles delineated in section 5.2.1.
- b) the methodologies and policies pertaining to the depreciation of each class of assets. Depreciation charges calculated based on either the appraisal value or the historical cost of the relevant asset (book value), depending on whether or not those assets have been reappraised, the economic life of that class of assets, and the weighted average remaining life of that class;
- c) the transfer pricing policies detailing the allocation of costs and revenues associated with transactions between business segments as well as activities between companies in the same business group. These policies must be compliant with the requirements set out in section 6.4 hereof.

5.4.2 Licensees shall submit the ACAM for approval to OfReg no later than four (4) months after the effective date of these Rules.

5.4.3 The ACAM at minimum shall include the following:

- A. Introduction
- B. Ownership and Operational Structure
- C. Date of Commencement
- D. Code of Conduct
- E. Accountabilities and Responsibilities
- F. Description of Services
- G. Cost Assignment and Allocation Process
- H. Service Agreement List
- I. Guidelines for Transactions between Affiliates
- J. Shared Services Cost Distribution Details
- K. Guidelines and Procedures for Charging Affiliates for services provided by the Licensee

- L. Guidelines and Procedures for Costs Originating with the licensee's regulated business
- M. Guidelines and Procedures for Charging Non-regulated Affiliates or Activities for services provided

## 5.5 Changes to the Accounting and Cost Allocation Manual

5.5.1 OfReg may, periodically, after consultation with Licensees, require that the company(ies) makes changes to the ACAM as considered appropriate. After receiving such notification, the Licensees shall thereupon make the required changes to the ACAM and resubmit it to OfReg for approval within the stipulated time.

5.5.2 If Licensees fails to submit the amended ACAM to OfReg by the stipulated time, OfReg shall determine the appropriate changes to be made, amend the ACAM as determined, and notify Licensees and stakeholders of the amendment and the effective date thereof.

5.5.3 Licensees may request changes to the ACAM by way of an application to the Office, demonstrating:

- a) the precise details of the proposed change;
  - b) the reasons for the change;
  - c) that the amendment will not jeopardise the comparability of the resultant financial information with earlier information provided by that Licensee to the Office; and
- a) the impact of the changes on the Accounts Separation Statements.

OfReg shall thereupon review the proposed changes and in a timely manner, the Office shall indicate its decision in writing and set out the reasons therefor.

An amendment can only take effect from the start of a new regulatory year or such other date as agreed with the Office.

## 5.6 Materiality

For the purposes of section 5.2.1(d), an item of cost shall be deemed material if:

- a) its non-disclosure, misrepresentation or omission is potentially prejudicial to the interpretation of the financial position of Licensees, or;
- b) when the relevant Accounts Separation Statements are read, the item of cost, as presented, is likely to distort the understanding of the nature of the business activities that Licensees or entities within their business group are engaged.

#### 5.7 Determination of Substance.

In relation to the assessment of Licensees transactions, particularly with regard to the section 5.3.1(c), the determination of substance shall be the basis on which the appropriateness of a transaction is judged. To determine the substance, all aspects of the transaction and events connected to the transaction shall be considered together.

#### 5.8 Verifiability of Information

The information in Accounts Separation Statements must be verifiable. Licensees are therefore required to maintain records and relevant accounting data so that Accounts Separation Statements may be rigorously and independently verified.

#### 5.9 Management Responsibility Statement

5.9.1 The Accounting Separation Statements prepared by Licensees for the purposes of these Rules must be accompanied by a statement which evidences the responsibility for the information contained in those Accounting Separation Statements (Management Responsibility Statement) in the form provided in Appendix 5.

5.9.2 The Management Responsibility Statement must be:

- a) signed and dated by the Chief Executive Officer or any other authorised officer; and
- b) approved by a resolution of the Board of Directors no more than fourteen (14) days before the date of the Management Responsibility Statement (a certified copy of this resolution must be attached to the Management Responsibility Statement).

#### 5.10 Supporting Records and Audit Trail

5.10.1 Licensees must ensure that accounting records are:

- a) properly kept and are of such clarity that they accurately explain the transactions and financial position of each of the business segments;
- b) designed to enable an Auditor to properly form an opinion on the Accounts Separation Statements vis-à-vis these Rules; and
- c) contains adequate information about transactions within and between business segments to enable an Auditor to form an opinion about Licensees' compliance with these Rules.

5.10.2 The authenticity and accuracy of the accounts separation process must be maintained. Licensees are therefore required to maintain an audit trail with respect to:

- a) all information used to prepare the Accounts Separation Statements including the allocation of costs to business segments and data which captures the company's transaction with related parties;

## 5.11 Audit Requirements

5.11.1 Licensees shall, at their own expense, appoint an independent and reputable Auditor to audit the Accounts Separation Statements.

