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ELECTRICITY REGULATORY AUTHORITY LAW

(2010 Revision)

Law 10 of 2005 consolidated with Law 1 of 2008, Cayman Islands Constitution Order 2009 (U.K.S.I. 2009 No. 1379) and 15 of 2009.

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Note (not forming part of the Law): This revision replaces the 2008 Revision which should now be discarded.

ELECTRICITY REGULATORY AUTHORITY LAW

(2010 Revision)

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ELECTRICITY REGULATORY AUTHORITY LAW

(2010 Revision)

PART I - Introductory

1. This Law may be cited as the Electricity Regulatory Authority Law (2010 Revision). Short title

2. In this Law- Definitions

“additional electricity generation” means any electricity capacity or energy that the Authority solicits to be generated either in substitution for a generating station or generating unit therein in addition thereto;

“authorised officer” means a person authorised by the Authority;

“Authority” means the Cayman Islands’ Electricity Regulatory Authority established by section 3;

“back up electricity supply” means the provision of electricity supplies by a Generator or a T&D Licensee to another person which is temporarily unable to satisfy its system demand with the generation resources normally available to it;

“Board” means the Board of directors of the Authority established by section 4;

“Cabinet” has the meaning ascribed thereto in the Constitution;

“Capital Investment Plan” means those additions to its generation and T&D assets that a licensee intends to make, that, when added will form part of its rate base as approved by the Authority;

“chairman” means chairman of the Board;

“consumer” means a person who is a customer of, and is supplied with electricity by, a T&D licensee;

“Court” means the Grand Court of the Cayman Islands;

“destructive event” means a hurricane, flood, fire, earthquake, act of terrorism or other calamity, whether similar to the aforementioned or not;

“director” means a director of the Authority appointed under section 5;

“document” means any record, book or other information in any form including any information written, printed, stored, maintained or preserved by means of any mechanical or electronic device and includes an electronic record as defined in the Electronic Transactions Law (2003 Revision);

2003 Revision

“electric line” means a line which is used either solely or primarily for the transport of electricity for any purpose and includes -

- (a) a support for such line, that is to say, the structure, pole, or other thing in, on, by or from which such line may be supported, carried or suspended;
- (b) apparatus connected to such line and related to the transmission and distribution of electricity ; and
- (c) any wire, cable, tube, pipe or other apparatus, including its casing or coating, which surrounds or supports or is surrounded or supported by, or is installed in close proximity to, or is supported, carried or suspended in association with, such line and related to the transmission and distribution of electricity;

“electricity” means electric current or energy or any like agency;

2008 Revision

“Electricity Law” means the Electricity Law (2008 Revision);

“electricity service industry” means commercial provision of electricity supplies to the general public;

“Electricity Law” means the Electricity Law (2008 Revision);

“electronic” means relating to technology having electrical, magnetic, optical, electromagnetic, or similar capabilities, whether digital, analogue or otherwise;

“fee” means the fee from time to time prescribed by and payable to the Authority for any application or purpose other than for a licence;

“Financial Secretary” means the principal adviser to the Minister responsible for finance;

“functions” includes powers and duties;

“General Regulatory Principles” means the overall guidelines relating to the regulation of the electricity industry in the Islands set out in the Second Schedule;

“generate”, in relation to electricity, means to produce electricity;

“generation assets” means all assets used and useful in the generation of electricity, including property, infrastructure (for example, prime movers, generating units, switches and switch yards, breakers, transformers, fuel delivery and storage systems), controls and other support equipment and facilities up to the specified point of interconnection with the T&D system of a T&D licensee;

“generation licence” means a licence which permits a Generator, among other things -

- (a) to generate electricity for sale to a T&D licensee for further transmission and distribution to consumers; and

- (b) to construct, reconstruct, replace or modify a generating station or any generating unit therein for the purpose of generating electricity for sale to a T&D licensee;

“generating station” means a station for the generation of electricity;

“generation solicitation process” means the process by which the Authority solicits for additional electricity generation in accordance with the procedures set out in regulations made under this Law;

“Generator” means a person possessing a valid licence to generate and deliver electricity to a T&D licensee;

“Governor” -

- (a) except in section 22(4), means the Governor in Cabinet; and
- (b) in section 22(4), means the person for the time being holding the office of Governor of the Islands, and includes any person for the time being lawfully performing the functions of that office under section 31 of Schedule 2 to the Constitution, and to the extent to which a Deputy appointed under section 34 of Schedule 2 to the Constitution is authorised to act, that Deputy;

“interconnection” means the electrical connection of a generating station of a Generator, or of a generating unit used for self supply to the T&D licensee;

“Judge” means a judge of the Grand Court;

“licence” means a licence granted to a person by the Governor or by the Authority under this Law and includes any renewal thereof or modification thereto;

“licence fee” means the initial, annual or renewal fees for a licence prescribed from time to time by, and payable to, the Authority by a licensee;

“licensee” means a person to whom a licence is granted;

“managing director” means the managing director of the Authority appointed under section 6;

“Minister” means the member of Cabinet for the time being charged with responsibility for electricity generation, transmission and distribution in accordance with section 54 of the Constitution;

“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 Authority whereby the T&D licensee contracts to purchase or acquire electricity generated by a Generator as specified in the agreement or terms and conditions;

“premises” means one or more buildings or structures, occupied or used by a person;

“public officer” has the meaning assigned to it by section 124(1) of the Constitution;

“publish”, in relation to any regulation, rule, direction, decision, accounts or notice required to be given or promulgated under this Law, means causing the regulation, rule, direction, decision, accounts or notice to be published in the Gazette and either published in electronic format on the Internet or in a newspaper circulating in the Islands;

“RCAM” or “rate cap and adjustment mechanism” means the mechanism for determining and modifying prices for electricity delivered by a T&D licensee to consumers as approved by the Authority and specified in that licensee’s T&D licence;

“Registrar” means the Registrar of Companies;

“renewable or alternative forms of energy” means non-fossil energy used in the generation of electricity which does not deplete the amount of that energy available in the future or for which the supply can be readily regenerated, including energy derived from wind, hydro, biomass, waste (including waste heat), bio-fuel, geothermal, fuel cells, tidal, temperature inversion or convection, solar or wave or any combination of such forms of energy;

“reserve fund” means the general reserve fund which the Authority is required to maintain under section 18;

“standby connection” means an electrical connection between the T&D system of a T&D Licensee and premises for the purposes of a backup electricity supply;

“T&D” means transmission and distribution;

“T&D assets” means all the electrical transmission and distribution assets owned by the T&D licensee and used and useful in the provision of licensed transmission and distribution services, including property, rights of way, infrastructure (for example, poles, wire, switches, transformers, capacitors and substations), vehicles, equipment and controls from the specified interconnection point with a generating station and extending through to and including the revenue or title transfer meter at end-use consumer sites or other interconnection points;

“T&D code” means a set of rules adopted, prepared or adapted by a T&D licensee and approved by the Authority under this Law to be observed in respect of all technical aspects including safety, relating to interconnection and connection to and operation of the transmission and distribution system operated by the T&D licensee, including the dispatch of generating units to serve the load and reserve requirements of that T&D licensee;

“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;

“term, condition or requirement” means a term or condition of a licence or a requirement imposed upon a licensee by the Authority or under this Law; and

“transmission and distribution” means the transport of electricity by means of a T&D system for delivery to consumers for reward.

PART II - Establishment, Capital and Administration of Authority

3. (1) There is established the Cayman Islands’ Electricity Regulatory Authority which shall be a body corporate and shall have perpetual succession and a common seal and may sue and be sued in its corporate name.