5.11.2 OfReg may request meetings with the Auditor to discuss the auditor's findings. Licensees shall ensure that appropriate provisions that allow OfReg access to the auditors, are included in the Terms of Reference, the Letter of Engagement and/or the Contract with the Auditor.

5.11.3 Licensees shall allow the Auditor or its authorised representatives the right of access to its accounting data or any other relevant information that may assist in the timely and proper execution of the audit exercise. For the purpose of the audit, Licensees are also required to make available to the Auditor or its designee officers, appropriate personnel on its staff to provide relevant information and explanations in relation to its accounts and operations.

- 5.11.4 The Auditor shall gather auditing evidence to substantiate the reliability of the accounting records. The Auditor should provide an opinion with respect to whether the Accounts Separation Statements are fairly presented based on these Rules and are compliant with requirements of the Licence. Among other things, the Auditor's Report shall examine:
- a) the appropriateness and adequacy of the procedure used in the disaggregation of cost and revenue;
  - b) the relevance and accuracy of the data and parameters employed in the allocation of costs to regulated products;
  - c) the reconciliation between Licensees' Regulatory Accounts and its statutory accounts;
  - d) the appropriateness of methodologies used regarding amortisation, cost capitalisation and cost allocation in relation to the evaluation of the assets; and
  - e) the accuracy and appropriateness of transfer charges in separated accounts.

- 5.11.5 All Accounts Separation Statements must be accompanied by the Auditor's Report. The report, which must be signed and dated by the Auditor, shall:
- a) declare the Auditor's opinion as to whether the Accounts Separation Statements have been fairly presented and complies with the requirements of these Rules;
  - b) point out any defect in the Accounts Separation Statements caused by material non-compliance with the ACAM in relation to its preparation of the said Statements, as well as any other failures or inadequacies discovered;
  - c) identify exceptions clearly, if any exist, and the effect each exception noted would have on the Accounting Separation Statements;
  - d) highlight any other issues pertaining to the Accounts Separation Statements that would detract from a fair presentation of the accounts, including but not limited

to failure by the auditor or its authorised representatives to obtain from Licensees, all necessary information as well as explanations necessary to perform and execute the audit exercise.

5.11.6 The Auditor's Report must be accompanied by an Auditor's Statement in the format provided in Appendix 6.

5.11.7 OfReg has the right to appoint an Auditor or request that the independent Auditor appointed by Licensees to re-audit, in whole or in part, the accounts, if:

- a) the Auditor's Report is deemed by OfReg to require further work for the purpose of regulatory certainty, or;
- b) the Auditor's Report does not, in OfReg's view, provide a basis for confidence in the Accounts Separation Statements.
- c) based on the evidence in the Auditor's Report or directly from the information in the Accounts Separation Statement, there is:
  - i. material non-compliance with these Rules or the ACAM;
  - ii. a failure or deficiency in the Accounts Separation Statement; or
  - iii. any other issues in relation to the Accounts Separation Statements that in the opinion of the Auditor and/or OfReg should have been reported and was overlooked or omitted.

5.11.8 Regardless of whether the Auditor is appointed by Licensees or OfReg to conduct a re-audit, all such audit costs are to be borne by the Licensees.

## 5.12 General Information Sheet

5.12.1 For the purpose of these Rules, Licensees' Account Separation submissions to OfReg must be accompanied by a General Information Sheet that:

- a) lists the names of the companies (including company registration number(s)) in the Corporate Group that owns the Licensee;
- b) contains an organisational chart that shows the ownership relationship and corporate nexus between the relevant members in the Corporate Group; and
- c) describes the activities undertaken by each member of the Corporate Group and how the activities impact the Licensees.

5.12.2 The General Information Sheet must be:

- a) signed by Licensees' Chief Executive Officer or by such other person explicitly designated (in writing) by the Board of Directors to do so.
- b) approved by a resolution of the Board of Directors passed no more than fourteen (14) days before the Accounts Separation submission is made to OfReg. (A certified copy of this resolution must be attached to the General Information Statement).

5.13 Reporting Requirements

5.13.1 For the purpose of these Rules, the reporting period shall be in relation to the activities and transactions undertaken in each financial year.

5.13.2 Licensees, within three (3) months of the end of their financial year, are required to prepare and submit in accordance with these Rules, the following:

- a) the Accounts Separation Statements for each business segment for the reporting period;
- b) the Management Responsibility Statements that must accompany the Accounts Separation Statements, in accordance with section 5.9 of the Rules;
- c) the Auditor's Report on the Accounts Separation Statements for the reporting period, in keeping with section 5.11 of these Rules;



- d) the General Information Sheet that must accompany the Accounts Separation Statements in accordance with section 5.12 of these Rules.

5.13.3 Notwithstanding the reporting period, OfReg reserves the right to require Licensees to provide interim or additional information it may reasonably specify periodically, including but not limited to:

- a) information to augment and support the reporting requirements set out in these Rules.
- b) supplemental financial and accounting information as well as information of a non-financial nature deemed necessary for the determination of the actual cost of the services provided by the company; and
- c) other information that may be required periodically by OfReg in order to effectively carry out its regulatory responsibilities.

#### 5.14 Modification of the Rules

5.14.1 These Rules may periodically be revised to:

- a) reflect changes in practices and industry conditions;
- b) address new products and the introduction of new technologies; and
- c) facilitate the refinement of practices and principles.

5.14.2 OfReg may, periodically, require Licensees to amend their procedures used regarding compliance with these Rules. In such an event, OfReg shall notify the company via written instructions on the matter. OfReg shall clearly identify the date upon which such amendment would become effective.

5.14.3 In the event that Licensees wishes to initiate changes to these Rules, Licensees must observe the following procedure:

- a) a submission clearly identifying the desired amendments and the associated reasons shall be made to OfReg.

- b) an analysis that illustrates the full financial implications of the amendment(s) shall be included in the submission. In order to show the impact of the proposed change, the analysis shall reflect the impact of the proposed changes in the current reporting period, as well as, the last two financial years immediately preceding the current reporting period.
- c) Licensees shall provide the additional information requested by OfReg for the purpose of reviewing the proposed change.

5.14.4 Where a Licensee-initiated change to these Rules will result in modifications to an associated procedure, OfReg shall, at the time of assessing the merits of the proposed change, consider and determine the consequential modification to the associated procedure.

5.14.5 Subject to sections 5.14.4 and 5.14.6, a modification to these Rules should become effective six (6) months after the effective date of the decision of the Office.

5.14.6 Notwithstanding the time specified in section 5.14.5, the Office, with reasons for so doing and after consultation with Licensees, may deem it necessary to implement the changes at an earlier or later date and the Licensees shall act in accordance with the Office's determination.

## 5.15 Confidentiality

Where commercially sensitive information is provided in compliance with these Rules, OfReg shall comply with the Law and:

- a) restrict the disclosure of such information to its technical staff, legal advisors and the relevant consultants on a need to know basis;
- b) employ the information only with regards to its regulatory considerations, statements and the fulfilment of its statutory duties;
- c) disclose information only if OfReg deems it necessary for the fulfilment of statutory obligations and in accordance with law governing such information. In such an event, OfReg will, prior to OfReg's final decision on the disclosure, notify Licensees

and allow Licensees a reasonable opportunity to present their position.

## **6.0 Information Requirements for Accounts Separation**

### **6.1 Accounts Separation Statements for Business Functions**

6.1.1 Licensees are required to maintain separate accounts for each business function. The definition of each of the business functions is provided in Appendix 1.

6.1.2 The accounts maintained under each business function must be of such that each function is treated as if it were a separate company. This is to ensure that cost and revenues, assets and liabilities, as well as the reserves and provisions of each business function are individually identifiable in the accounts.

6.1.3 Licensees are required, in accordance with these Rules, to prepare and submit the following:

- a) Income Statements for each business function;
- b) Statements of Mean Capital Employed (assets and liabilities) for each business function (see Appendix 4B);
- c) Cash flow Statements for each business function (see Appendix 4C);
- d) A Consolidated Income Statement that combines in a single statement all the individual business functions' Income Statements (see Appendix 2). This statement should contain the following reports:
  - i. a summary of revenues, operating costs and the return for each business function;
  - ii. consolidated adjustments, with separate identification of each adjustment item; and
  - iii. a reconciliation to Licensees' audited Income Statement.
- e) A Consolidated Mean Capital Employed Statement that aggregates in a single statement all the individual business functions' Mean Capital Employed Statements (see Appendix 3).

### **6.2 Income Statements**

6.2.1 Income statements shall be provided for each business function listed in Appendix 1. Each statement should show the revenues, costs and operating result (i.e. profit or loss) for the segment (see Appendix 4A, 4D and 4E).

6.2.2 In reporting revenues, the following should be separately identified:

- a) revenues from external sources;
- b) revenues from the company's internal businesses; and
- c) revenues from entities controlled by Licensees and/or related entities (including overseas parents and/or subsidiaries, if applicable).

6.2.3 A similar treatment should be given to the treatment of costs in each function. The following costs should be clearly identified:

- a) fixed costs;
- b) variable costs;
- c) direct, directly attributable and indirectly attributable costs;
- d) allocated unattributable common costs;
- e) charges paid to the company's internal businesses;
- f) charges paid to the company's controlled entities and/or related entities (including overseas parents and/or subsidiaries, if any); and
- g) charges paid to other operators.

### 6.3. Statements of Mean Capital Employed

6.3.1 Licensees must prepare and submit a Statement of Mean Capital Employed for each business function. This statement must set out the arithmetic average values of capital over the reporting period (see Appendix 3 & 4B). The Mean Capital Employed refers to the total written down value of non-current assets and working capital. It is therefore the company's total assets less current liabilities, excluding corporate taxes, dividends payable and long term liabilities.