Establishment of
Authority

(2) For the purpose of carrying out its functions under this Law, the Authority may buy, sell, hold, deal with and otherwise acquire and dispose of land and other property of whatsoever nature and may enter into contracts whether of agency or otherwise.

(3) All deeds, documents and other instruments requiring the seal of the Authority shall be sealed with the common seal of the Authority, upon resolution by the Authority, in the presence of the chairman of the Board or managing director and one other director.

(4) The Authority shall establish and maintain its office and principal place of business within the Islands, and shall cause details thereof to be published, and service of all documents on the Authority shall be deemed to be effected if delivered at the said office.

(5) The Authority may, by resolution, appoint an officer of the Authority or any other agent either generally or in a particular case to execute or sign on behalf of the Authority any agreement or other instrument not under seal in relation to any matter coming within the function of the Authority.

4. (1) The Authority shall have a Board consisting of a chairman and not fewer than eight and not more than ten other directors.

Board of directors

Appointment of
directors

(2) The Board shall be responsible for the governance of the Authority, including the policy and general administration of the affairs and business of the Authority in accordance with the provisions of this or any other Law.

5. (1) The directors referred to in section 4 shall be appointed by the Governor on such terms and conditions as the Governor may specify in their instruments of appointment, and one of the directors shall be appointed as chairman by the Governor.

(2) Prior to appointing any person to be a director, the Governor shall be satisfied that-

- (a) the person has the skills, knowledge and integrity to carry out the duties required in a highly competent and politically neutral manner; and
- (b) the person will have no financial or other interest likely to affect prejudicially the exercise of his functions as a director, and the Governor may require a person he proposes to appoint to give such declaration as the Governor considers necessary to establish that no conflict of interests exists.

(3) *Repealed by section 3(a) of Law 15 of 2009.*

(4) A member of the Legislative Assembly shall not be a director.

(5) Subject to subsection (7) and section 7 and to any other law, directors shall hold and vacate office in accordance with the terms of their appointment.

(6) Directors shall serve for a term of three years and are eligible for re-appointment by the Governor; but directors shall hold office at the pleasure of the Governor.

(7) A director may resign at any time by giving a signed notice of resignation to the Governor.

(8) A director, unless he sooner resigns or is removed from office, shall continue in office until a successor comes into office notwithstanding that his term may have expired.

(9) Where a director appointed under subsection (1) dies, resigns or otherwise vacates his office before the expiry of the term for which he has been appointed, another person may be appointed by the Governor for the unexpired period of the term of office of the director in whose place that person is appointed, and subsections (2) and (4) shall apply to such appointment.

(10) Directors shall, at the discretion of the Governor, be paid such remuneration and such reasonable allowances in respect of expenses properly incurred by them in the performance of their duties as the Governor shall, from time to time, determine; and any remuneration or allowances paid to a director shall be an expense of the Authority.

(11) Subsections (6) and (10) shall not apply to a director appointed as managing director under section 6.

(12) A person who makes a declaration under subsection (2)(b) containing particulars which he knows, or ought to know, are false is guilty of an offence and liable on summary conviction to a fine of twenty thousand dollars.

6. (1) The Governor shall appoint any individual to be the managing director; but, if a managing director is appointed from among individuals other than the directors appointed under section 5, he shall by virtue of his office be deemed to be a director appointed under section 5.

Managing director of Authority

(2) The managing director shall be an employee of the Authority appointed on such terms and conditions as the Governor may decide.

(3) The managing director shall-

- (a) be entrusted with the day to day administration of the Authority to the extent delegated by the Board;
- (b) carry out duties as specified under this Law or any other law or as directed by the Authority; and
- (c) ensure that the Authority participates in the development and implementation of the electricity policy of the Islands.

(4) The managing director shall render services exclusively to the Authority and shall be answerable to the Board for all acts and decisions made in that capacity.

(5) In the event of the absence or inability to act of the managing director, the Governor may appoint a director upon such terms as thought fit to discharge the managing director's duties during the period of the latter's absence or inability.

7. (1) The Governor shall terminate the appointment of a director who resigns his office, and may terminate the appointment of a director who-

Resignation of directors and termination of office

- (a) by reason of physical or mental illness, is incapable of carrying out the duties of a director;
- (b) is declared bankrupt, suspends payment to, or compounds with creditors;

- (c) is convicted in any jurisdiction of an indictable offence or any offence involving dishonesty or fraud;
- (d) is guilty of serious misconduct in relation to the duties as a director;
- (e) is absent, without leave of the chairman, from three consecutive meetings of the Board;
- (f) fails to disclose a conflict of interests in accordance with this Law;
- (g) after his appointment, acquires a financial or other interest likely to affect prejudicially the exercise of his functions as director; or
- (h) in the Governor's reasonable opinion, is otherwise unable or unfit to discharge the duties of a director competently under this Law or any other applicable law of the Islands, or is otherwise unsuitable to continue as a director.

(2) Without prejudice to the provisions of subsection (1), the Governor acting in his discretion may terminate the appointment of any director, whether the director was appointed before, on or after the date of commencement of the Electricity Regulatory Authority (Amendment) Law, 2009.

Law 15 of 2009

Procedure of Board

8. The First Schedule has effect with respect to procedure of the Board.

Functions of Authority

9. (1) Subject to this Law, the Authority has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

(2) Without prejudice to subsection (1), the principal functions of the Authority shall include-

- (a) to monitor and regulate the tariffs, rate structures and terms and conditions for electricity transmission and distribution charged to consumers by T&D licensees in accordance with the respective RCAM ;
- (b) to review and approve other rates offered by T&D licensees outside of the respective RCAM and available at the option of the consumer;
- (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) to establish and enforce regulations, processes and licence standards regarding the granting of licences;
- (e) to grant, modify or renew licences for generation -
 - (i) for additional electricity generation in the context of the generation solicitation process;

- (ii) where the Authority is satisfied that it is economic to extend the life of the generating unit or units of a Generator held under an existing generation licence;
 - (iii) from alternative or renewable sources of energy; or
 - (iv) under section 26(4);
 - (f) to solicit additional generation capacity and conduct the generation solicitation process;
 - (g) to grant, modify or renew a T&D licence to provide a T&D system in each of the Islands;
 - (h) subject to section 27, to conduct the tender process for applicants for any new T&D licence to provide a T&D system, and to select the successful tender;
 - (i) to monitor and regulate the divestiture of T&D assets when required by this Law;
 - (j) to monitor and regulate the divestiture of generation assets when required by this Law;
 - (k) to review and approve rates for backup electricity supply and for interconnection charged by a T&D licensee to another person in accordance with this Law;
 - (l) to review and approve any PPA;
 - (m) to review and approve adjustments to rates charged for street lighting, based on cost justifications prepared by a T&D licensee and submitted from time to time;
 - (n) to review and approve the charges associated with generation that are passed through to the consumer by a T&D licensee;
 - (o) to monitor and regulate all licensees in a manner that -
 - (i) promotes sustainable competitive practices;
 - (ii) provides an opportunity for a fair and reasonable return to licensees; and
 - (iii) protects the economic interests and well being of consumers by keeping tariffs and rate structures as low as can reasonably be achieved;
 - (p) to review and approve annually the Capital Investment Plans for all licensees; and
 - (q) to authorise a T&D licensee to purchase renewable or alternative forms of energy from consumers who generate electricity for self-supply subject to the requirements of the Electricity Law (2008 Revision) and regulations made thereunder.
- (3) The Authority shall also -
- (a) upon receipt of any direction given by the Governor under section 11, develop and implement such processes and arrangements, as may be necessary or desirable to give effect to such directions;

- (b) engage in a public consultation process on the procedures to be adopted by the Authority to implement the processes and arrangements developed under paragraph (a);
 - (c) advise the Governor on the effect of electricity generation or transmission and distribution upon the environment, having regard to sustainability and international agreements on the environment to which the Islands are or may become a party;
 - (d) formulate, publish and implement such rules as the Authority may consider necessary after the public consultation process referred to in paragraph (b), taking account of matters raised in the public consultation process; and
 - (e) advise the Governor on the development and regulation of the electricity industry in the Islands and on the exercise of the functions of the Governor under this Law.
- (4) The Authority shall carry out the functions and exercise the powers conferred upon it under this Law in a manner which-
- (a) is reasonable;
 - (b) does not discriminate unfairly between applicants for licences or licensees;
 - (c) protects the interests of consumers;
 - (d) protects the security and public interests of the Islands; and
 - (e) is consistent with the General Regulatory Principles.
- (5) In carrying out the functions and duties imposed and exercising the powers conferred by this Law, the Authority shall have regard to -
- (a) the need to develop and promote sustainable competition for additional electricity generation in accordance with this Law;
 - (b) the need to regulate and supervise licensees in such a manner as to ensure that all reasonable demands by consumers for electricity are satisfied;
 - (c) the need to ensure that applicants and licensees are capable of financing the activities they are, or seek to be, licensed to undertake;
 - (d) whether licensees have promoted or will promote safety, sound environmental practices, technical proficiency and efficiency in the generation, transmission and distribution of electricity;
 - (e) whether licensees have ensured or will ensure the continuity, security and quality of supplies of electricity within the Islands;
 - (f) whether licensees have promoted or will promote the development and use of renewable or alternative forms of energy by licensees and consumers;
 - (g) whether licensees have promoted or will promote the efficient consumption and use of electricity by consumers;

- (h) the needs of rural customers, the disadvantaged and the elderly; and
- (i) the need to permit and promote the use of renewable or alternative forms of energy by consumers so as to reduce the load on any T&D system.

(6) Without prejudice to subsection (5), the Authority shall have the power to establish environmental standards and to ensure that licensees-

- (a) comply with planning standards; and
- (b) take effective measures to comply with safety and environmental standards.

10. For the purposes of carrying out its functions under this Law or any other law the Authority shall have power to- Additional powers of Authority

- (a) convene hearings to consider any matter;
- (b) summon and examine witnesses;
- (c) call for, from any person, and examine documents including, but not limited to, financial records;
- (d) administer oaths;
- (e) require that any document submitted to the Authority be verified by affidavit;
- (f) do anything which is related or incidental to what is specified in paragraphs (a), (b), (c), (d) and (e); and
- (g) do anything it is authorised to do by this or any other law.

11. (1) The Governor may give to the Authority directions of a general character as to the policy to be followed in the exercise and performance of the functions of the Authority in relation to matters appearing to the Governor to concern the public interest, and the Authority shall give general effect to any such directions. Directions by the Governor

(2) The Authority shall cause any such directions to be published as soon as reasonably practicable after being given by the Governor, but no such directions shall apply in respect of a matter pending before the Authority on the day on which the directions are given.

12. The financial year of the Authority shall end on the 30th June of each year or on such other date as the Board may resolve. Financial year

13. Such sums as may have been loaned by the Government to the Authority to enable it to commence its functions shall be repaid by the Authority at such times and by such methods as the Financial Secretary may determine. Repayment of set up loan

14. (1) The revenue of the Authority shall be classified under the following heads of receipt- Financial procedure

- (a) fees received by virtue of this Law, other than licence fees which shall be paid into the general revenue of the Islands within two business days after receipt by the Authority;
- (b) amounts borrowed by the Authority; and
- (c) miscellaneous receipts, including interest on and service of investments,

and such revenue shall, within seven days of the receipt thereof, be paid into a bank account approved by the Financial Secretary to be established, owned and operated by the Authority.

(2) The revenue of the Authority shall be applied to meet the following heads of expenditure -

- (a) interest on loans;
- (b) repayment of overdraft on current account;
- (c) current operating expenses;
- (d) salaries, pensions and gratuities;
- (e) reserve fund;
- (f) consulting fees and expenses; and
- (g) miscellaneous expenditure approved by the Board.

(3) The Authority may, with the approval of the Financial Secretary, invest its reserve fund at interest.

(4) The Authority shall, no later than three months before the commencement of each financial year, cause estimates of expenditure and revenue to be prepared for the financial year following, for consideration by the Board, and upon adoption by the Board, such estimates shall be published.

(5) Where there is a balance of account in favour of the Authority after the Authority has paid all of the expenses specified in subsection (2), such balance may, if requested by the Financial Secretary within three months of the financial year end of the Authority, be paid into the general revenue of the Islands or in default of such request, may be applied to reduce the regulatory fee ultimately paid by consumers.

(6) The Authority shall be financially independent of the Government and shall be administered as a self-supporting entity.

Borrowing powers

15. (1) Subject to subsection (2), the Authority may borrow sums required to meet its obligations or discharge its functions.

(2) The power of the Authority to borrow shall be exercisable only with the approval of the Governor as to the amount, sources of the borrowing and terms on which the borrowing may be effected, and an approval given in any

respect for the purpose of this subsection may be either general or limited to a particular borrowing or otherwise, and may be either unconditional or subject to conditions.

16. (1) The Governor may, from time to time, authorise advances and grants to the Authority out of sums placed upon the estimates of the Islands for any purpose, subject only to approval by the Legislative Assembly. Advances, grants and guarantees

(2) The Governor may guarantee, in such manner and on such conditions deemed fit, the payment of the principal and interest on any authorised borrowings of the Authority made otherwise than by way of advance under subsection (1), subject only to approval by the Legislative Assembly.

(3) Where the Governor is satisfied that there has been default in the repayment of any principal moneys or interest guaranteed under subsection (2) then, with the prior approval of the Finance Committee of the Legislative Assembly, the Governor shall direct the repayment out of the general assets and revenue of the Islands of the amount in respect of which there has been such default.

17. The Authority shall pay, at such times and in such manner as the Governor may direct, such amounts as may be so directed in or towards repayment of advances made to the Authority under section 16, and any sums issued in fulfilment of any guarantee given thereunder, and shall likewise pay interest on what is outstanding for the time being in respect of such advances and of any sum so issued at such rate as the Governor may direct, and different rates of interest may be directed as respects different periods. Repayment of advances

18. (1) The Authority shall maintain a general reserve fund. Reserve fund

(2) The management of the reserve fund, the sums to be carried from time to time on the credit thereof and the application of the fund shall be as the Authority may determine.

(3) Notwithstanding subsection (2), no part of the reserve fund shall be applied otherwise than for the purposes of the Authority.

(4) The power of the Governor to give directions to the Authority shall extend to giving the Authority directions as to any matter relating to the establishment or management of the reserve fund, the carrying of funds to the credit thereof or the application thereof, notwithstanding that the direction may be of a specific character.