In the Statement of Mean Capital Employed for each business function, Licensees must clearly identify the following:

- a) Current assets by major line item;
- b) Non-current assets by major line item;
- c) Current liabilities by major line item;
- d) Non-current liabilities by major line item;
- e) Total mean capital employed; and
- f) Return on capital employed.

6.3.2 The return on the capital for each item in the Statement of Mean Capital Employed for respective business segments should be consistent with the cost of capital (CoC) as defined in the relevant Condition of the Licensees' T&D Licences.

#### 6.4 Transfer Pricing

6.4.1 Transfer pricing refers to the process by which accounting values are assigned to a product sold in a transaction between divisions of a company, or companies belonging to the same corporate group. This may lead to price distortions that unfairly favours a monopolist provider at the expense of its competitor. In order to minimise the likelihood of this occurrence, the following principles shall be applied to the pricing of the resources and products associated with transactions between business functions, divisions of Licensees, or companies belonging to the same corporate group that owns the Licensees.

- a) Electricity services shall be charged at the applicable tariffs specified in the current Rate Schedules;
- b) Competitive services shall be charged at the prevailing market rates;
- c) Shared services within Licensees shall be valued at full cost of provision based on usage;
- d) Asset transfers from one division to another shall be valued at the realisable value of the resource; and
- e) Allocation of the capitalised value of assets jointly used by two or more divisions within the company shall be based on service usage.

6.4.2 A Licensee shall be required to provide a detailed description of the process, as well as the cost build up and the methodology(ies) employed, to derive transfer prices between divisions within the company or those affecting its costs based on transactions between itself and companies within its Corporate Group.

#### 6.5 Accounts Separation Statements for Business Segments

6.5.1 As it pertains to the business segment, Licensees shall be required to provide the following segment schedules identified in Appendix 1A.

a) Statement of Mean Capital Employed (assets and liabilities) for each business segment;

b) Cost Schedule Statement for each business segment that clearly identifies:

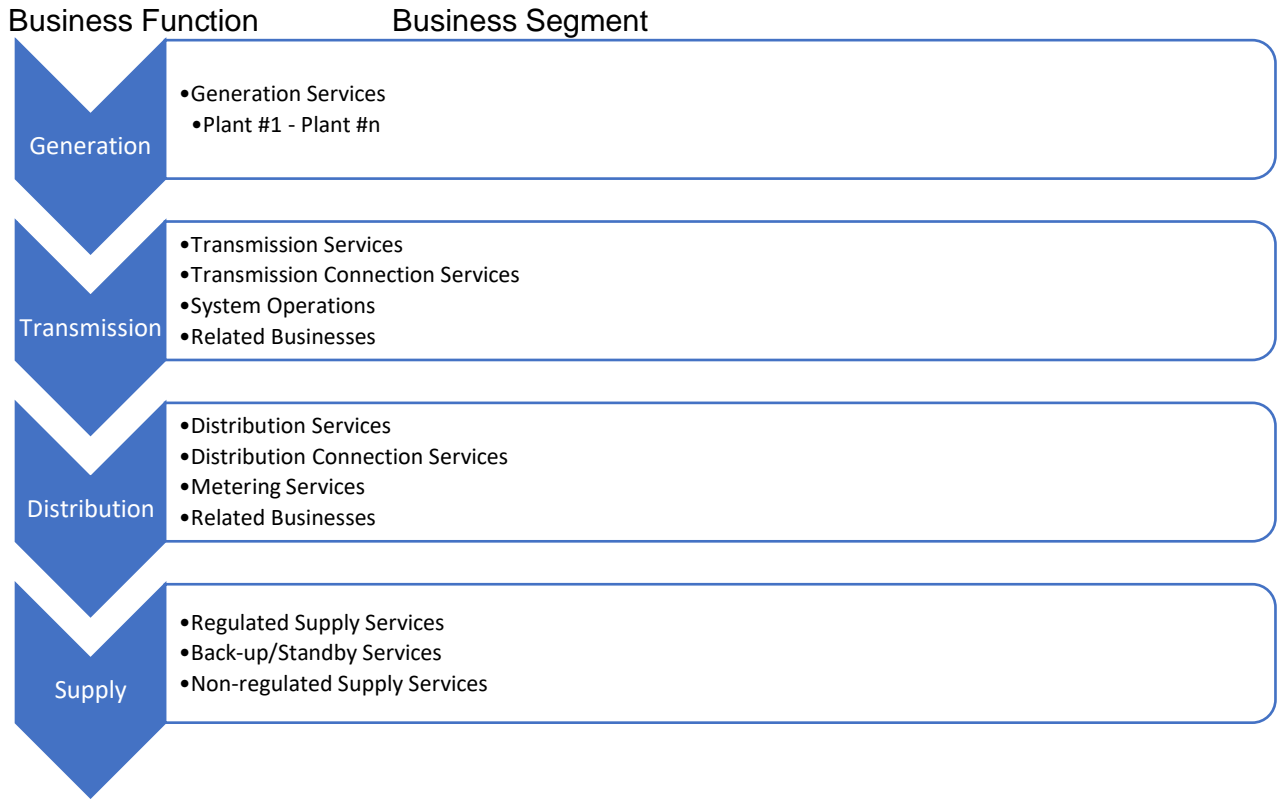
i. fixed costs;

ii. variable costs;