Balancing of revenue account	19. The Authority shall exercise and perform its functions so as to ensure that its revenues are sufficient to meet all sums properly chargeable to its revenue account.
Audit	20. (1) The accounts of the Authority shall be prepared and maintained in accordance with the standards recommended for the time being by the International Public Sector Accounting Standards Committee or by such other body as may be set up in its place. (2) The accounts of all transactions of the Authority shall be audited annually by the Auditor General who shall have such powers in relation to the Authority, its directors, and the property, securities and accounts of the Authority as he has in relation to other public money and public officers by virtue of the Public Management and Finance Law (2010 Revision).
2010 Revision	(3) On completion of the audit of the Authority's accounts under subsection (2), the Auditor General shall prepare a report thereon within three months of the close of the financial year to which the audited accounts relate.
Publication of accounts and annual report	21. (1) The Authority shall submit annually to the Governor, not later than six months following the end of the financial year, a report on its activities and transactions during the previous financial year, together with audited accounts including a balance sheet and income and expenditure accounts as approved by the Board as at the close of the previous financial year. (2) The report and accounts under subsection (1) shall be laid on the table of the Legislative Assembly by the Minister not later than three months following their submission to the Governor and thereafter published. (3) The Authority shall, with the approval of the Board, publish a statement of its assets and liabilities as at the 30th June and the 31st December of each year, not later than two months after such dates.
Power to employ staff, etc.	22. (1) The Authority may employ, at such remuneration and on such reasonable terms and conditions as may be approved from time to time by the Board, such persons for such offices or such purposes as may be necessary for the performance of the functions of the Authority. (2) The Authority shall create and maintain or subscribe to a fund for the payment of pensions to employees of the Authority in accordance with a scheme, the terms of which shall be approved by the Governor. (3) The fund shall be vested in trustees to be appointed by the Authority for that purpose and shall be maintained at a sufficient level according to accepted

actuarial principles to enable pensions to be paid to all employees of the Authority in accordance with the approved scheme.

(4) The Governor may, subject to such conditions as thought fit, approve of the appointment of any public officer in the service of Government by way of secondment to any office with the Authority, and any public officer so appointed shall, in relation to pension, gratuity or other allowance and to other rights and obligations as a public officer, be treated as continuing in the service of Government.

PART III - Licensing

23. (1) Subject to section 9(2)(q), no person shall generate, transmit, distribute or deliver electricity for reward unless licensed under this Law.

Procedure for the grant of a licence

(2) Subject to this Law, the Authority may grant a generation licence or a T&D licence to any person, upon such terms and conditions as it shall deem appropriate.

(3) An applicant for a licence under this section shall submit an application to the Authority in the form, and accompanied by such application fee, as the Authority shall prescribe from time to time which fee shall be credited against the licence fee payable by the successful applicant.

(4) Before granting a licence under this section, the Authority shall-

- (a) ensure that the applicant possesses the financial capacity, industry experience and technical qualifications necessary to perform fully the obligations attached to the licence for which the applicant is applying;
- (b) ensure that the applicant intends to commence performance of those obligations within a reasonable period of time; and
- (c) take into account -
 - (i) whether, during the term of any current or prior licence or authorisation granted in respect of the Islands or any other jurisdiction, the applicant has complied with all terms, conditions, specifications and requirements of any licence or authorisation, order, directive, rule or regulation pertaining to such licence or authorisation;
 - (ii) the safety and security of the electricity transmission and distribution system, and generating station;
 - (iii) the protection of the environment generally including plans for the limitation of emissions to the atmosphere, water or land;

- (iv) whether any site or sites proposed for a generating station or T&D system and any associated land use is appropriate in all the circumstances;
- (v) the efficiency of the proposed generation or transmission and distribution system;
- (vi) the nature of the primary source of energy to be used by a generating station (which shall in no circumstance include the use of nuclear fission for the generation of electricity);
- (vii) whether the persons directly associated with the application are fit and proper persons to be granted a licence;
- (viii) whether the best interests of consumers will be promoted or enhanced;
- (ix) whether the aim of achieving sustainable competition for additional electricity generation in each of the Islands may be promoted or enhanced;
- (x) whether research, development and introduction of methods of generating electricity using renewable or alternative forms of energy and methods of increasing efficiency in the use and production of electricity will be promoted or enhanced; and
- (xi) whether the security and public interests of the Islands will be preserved and protected.

(5) For the purposes of this section, in determining whether a person is a fit and proper person, regard shall be had to all circumstances, including evidence of that person's-

- (a) honesty, integrity and reputation;
- (b) experience, reliability, competence and capability; and
- (c) financial capacity and soundness.

(6) Upon the grant of a licence, the Authority shall monitor the licensee to ensure that it complies and continues to comply with the terms, conditions and requirements of its licence.

(7) Every T&D licensee shall offer to deliver electricity to any member of the public who may request such delivery without discrimination against or preference to such person.

(8) Upon the grant of any licence the licence fee in respect thereof shall be payable quarterly in arrears to the Authority by the licensee.

(9) Subject to section 75(1), a person who performs any of the activities requiring a licence otherwise than for their own use or consumption, without being in possession of a valid licence issued by the Authority to do so, is guilty of an offence and liable-

- (a) on summary conviction to a fine of ten thousand dollars; or
- (b) on conviction on indictment to a fine of twenty thousand dollars,

for each day the offence continues after the date it first occurred.

(10) No licensee is required to be licensed under the Trade and Business Licensing Law (2007 Revision), and all licensees shall be exempt from the Local Companies (Control) Law (2007 Revision).

2007 Revision
2007 Revision

24. (1) A licensee that is a company shall not issue shares, and a person owning or having an interest in shares in the licensee shall not transfer, otherwise dispose of, or deal in those shares or interest where such issuance, transfer, disposal or dealing would thereby result in a total shareholding or total voting rights by the person acquiring such shares or voting rights by such issuance, transfer, disposal or dealing of more than ten per cent of the issued share capital or total voting rights of the licensee without the prior written consent of the Authority.

Shares of licensee etc
not to be issued or
transferred without
approval of Authority

(2) In subsection (1), the reference to shares being issued, transferred, disposed of or dealt with includes the issue, transfer or disposal of or dealing with either the direct or indirect legal or beneficial interest in the shares.

(3) A licensee who may wish to deal with shares as provided in subsection (1) shall request the consent of the Authority in writing, and the Authority shall reply in writing within seven days of the receipt of such request.

(4) Where the Authority refuses to give its consent it shall give reasons in writing for such refusal.

(5) The Authority may, in respect of a licensee whose shares are publicly traded on a stock exchange recognised by the Cayman Islands Monetary Authority, waive the obligation to obtain consent under this section, and any such waiver shall be subject to -

- (a) a condition that the licensee shall, immediately upon becoming aware of same, notify the Authority of -
 - (i) any actual or proposed change in control thereof;
 - (ii) any actual or proposed acquisition by any person or group of persons of shares which results or would result in a total shareholding by that person or group of persons of more than ten per cent of the issued share capital or total voting rights thereof; or
 - (iii) any actual or proposed acquisition by any person or group of persons of shares which results or would result in a total shareholding by that person or group of persons of more

than ten per cent of the issued share capital or total voting rights of the parent company of the licensee;

- (b) a condition that the licensee shall, as soon as reasonably practicable, provide such information to the Authority as may be required by the Authority for the purpose of satisfying that the persons acquiring or proposing to acquire control or ownership in the circumstances set out in paragraph (a) are fit and proper persons to have such control or ownership, but the licensee shall not be required to provide to the Authority information that is either not in its possession or that it does not have a legal or contractual right to obtain; and
- (c) such terms and other conditions as the Authority may deem necessary.

(6) Notwithstanding any waiver issued under subsection (5), where the Authority has been notified by a licensee or otherwise becomes aware of any of the circumstances set out in that subsection, and the Authority has determined that such person or group of persons are not fit and proper persons to have control or ownership of the licensee or its parent company, the Authority may -

- (a) in the event of a proposed acquisition of shares in the licensee, refuse to allow the proposed transfer of shares;
- (b) in the event of an acquisition of shares in the licensee or its parent company -
 - (i) impose such conditions on the licence as it may deem necessary;
 - (ii) issue a directive or directives to the licensee as to the management and operations of the licensee; or
 - (iii) suspend or revoke the licence on the order of the Governor where he determines such suspension or revocation is necessary for reasons of the security or public interest of the Islands.