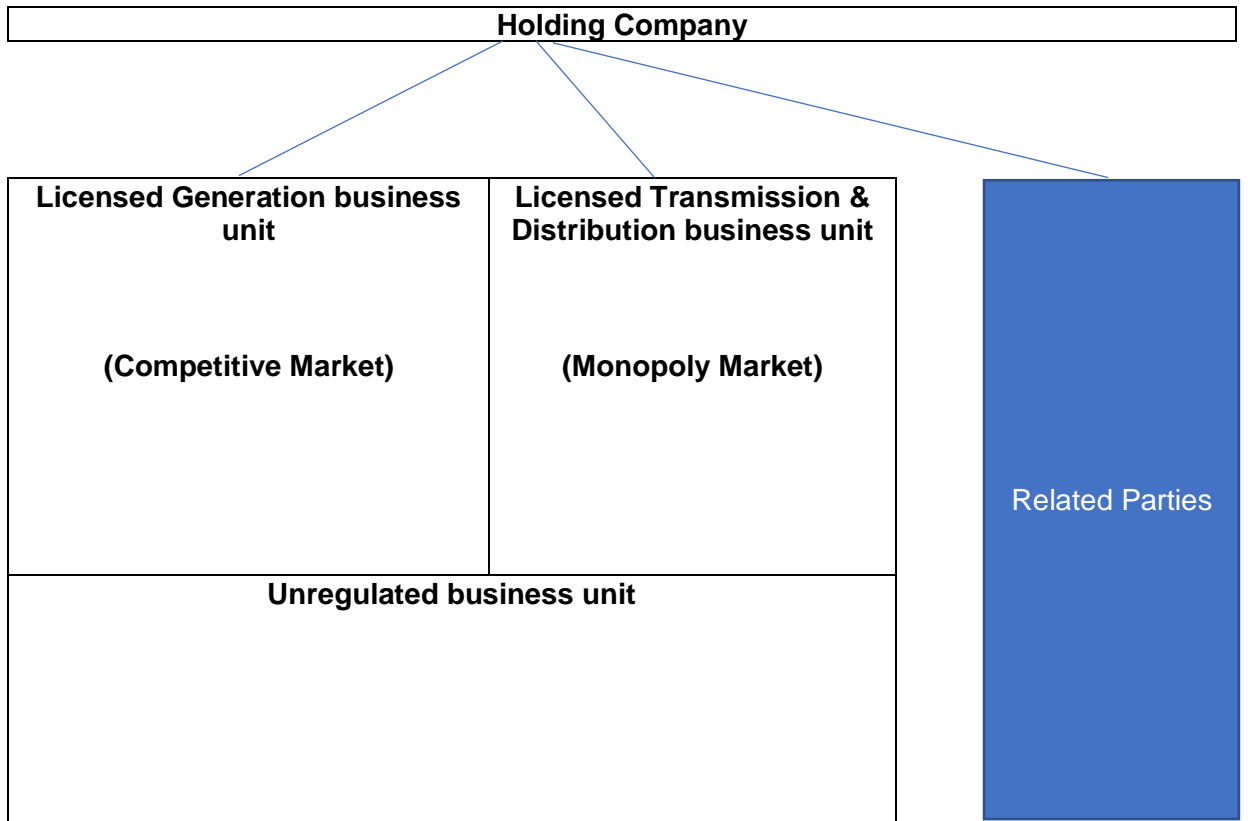
iii. direct, directly attributable and indirectly attributable costs; and

iv. allocated un-attributable common costs.