(7) Where shares in a company which is a licensee vest automatically through process of law in another person or group of persons and such vesting results in a total shareholding by that person or group of persons of more than ten per cent of the issued share capital or total voting rights in the company, the secretary of the company or the Registrar shall, immediately upon becoming aware of such vesting, inform the Authority of the number of shares and the identity of the person in whom they have vested, and the Authority shall have the power to impose conditions on the licence and to issue directives as to the management and operations of the licensee.

(8) Where a licensee-

- (a) fails or refuses to obtain the consent of the Authority in accordance with this section or proceeds to deal with shares where the Authority has refused to consent to such dealing; or
- (b) fails to comply with subsection (5), (6) or (7),

the licensee commits an offence and is liable -

- (i) on summary conviction to a fine of ten thousand dollars; or
- (ii) on conviction on indictment to a fine of twenty thousand dollars,

for each day that the offence continues after the date it first occurred.

(9) In this section -

“control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a company or other entity, whether through the ownership of voting rights, by contract or otherwise; and

“parent company”, in relation to any company or other entity, means any company or other entity by which it is directly or indirectly controlled.

25. (1) A licensee shall not assign a licence granted under this Law, or any rights thereunder without the prior written consent of the Authority. Assignment or transfer of licence

(2) The Authority may consent to an application for the assignment of a licence under subsection (1) where the Authority is satisfied that the proposed assignee satisfies the criteria set out in section 23(3), (4) and (5).

(3) A licensee who may wish to assign or transfer a licence as provided in subsection (1) shall request in writing the consent of the Authority and the Authority shall reply in writing within twenty-eight days of the receipt of such request.

(4) The Authority shall, before consenting to the assignment of a licence, publish the particulars of the proposed assignment.

(5) Where the Authority refuses to give its consent it shall give reasons in writing for such refusal to the licensee that requested the consent.

26. (1) A T&D licence shall be for a period not exceeding twenty years from its date of commencement. Duration of licence

(2) A generation licence shall be for a period not exceeding twenty-five years from its date of commencement.

(3) Where a Generator is awarded the right to supply additional electricity generation under the generation solicitation process, its existing licence shall be

cancelled and a new licence issued to the licensee for a term not exceeding twenty-five years, to correspond with the period required for construction, reconstruction, replacement or modification of a generating station or any generating unit therein, together with the estimated economic life of the relevant generating unit or units or the term of the relevant PPA as appropriate; and the new licence shall cover -

- (a) the new generating unit or units and any existing generating unit or units covered under its previous licence which have not been retired; or
- (b) the new PPA and any existing PPAs covered under its previous licence which have not expired,

as appropriate.

(4) Upon application by a Generator, the Authority may, if it is satisfied that it is economic to extend the life of an existing generating unit or units, without application of the generation solicitation process, grant a new generation licence, the terms of which shall correspond with the new estimated life of the generating unit or units.

(5) If, outside the contexts of section 9(2)(e)(i) and (ii) -

- (a) due to a destructive event, some or all of a Generator's generation assets are damaged or destroyed so as to prevent the Generator from being able to satisfy its obligations to supply sufficient electricity to the T&D licensee; and
- (b) the Authority is of the view that it would be in the best interests of consumers,

the Authority may grant a licence to another person either -

- (i) during the period in which the Generator is repairing or replacing its generation assets that are so damaged or destroyed; or
- (ii) if the Generator's PPAs are validly terminated as a result of its inability to recover from the destructive event, during the period that it will take to conduct the generation solicitation process in order to replace the Generator's generating capacity and enable the new licensee to put in place the generation assets that are required to meet such capacity,

and any such licence shall be temporary in nature, shall be granted for no longer than such period of time as is reasonably necessary in the circumstances, and shall be subject to such conditions as the Authority may, in its discretion, deem appropriate.

(6) A licence may be renewed upon application by the licensee, or otherwise modified, suspended or revoked in accordance with this Law.

(7) Generation licences shall not be exclusive.

27. (1) Where a T&D licensee applies for renewal of a T&D licence, the Authority may refuse to renew that T&D licence for reasonable cause including whether the licensee is or has engaged in conduct that contravenes this Law or is or has been otherwise in fundamental or persistent breach of that T&D licence. Renewal of licence

(2) Where the Authority has reasonable cause for refusing to renew a T&D licence under subsection (1), it shall inform the T&D licensee by written notice to be served upon the T&D licensee as soon as practicable, of the Authority's intention not to renew the T&D licence and specify the reasonable cause upon which the Authority relies for refusing to renew the T&D licence.

(3) A T&D licence shall be automatically renewed for further periods of up to twenty years unless abandoned or surrendered by the T&D licensee or unless written notice of non-renewal for reasonable cause by the Authority is given under subsection (2) at least five years prior to the expiry of the T&D licence, and if, within two years of service of the said notice given by the Authority, reasonable cause has not been shown to the Authority's satisfaction that the T&D licence should be renewed, the Authority shall compel compulsory divestiture of the T&D assets of the T&D licensee upon expiry of the T&D licence at a value equal to the average of the values determined by a panel of three qualified valuers with experience in valuing T&D assets.

(4) The panel referred to in subsection (3) shall be -

- (a) one member to be chosen by the Authority;
- (b) one member to be chosen by the T&D licensee; and
- (c) one member, who shall be chairman of the panel, to be chosen by the other two members.

(5) The panel referred to in subsections (3) and (4) shall value the T&D assets of the T&D licensee at the fair market value.

(6) A licensee referred to under subsection (2) shall have three months from the date of service of the said notice to make written submissions to the Authority in respect of the refusal and showing cause why it ought to have its licence renewed.

(7) The Authority shall consider any written submissions made under subsection (6), and shall inform the licensee of its decision on the matter and provide written reasons for its decision within two months of the receipt of the said submissions.

- Modification of licence
28. (1) Without prejudice to subsection (2) or (3), a licence may be modified where the Authority and the licensee each consent in writing to modify the licence subject to any special conditions concerning modification in the relevant licence.
- (2) Notwithstanding subsection (1), the Authority shall immediately, on the direction of the Governor, modify a licence for reasons of the security or the public interest of the Islands with or without the agreement of the licensee.
- (3) Where the Authority, on the recommendation of the Governor, considers that a licence should be modified in the public interest, the Authority shall give to the licensee a written notice that-
- (a) sets out the proposed modification;
 - (b) states the reasons for the proposed amendment; and
 - (c) invites the licensee to file submissions within twenty-eight days to show cause why the licence should not be so modified.
- (4) The Authority may modify the licence if, after having regard to a submission made under subsection (3)(c), the Authority considers the licence should be modified-
- (a) in the manner set out in the notice; or
 - (b) in some other manner consistent with the said submissions.
- (5) Where the Authority decides to modify the licence, the Authority shall give to the licensee a written notice stating-
- (a) how the licence has been modified; and
 - (b) that the licensee may apply to the Authority for a reconsideration of its decision in accordance with section 72(1)(d).
- Licence and regulatory fees
29. (1) A licensee shall pay to the Authority all such licence and regulatory fees in the amount, time and manner prescribed by regulations made under this Law, and the obligation to pay the said licence and regulatory fees is a financial commitment of a licensee and shall be recoverable as a debt due to the Authority.
- (2) Each licensee shall submit to the Authority -
- (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 Authority to calculate and agree the amount of the prescribed licence and regulatory fees.
- Suspension or revocation of licence
30. (1) The Authority may suspend or revoke a licence where the licensee-

- (a) is in fundamental breach of the licence;
- (b) persistently breaches any condition attached to the licence or repeatedly contravenes this Law;
- (c) is dissolved;
- (d) is wound up or declared bankrupt;
- (e) is convicted of an offence under this Law and punished by a fine in excess of three hundred thousand dollars;
- (f) fails to pay any licence fee, regulatory fee or financial commitment under this Law for a continuous period in excess of three months;
- (g) is to be struck or is struck from the register of companies;
- (h) compounds with its creditors to the detriment of the public interest;
- (i) obtained the licence by a fraudulent, false or misleading representation or in some other illegal manner; or
- (j) having had his licence suspended, has failed to rectify any ground for suspension under this section within a period of one year following upon the date of any such suspension.