# Schedule 1: The Relationship between Business Functions and Segments



**Figure 2. Accounts Separation**





## Schedule 2: The Business Functions, Segments and Components

Function	Segment	Components
Generation	Generation Services	<ul style="list-style-type: none"> <li>▪ Generation of electricity (Rate base)</li> <li>▪ Generation of electricity (Utility-owned IPPs)</li> <li>▪ Generation of electricity (Purchases)</li> </ul>
Transmission	Transmission Services	<ul style="list-style-type: none"> <li>▪ Provision of access services</li> <li>▪ Planning, maintenance, augmentation and operation of transmission connection assets</li> </ul>
	System Operations	<ul style="list-style-type: none"> <li>▪ Provision of system operation services</li> </ul>
	Related Businesses	<ul style="list-style-type: none"> <li>▪ Related businesses that use transmission assets, facilities and staff (e.g. telecommunication business)</li> </ul>
Distribution	Distribution services	<ul style="list-style-type: none"> <li>▪ Provision of regulated distribution services</li> <li>▪ Provision of ancillary services</li> <li>▪ Planning, maintenance, augmentation and operation of distribution system</li> </ul>
	Distribution Connection Services	<ul style="list-style-type: none"> <li>▪ Provision of access services</li> <li>▪ Planning, maintenance, augmentation and operation of transmission connection assets</li> </ul>
	Metering services	<ul style="list-style-type: none"> <li>▪ Provision of metering services (i.e. installation, commissioning, testing, repairs and maintenance of meters and meter readings, etc.)</li> </ul>
	Related Businesses	<ul style="list-style-type: none"> <li>▪ Related businesses that use transmission assets, facilities and staff (e.g. provision of pole service for telecommunication business)</li> </ul>
Supply	Supply Services	<ul style="list-style-type: none"> <li>▪ Provision of regulated supply services (i.e. billing, collection, customer services, energy trading, etc.)</li> </ul>
		<ul style="list-style-type: none"> <li>▪ Provision of backup/standby services</li> </ul>
		<ul style="list-style-type: none"> <li>▪ Provision of regulated supply services (i.e. billing, collection, customer services, energy trading, etc. for customers with special requirements)</li> </ul>

**Appendix 2: THE CONSOLIDATED INCOME STATEMENT REPORTING  
FORMAT**

\_\_\_\_\_, Ltd.  
Total Statement of Income for the year ended \_\_\_\_\_

Description	Revenue (US\$'000)	Operating Costs (US\$'000)	Profit before Interest & Tax (US\$'000)	Interest & Tax Costs (US\$'000)	Extraordinary Items (US\$'000)	Operation Profit after Interest, Tax and Extraordinary Items (US\$'000)
<b>Generation*</b>						
<b>Transmission*</b>						
<b>Distribution*</b>						
<b>Supply*</b>						

<b>Generation</b> *						
-						
<b>Transmission*</b>						
<b>Distribution*</b>						
<b>Supply*</b>						
Elimination of Inter-company Transactions						
Total						
RELATED BUSINESS ES						
Total revenue <sup>1</sup> Total costs <sup>2</sup>						
Other adjustments <sup>3</sup>						
<b>Elimination of Inter-company Transactions</b>						
Total as per audited General Purpose Financial Statements						

<sup>1</sup> Specify by type of revenue (account heading)

<sup>2</sup> Specify by type of cost (account heading)

<sup>3</sup> Specify by type (account heading)

\*Complete for each Business Segment that the Licensee is engaged in.

**APPENDIX 3: THE CONSOLIDATED MEAN CAPITAL EMPLOYED STATEMENT FORMAT**

\_\_\_\_\_, Ltd.  
**Total Statement of Income for the year ended \_\_\_\_\_**

<b>Description</b>	<b>Total Assets</b>	<b>Total Liabilities</b>	<b>Net Assets (Liabilities)</b>
Generation*			
Transmission*			
Distribution*			
Supply*			
Elimination of Inter-company Transactions			
Long term borrowings			
Provision for deferred tax (if applicable)			
Provision for dividends payable			
Unallocated dividends receivable			
Unallocated interest payable			
Unallocated interest receivable			
Unallocated asset/liabilities <sub>2</sub>			
<b>Total</b>			
<b>RELATED BUSINESSES</b>			
Assets & Liabilities for Related Businesses			
<b>Shareholders' Equity</b> as per audited General Purpose Financial Statements			

\*Complete for each Business Segment that the Licensee is engaged in.

**APPENDIX 4A: BUSINESS FUNCTION INCOME REPORTING FORMATS**

\_\_\_\_\_, Ltd.  
**Total Statement of Income for the year ended \_\_\_\_\_**

Account code or reference	Description	Generation (US\$'000)
	Revenue from the sale of electricity and provision of ancillary services Revenue from the sale of assets Other revenue (analysed as appropriate)	
	<b>Total Revenue</b>	
	Maintenance s as appropriate) Depreciation – Historic cost Depreciation – Appraisal increment	
	<b>Total operating costs</b>	
	<b>Profit before interest and tax</b>	
	Interest	
	Profit before tax and extraordinary items	
	Tax (if applicable) Extraordinary Revenue items <sub>1</sub> Extraordinary Expense items <sub>1</sub>	
	<b>Profit after interest, tax and extraordinary items</b>	