(2) Notwithstanding subsection (1), the Authority, on the order of the Governor, shall, without notice, suspend or revoke any licence if the suspension or revocation is necessary for reasons of the security or the public interest of the Islands.

(3) The Authority shall, before suspending or revoking a licence under subsection (1), give fourteen days written notice to the licensee, in which notice the Authority shall draw to the attention of the licensee the grounds on which the Authority intends to suspend or revoke the licence.

(4) Before suspending or revoking a licence under subsection (1)(a) or (b), the Authority may give an opportunity to the licensee to remedy the breach, if capable of remedy, within a reasonable time and in any event before the expiration of the fourteen day period of notice given under subsection (3) if the public interest or security of the Islands is not harmed in so doing.

(5) Upon revocation of a licence under this section, the Authority shall compel compulsory divestiture of the licensee's T&D or generation assets, as the case may be, and section 27(3), (4) and (5) shall, with the necessary changes being made, apply to the valuation of such T&D or generation assets, as the case may be.

31. If at any time, from revocation of its licence, insolvency or other cause, a licensee is unable to continue to generate, transmit or distribute electricity for which the licensee was licensed under this Law, it shall be lawful for the Authority -

Power to take possession of electricity infrastructure in certain cases

- (a) to enter upon and take possession of the generation assets or T&D assets (as the case may be) of the licensee; and
- (b) permit another licensee or person whom the Authority is satisfied has the requisite skills, competence and capacity to enter upon and take possession of the generation assets or T&D assets (as the case may be) of the licensee, and to maintain them in working order for twelve months, or such time as may be necessary for their sale or disposal in accordance with section 27 or 30 as appropriate.

Register of applications and licences

32. (1) The Authority shall cause to be kept a register of all applications for licences received by it and all licences granted and such register may be kept in electronic form.

(2) The Authority-

- (a) shall make available for public inspection during its business hours, applications made and licences granted; and
- (b) may permit any person to make copies of any entry in the said register and may charge such fees as it considers reasonable for such copies.

PART IV - Directives by Authority

Directives by Authority to protect public health, etc.

33. (1) Subject to subsection (2), where the Authority is satisfied that action is necessary to-

- (a) protect public health, safety or the environment;
- (b) protect the continuity of supply of electricity;
- (c) protect the interests of other licensees;
- (d) prevent a licensee from contravening or attempting to contravene a term, condition or requirement of its licence or a provision of this Law or any other law; or
- (e) prevent dissipation of the assets of a licensee other than in the ordinary course of business,

the Authority may, by notice in writing, direct the licensee concerned to immediately discontinue or refrain from a practice or to do or perform an act or thing as may be specified in the said notice or procure that such act or thing be done.

(2) Nothing in this section shall permit the Authority to give directives to a licensee demanding compliance with-

- (a) the National Pensions Law (2010 Revision);
- (b) the Health Insurance Law (2005 Revision);
- (c) the Workmen's Compensation Law (1996 Revision);

2010 Revision
2005 Revision
1996 Revision

- (d) the health and safety provisions of the Labour Law (2007 2007 Revision Revision); or
- (e) matters relating to an industrial dispute.

(3) Subject to section 34, a licensee who fails or refuses to immediately discontinue or refrain from a practice specified in the said notice is guilty of an offence and liable -

- (a) on summary conviction to a fine of fifty thousand dollars; or
- (b) on conviction on indictment to a fine of one hundred thousand dollars,

for each day the offence continues after the date it first occurred.

34. (1) The notice referred to in section 33 shall-

Notice of directive by
Authority

- (a) specify the term, condition or requirement which the Authority considers that the licensee may be contravening or may be likely to contravene;
- (b) specify the licensee's acts or omissions which, in the opinion of the Authority, may constitute or would be likely to constitute contravention of the term, condition or requirement concerned;
- (c) contain a directive to the licensee to-
 - (i) immediately discontinue or refrain from any practice specified in the said notice; or
 - (ii) do or perform any act or thing as may be specified in the said notice or procure that any such act or thing be done, andwhere appropriate, take such remedial action as the Authority may reasonably require to cure the contravention or prevent its repetition; and
- (d) specify the penalty for failure to comply with the notice and the period, being not less than fourteen days from the date of the notice, within which representations or objections regarding the matters contained in the notice may be made by the licensee.

(2) The Authority may-

- (a) after consideration of representations or objections made under subsection (1)(d); or
- (b) at any time by its own motion,

suspend, amend, modify or revoke a directive given hereunder.

35. In order to ensure compliance with a directive given under section 33, the Authority may apply in a summary manner *ex parte* or on notice to the Court for an order requiring a licensee who, in the opinion of the Authority, has not

Compliance with
directive

complied with the notice to do all necessary things to comply with such notice or to refrain from practices as specified in the notice.

Powers of Court in respect of directives

36. The Court may confirm, revoke or vary a directive made by the Authority and shall have such powers as are necessary to enforce such orders as the Court may make under section 35.

PART V - Anti-competitive Practices

Interpretation for the purposes of this Part

37. (1) This Part deals with-

- (a) agreements, arrangements and practices; and
- (b) intent or attempts to enter into agreements, arrangements or practices,

relating to the generation or transmission and distribution of electricity in the Islands.

(2) A provision of this Part which is expressed to apply to, or in relation to, an agreement is to be read as applying equally to, or in relation to, an arrangement or a practice by a licensee, but with any necessary modifications unless the context otherwise requires.

(3) In this Part-

“section 38 prohibition” means the prohibition specified in section 38; and

“section 42 prohibition” means the prohibition specified in section 42.

Agreements, etc. preventing, restricting or distorting competition

38. (1) Agreements, arrangements or practices by or between licensees or between one or more licensees and any other person that have as their object or effect the prevention, restriction or distortion of sustainable competition in the electricity industry in the Islands are prohibited.

(2) Subsection (1) applies, in particular, to agreements, arrangements or practices that-

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development or investment;
- (c) share consumer bases or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other parties, thereby placing the parties or any one of them at a competitive disadvantage; or
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature

or according to commercial usage, have no connection with the subject of such contracts.

(3) Subsection (1) applies only if the agreement, arrangement or practice is, or is intended to be, implemented in the Islands or is, or is intended to be, implemented in such other manner as will affect generation or transmission and distribution of electricity in a way that prejudices the interests of consumers.

(4) Any agreement, arrangement or practice prohibited by subsection (1) is void.

39. (1) The Authority may grant an exemption from section 38 with respect to a specific agreement, arrangement or practice if- Exemptions for specific agreements

- (a) a request for an exemption has been made to the Authority by a party to the agreement; and
- (b) the agreement is one to which section 40 applies.

(2) The exemption referred to in subsection (1) may be granted subject to such terms, conditions or requirements and shall have effect for such period as the Authority considers appropriate and which terms, conditions or requirements shall be specified in the grant of the exemption.

(3) The Authority may grant an exemption which has effect from a date earlier than the date on which it is granted.

(4) The Authority may, on application by a party to the agreement, extend the period for which an exemption has effect, and the extension shall be made subject to such terms, conditions or requirements as the Authority considers appropriate and shall specify in the grant of the extension.