**APPENDIX 4B: BUSINESS FUNCTIONS/SEGMENTS MEAN CAPITAL REPORTING FORMATS**

\_\_\_\_\_, Ltd.  
**Statement of Mean Assets and Liabilities as at \_\_\_\_\_**

Account code or reference	Description	US\$'000
	<p>NON-CURRENT ASSETS</p> <p>Utility plant and equipment – Historic cost            Buildings and improvements – Historic cost            Information technology – Historic cost            Motor vehicles – Historic cost            Other Assets (please specify) – Historic cost</p> <p>Total Historic Cost</p> <p>Utility plant and equipment – Accumulated Historic depreciation            Buildings and improvements – Accumulated Historic depreciation            Information technology – Accumulated Historic depreciation            Motor vehicles – Accumulated Historic depreciation            Other Assets (please specify) – Accumulated Historic depreciation</p> <p><b>Total Accumulated Depreciation</b></p> <p>Investments and advances            Land and development</p>	
	Total non-current assets	
	<p>CURRENT ASSETS</p> <p>Cash and cash equivalents            Receivables            Investments            Prepayments            Materials and supplies            Other current assets</p>	
	Total Current Assets	
	<b>TOTAL ASSETS</b>	
	<p>CURRENT LIABILITIES</p> <p>Trade payables and accrued expenses            Loans            Provisions</p>	
	Total current liabilities	
	<b>TOTAL LIABILITIES</b>	
	<b>NET ASSETS/(LIABILITIES)</b>	

**APPENDIX 4C: BUSINESS FUNCTIONS/SEGMENTS MEAN CAPITAL REPORTING FORMATS**

\_\_\_\_\_, Ltd.

**Cash Flow Statement for the year ended as at \_\_\_\_\_**

<b>Account code or reference</b>	<b>Description</b>	<b>US\$'000</b>
	<b>Cash Flows from Operating Activities</b>	
	Net income before tax and extraordinary items	
	Adjustments for depreciation – Historic cost	
	Adjustments for depreciation – Appraisal increment	
	Adjustments for foreign exchange loss / (gain)	
	Investment loss (income)	
	Interest expense (income)	
	Operating income before working capital charges	
	Decrease / (increase) in trade and other receivables	
	Decrease / (increase) in inventories	
	Increase / (decrease) in trade payables	
	Cash generated from operations	
	Interest paid	
	Income taxes paid (if applicable)	
	Cash flow before extraordinary items	
	Extraordinary gain/(loss)	
	Net cash from (used in) operating activities	
	<b>Cash flows from Investing Activities</b>	
	Acquisition of subsidiary	
	Purchase of plant and equipment (analysed as appropriate)	
	Purchase of land and buildings	
	Interest received	
	Dividends received	
	Purchase of Other Investment Activities	
	Sale of Other Investment Activities	
	Net cash used in (from) financing activities	
	<b>Net Change in Cash Equivalents</b>	
	Cash and Cash Equivalents at Beginning of Year	
	Cash and Cash Equivalent at End of Year	



## APPENDIX 4D: BUSINESS FUNCTIONS REVENUE SCHEDULE FORMAT

\_\_\_\_\_, Ltd.  
**Revenue Schedule for the year ended** \_\_\_\_\_

<b>Account code or reference</b>	<b>Description</b>	<b>US\$'000</b>
	<b>Direct Revenue</b> Revenue from the sale of electricity and ancillary services Revenue from the sale of assets Other revenue (analysed as appropriate)	
	<b>Total direct revenue</b>	
	<b>Indirectly attributable revenue</b> Revenue from the sale of electricity and ancillary services Revenue from the sale of assets Other revenue (analysed as appropriate)	
	<b>Total indirectly attributable revenue</b>	
	<b>Un-attributable revenue allocated</b> Revenue from the sale of electricity and ancillary services Revenue from the sale of assets Other revenue (analysed as appropriate)	
	<b>Total un-attributable revenue</b>	
	<b>Total revenue</b>	

*Note:* In addition to the above, it is mandatory to produce for each revenue item that has been allocated to the Business Function a supporting work paper that includes:

- (a) The amounts that have been indirectly attributed to the Business Function
- (b) The amounts that have been allocated to the Business Function
- (c) A description of the allocation basis
- (d) The numeric quantity of each allocation factor

## APPENDIX 4E: BUSINESS SEGMENTS COST SCHEDULE FORMAT

\_\_\_\_\_, Ltd.  
**Cost Schedule for the year ended \_\_\_\_\_**

<b>Account code or reference</b>	<b>Description</b>	<b>US\$'000</b>
	<b>Direct costs</b> Maintenance Operating expenses Depreciation – Historic cost Depreciation – Appraisal increment Other costs (analysed as appropriate)	
	<b>Total direct costs</b>	
	<b>Indirectly attributable costs</b> Maintenance Operating expenses (analysed as appropriate) Depreciation – Historic cost Depreciation – Appraisal increment	
	<b>Total indirectly attributable costs</b>	
	<b>Un-attributable costs allocated</b> Maintenance Operating expenses (analysed as appropriate) Depreciation – Historic cost Depreciation – Appraisal increment	
	<b>Total un-attributable common costs allocated</b>	
	<b>Total operating costs</b>	
	Direct extraordinary items Indirectly attributable extraordinary items Un-attributable extraordinary items allocated	
	<b>Total Extraordinary Items</b>	