40. The Authority may declare the provisions of section 38 inapplicable in the case of any agreement, arrangement or practice which- Declaration of exemptions

- (a) contributes to-
 - (i) improving generation, transmission or distribution of electricity in the Islands; or
 - (ii) promoting technical or economic progress in relation thereto,while allowing consumers to share the resulting benefit; but
- (b) does not-
 - (i) impose on the parties to the agreement restrictions which are not indispensable to the attainment of those objectives; or
 - (ii) afford the parties concerned the possibility of eliminating or harming a competitor.

Cancellation, etc. of exemptions

41. (1) Where the Authority has reasonable grounds for believing that there has been a material change of circumstance since it granted an exemption, it may by notice in writing-

- (a) cancel the exemption;
- (b) vary or remove any term, condition or requirement; or
- (c) impose additional terms, conditions or requirements.

(2) Where the Authority has reasonable grounds for believing that the information on which it based its decision to grant an individual exemption was incomplete, false or misleading in a material particular, it may, by notice in writing, take any of the steps mentioned in subsection (1).

(3) Where a term, condition or requirement of an exemption has been breached, the Authority may, in its sole discretion, cancel the exemption.

(4) The Authority may, by notice in writing, take a step under subsection (1) where it reasonable has reasonable grounds for believing there has been failure to comply with a term, condition or requirement of an exemption.

(5) A step taken by the Authority under subsection (1), (2) or (4) has effect from such time as may be specified in the notice.

(6) Where an exemption is cancelled under subsection (1), (2) or (4), the date specified in the notice cancelling it may be earlier than the date on which the notice is given.

(7) The Authority may act under subsection (1), (2), (3) or (4) on its own motion or on a complaint made by any person.

Abuse of significant position

42. (1) Any conduct on the part of one or more licensees which amounts to the abuse of a significant position in the market for generation or transmission and distribution of electricity is prohibited, provided however that a licensee shall be entitled to protect its legitimate business interests subject to this Law.

(2) Conduct referred to in subsection (1) may, in particular, constitute such an abuse if it consists of-

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, access or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other parties, thereby placing the parties or any one of them at a competitive disadvantage;

- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary requirements which, by their nature or according to commercial usage, have no connection with the subject of the contracts; or
- (e) using revenues attributed to a particular service or activity to unfairly cross-subsidise or affect competition for another service or activity,

unless otherwise approved or exempted by the Authority.

43. The Authority may conduct an investigation under this Part, on application by any party or on its own motion, if there are reasonable grounds for believing that either-

Authority's power to investigate

- (a) the section 38 prohibition; or
- (b) the section 42 prohibition,

has been infringed.

44. (1) For the purposes of an investigation under section 43, the Authority may, by notice in writing, require any person to produce to it a specified document, or to provide it with specified information, which it considers relates to any matter relevant to the investigation.

Powers when conducting investigations

- (2) A notice under subsection (1) shall indicate-
 - (a) the subject matter and purpose of the investigation; and
 - (b) the nature of the alleged offence to which the investigation relates.
- (3) In subsection (1)-

“specified” means-

- (a) specified, or described, in the notice; or
 - (b) falling within a category which is specified, or described, in the notice.
- (4) The Authority may also specify in the notice-
 - (a) the time and place at which any document is to be produced or any information is to be provided; and
 - (b) the manner and form in which the document is to be produced or the information is to be provided.
 - (5) The power under this section to require a person to produce a document includes a power-
 - (a) where the document is produced-
 - (i) to take copies of it or extracts from it; or

- (ii) to require that person or any person who is a present or past officer or employee of that person, to provide an explanation of the document; and
 - (b) where the document is not produced, to require the person to verify by affidavit, or state on oath, where, to the best of that person's knowledge, information and belief, the document is or may be found.
- Power to enter premises under a warrant
45. (1) On an application made by the Authority to the Court, a Judge may issue a warrant if satisfied that-
- (a) there are reasonable grounds for believing that there are on any premises documents or information-
 - (i) the production of which has been required under section 44; and
 - (ii) which have not been produced as required; or
 - (b) there are reasonable grounds for believing that-
 - (i) there are, on any premises, documents or information which the Authority has power to require to be produced under section 44; and
 - (ii) if the document or information were required to be produced, it would not be produced or would be concealed, removed, tampered with or destroyed.
- (2) A warrant under this section shall authorise a named officer of the Authority and any other officers of the Authority or other person or persons whose assistance the named officer considers reasonably necessary in the circumstances-
- (a) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;
 - (b) to search the premises and take copies of, or extracts from, any document appearing to be of a kind in respect of which the application under subsection (1) was granted (hereinafter called "the relevant kind");
 - (c) to take possession of any documents appearing to be of the relevant kind if-
 - (i) such action appears to be necessary for preserving the documents or preventing interference with them; or
 - (ii) it is not reasonably practicable to take copies of the documents on the premises;
 - (d) to take any other steps which appear to be necessary for the purpose mentioned in paragraph (c)(i);
 - (e) to require a person to provide an explanation of a document appearing to be of the relevant kind or to verify by affidavit, or

state on oath, where to the best of that person's knowledge, information and belief the document is or may be found; and

- (f) to require any information which is held in a computer and is accessible from the premises and which the named officer considers relates to any matter relevant to the investigation, to be produced in a form in which it can be taken away, and in which it is visible and legible.

(3) Where, in the case of a warrant under subsection (1)(b), the Judge is satisfied that it is reasonable to believe that there are also on the premises other documents relating to the investigation concerned, the warrant shall also authorise action under subsection (2) that the Judge considers necessary to be taken in relation to any such document.

(4) A person entering premises by virtue of a warrant under this section may take with him such equipment and materials as appears to him to be reasonably necessary.

(5) The named officer, on leaving the premises which he has entered by virtue of a warrant under this section, shall, if the premises are unoccupied or the occupier is temporarily absent, leave the premises as effectively secured as he found them.

(6) A warrant under this section continues in force until the end of the period of twenty-eight days beginning with the day on which it is issued.

(7) Any document of which possession is taken under subsection (2)(c) may be retained for a period of three months, and where no action is taken by the Authority in respect of an offence relating to the document within three months after seizure, or, if action is taken but no decision relating to forfeiture is made, the document shall be returned by the Authority to the person from whom it was seized.

46. (1) A warrant issued under section 45 shall indicate-

- (a) the subject matter and purpose of the investigation; and
- (b) the nature of the offence to which the warrant relates.

Entry of premises under
warrant: supplementary

(2) The powers conferred by section 45 shall be exercised only on production of a warrant issued under that section.

(3) Where there is no one at the premises when the named officer proposes to execute such a warrant, the named officer shall, before executing the warrant-

- (a) take such steps as are reasonable in all the circumstances to inform the occupier of the intended entry; and

- (b) if the occupier is informed, afford him or his legal or other representative a reasonable opportunity to be present when the warrant is executed.

(4) Where the named officer is unable to inform the occupier of the intended entry he shall, when executing the warrant, leave a copy of it in a prominent place on the premises as well as a written notice showing the date and time of the execution of the warrant and the address of the Authority to which enquiries may be made.

(5) In this Part-

“named officer” means the principal officer of the Authority named in the warrant; and

“occupier”, in relation to any premises, means a person whom the named officer reasonably believes is the occupier of those premises.

Privileged
communications

47. (1) A person shall not be required, under this Part, to produce or disclose a privileged communication.

(2) In this section-

“privileged communication” means a communication-

- (a) between a professional legal adviser and his client; or
- (b) made in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings,

and which in proceedings in the Court would be protected from disclosure on grounds of legal professional privilege.

Decisions following an
investigation

48. (1) Subsection (2) applies where, as the result of an investigation conducted under section 43 the Authority proposes to make a decision that-

- (a) the section 38 prohibition; or
- (b) the section 42 prohibition,

has been infringed.