Note: In addition to the above, for each revenue item that has been allocated to the Business Segment, it is mandatory to produce a supporting work paper that included:

- (a) The amounts that have been indirectly attributed to the Business Segment
- (b) The amounts that have been allocated to the Business Segment
- (c) A description of the allocation basis
- (d) The numeric quantity of each allocation factor

## Appendix 5 – MANAGEMENT RESPONSIBILITY STATEMENT

To: **The Utility Regulation and Competition Office**

The management of \_\_\_\_\_ accepts responsibility for all information and representations contained in the Accounts Separation Statements for the year ended [ \_\_\_\_ ]. The Accounting Separation Statements have been prepared in accordance with the provisions of the Accounting Separation Rules (the Rules) for \_\_\_\_\_ dated [ ] and satisfies the requirements stipulated by the Utilities Regulation and Competition Office, (OfReg).

As such, we hereby state that:

- a) The relevant systems of accounting and reporting are maintained in a manner so as to ensure that the necessary internal controls of assets, liabilities and transactions are recognised and maintained;
- b) Financial activities, transactions and events are properly recorded; and that costs and revenues are appropriately allocated in accordance with the Rules; and
- c) The accounting policies applied strictly conforms with the requirements of the Rules and the policies and principles set out in the Accounting and Cost Allocation Manual.

This Management Responsibility Statement has been approved by a resolution of the Board of Directors of \_\_\_\_\_, dated [ ], a certified copy of which is attached to this Statement.

Signature \_\_\_\_\_

Name \_\_\_\_\_

Date \_\_\_\_\_

## **Appendix 6 – AUDITOR’S STATEMENT**

To: **The Utility Regulation and Competition Office**

### SCOPE

We have audited the Accounts Separation Statements prepared by \_\_\_\_\_ in the attached regulatory financial report for the year ended [ ].

#### *Management Responsibility for the Accounts Separation Statement*

The management of \_\_\_\_\_ is responsible for the preparation and fair presentation of the Accounts Separation Statements in accordance with Accounting Separation Rules (the Rules) for \_\_\_\_\_ issued by OfReg. The management has determined that the Accounts Separation Statements satisfies the requirements of the Rules, including that:

- the system of accounting and reporting maintained by the management, which provides for the necessary internal controls to ensure that assets, liabilities and transactions are appropriately recorded and recognised, and that revenues and costs are properly allocated, have been implemented and maintained; and
- the accounting policies used are consistent with the requirements of the Rules and the approved Accounting and Cost Allocation Manual.

#### *Auditors’ Responsibility*

Our responsibility is to express an opinion on the Accounts Separation Statements based on our audit. In the audit conducted no opinions are expressed as to the appropriateness of accounting policies applied by the Office.

These Accounts Separation Statements have been prepared by \_\_\_\_\_, in keeping with the reporting requirements of the Rules established by OfReg. We disclaim any assumption of responsibility for any reliance on this report, or on the Accounts Separation Statements to which it relates, to any person other than OfReg, or for any purpose other than that for which it was prepared.

This audit has been executed in compliance with generally accepted auditing standards in the Cayman Islands. Our procedures included examination, on a test basis, of evidence supporting the amounts and other disclosures in the Accounts Separation Statements and the evaluation of significant accounting estimates. These procedures have been undertaken to form an opinion as to

whether, in all material respects, the Accounts Separation Statements are presented fairly in accordance with the requirements of the Rules and the approved Accounting and Cost Allocation Manual.

*Opinion*

**[To be completed by Auditors]**

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**Audit Opinion**

It is our opinion that the Accounting Separation Statements have been correctly constructed in accordance with the Accounting Separation Rules, and that the Accounting and Cost Allocation Manual (ACAM) prepared by \_\_\_\_\_, and provided to the Utilities Regulation and Competition Office in all material respects, present fairly the following:

- (i) The Statements of Income for each Business Segment;
- (ii) The Total Statement of Income of \_\_\_\_\_, Ltd.;
- (iii) The Statement of Assets and Liabilities for each Business Segment;
- (iv) The Statement of Assets and Liabilities \_\_\_\_\_, Ltd.; and
- (v) The Cash Flow Statement for each Business Segment.

Material exceptions and their respective effects on the Accounting Separation Statements are as follows:

[Describe any material exceptions]

Date: \_\_\_\_\_

Firm: \_\_\_\_\_

Partner: \_\_\_\_\_

Address: \_\_\_\_\_