(2) Before making such a decision, the Authority shall-

- (a) give written notice to any person likely to be affected by the proposed decision; and
- (b) afford that person an opportunity to make written representations to show cause why the Authority ought not to make such a decision.

49. (1) Where the Authority has made a decision that an agreement, arrangement or practice infringes the section 38 prohibition, it may give to such person as it considers appropriate such written directives as it considers necessary to bring the infringement to an end.

Directives in relation to agreements

(2) A directive under this section may, in particular, include provision requiring the parties to the agreement, arrangement or practice to modify or terminate the relevant agreement, arrangement or practice.

50. (1) Where the Authority has made a decision that conduct infringes the section 42 prohibition, it may give to such person or persons as it considers necessary such written directives as it considers necessary to bring the infringement to an end.

Directives in relation to conduct

(2) A directive under this section may, in particular, include provisions requiring the person concerned to modify the conduct in question or requiring him to cease that conduct.

51. (1) Where a person fails, without reasonable excuse, to comply with a directive under section 49 or 50, the Authority may apply to the Court for an order-

Enforcement of directives

- (a) requiring the person in default to comply with the directive within a time specified in the order; or
- (b) if the directive related to anything to be done in the management or administration of a licensee, requiring the licensee or any of its officers to comply with the directive and warrant to the Authority that the directive has been complied with.

(2) An order of the Court under subsection (1) may provide for all of the costs of, or incidental to, the application for the order to be borne by the person in default or any officer of a licensee who is responsible for the default.

52. (1) This section applies where the Authority has grounds for believing that-

Interim measures

- (a) the section 38 prohibition; or
- (b) the section 42 prohibition,

has been infringed, but has not completed its investigation into the matter.

(2) Where the Authority considers that it is necessary for it to act under this section as a matter of urgency for the purpose of-

- (a) preventing serious, irreparable damage to a particular person or category of person; or
- (b) protecting the public interest or security interests of the Islands,

it may give such directives as it considers necessary for that purpose without first giving notice to the person to whom the directive is issued.

(3) In all other cases, the Authority shall, before giving a directive under this section-

- (a) give written notice of the contents of the directive to any person to whom it proposes to give the directive; and
- (b) afford that person an opportunity to make oral or written representations to show cause why the Authority ought not to give such a directive.

(4) A subsequent notice under subsection (2) and any advance notice under subsection (3) shall indicate the nature of the directive which the Authority has given or is proposing to give and its reasons therefor.

(5) A directive given under this section has effect while subsection (1) applies, but may be replaced, if the circumstances permit, by a directive under section 49 or, as appropriate, section 50.

(6) In any case where the section 38 prohibition is believed to have been infringed, sections 49(1) and 50 also apply to directives given under this section.

(7) In any case where the section 42 prohibition is believed to have been infringed, sections 50(1) and 51 also apply to directives given under this section.

Notice to show cause

53. (1) Where the Authority has decided that an agreement has infringed either or both of the section 38 prohibition or section 42 prohibition, the Authority shall give to the licensee or person involved notice in writing of the decision and the Authority's reasons for the decision and invite the licensee to show cause, within fourteen days of service of the notice, why the Authority should not proceed to act on its decision.

(2) A notice to show cause shall state that, within fourteen days of service, the licensee or person on whom it is served may make representations in writing or otherwise show cause to the Authority concerning the matter and the Authority shall not determine the matter without considering submissions or representations received within that period of fourteen days.

(3) Where, after hearing representations under subsection (2), the Authority is of the opinion that its decision is correct, it shall so notify the licensee or person as soon as possible, and, in the case of an infringement of a section 38 prohibition or section 42 prohibition, the Authority-

- (a) may require the licensee or person to pay a penalty in respect of the infringement; and

(b) may suspend or revoke any licence issued to the licensee.

(4) The Authority may impose a penalty on a licensee or person or suspend or revoke a licence under subsection (3) only if it is satisfied that the infringement has been committed intentionally or negligently by the licensee or person.

(5) Notice of a penalty under this section shall be in writing and shall specify the date before which the penalty is required to be paid.

(6) The date specified under subsection (5) shall not be earlier than the end of the period within which an appeal against the notice may be brought.

(7) A penalty fixed by the Authority under this section in respect of any single contravention of section 38 or 42 by a licensee shall not exceed five hundred thousand dollars.

(8) Sums received by the Authority under this section shall be paid into the general revenue of the Islands.

54. (1) Where the specified date in a penalty notice has passed and-

Recovery of penalties

- (a) the period during which an appeal against the imposition, or amount, of the penalty may be made has expired without an appeal having been made; or
- (b) such an appeal has been made and determined,

the Authority may recover from the licensee or person, as a civil debt due to the Authority, the amount payable under the penalty notice which remains outstanding.

(2) In this section-

“penalty notice” means a notice given under section 53(5); and

“specified date” means the date specified in the penalty notice.

55. (1) This section applies to the period of time prior to a person entering into an agreement where that person is of the opinion that the agreement may infringe the section 38 prohibition and he has notified the Authority of the intended agreement and has requested a decision as to whether an exemption can be granted under section 39 with respect to the intended agreement.

Agreements notified to Authority

(2) The Authority may not impose a penalty under this Part in respect of any infringement of the section 38 prohibition after notification but before the Authority determines whether an exemption shall be granted.

(3) Where the Authority determines not to grant an exemption with respect to the intended or completed agreement, subsection (2) ceases to apply from the date on which that determination has been made and notified to the applicant.

(4) The fact that an intended agreement has been notified to the Authority does not prevent the investigation of that intended agreement under this Part.

PART VI - Cease-and-desist Orders

Cease-and-desist orders

56. (1) Where, upon investigation, the Authority is satisfied that there are reasonable grounds for believing that any conduct referred to in subsection (2) is being carried out by a licensee or person, the Authority may issue a cease-and-desist order to the licensee or person concerned.

(2) The conduct referred to in subsection (1) includes operations, acts or omissions in contravention of this Law or licence granted.

(3) An order under subsection (1) shall-

- (a) state the nature and timing of the alleged conduct and the name of the person against whom the allegation is made; and
- (b) be accompanied by documents, including a summary of the scope of any findings from its investigation, in support of the allegation including the Authority's findings upon investigation under subsection (1).

(4) Any person aggrieved by, or dissatisfied with, the order of the Authority may, within fourteen days of the communication of the order to him, or such longer period as the Authority may for good cause shown allow, apply to the Authority in writing for its decision to be reconsidered.

(5) On receipt of the application, the Authority shall, if the applicant has applied to be heard personally or by a representative, decide whether he shall be so heard and, if it is so decided, fix a time and a date for such hearing and notify the applicant.

(6) At every hearing where the applicant or his representative is present, the applicant or his representative shall be given an opportunity to address the Authority.

(7) The decision of the Authority shall be notified to the applicant within twenty-eight days after the conclusion of the hearing of the appeal.

Application for enforcement

57. Where the Court is satisfied on an application by the Authority that a licensee or person has-

- (a) failed to comply with a term, condition or requirement of a licence;
- (b) failed to comply with an order made under section 56; or
- (c) has contravened this Law,

the Court may exercise its powers specified in section 58.

58. (1) The Court may, pursuant to an application by the Authority under section 57-

Powers of Court in respect of cease-and-desist orders

- (a) order the offending licensee or person to pay to the Government a pecuniary penalty of fifty thousand dollars in the case of an individual and five hundred thousand dollars in the case of any other person;
- (b) grant an injunction restraining the offending licensee or person from engaging in conduct described in section 56; or
- (c) make such other order as the Court thinks fit,

in respect of each contravention or failure specified in that section.

(2) In exercising its powers under this section the Court shall have regard to-

- (a) the nature and extent of the conduct giving rise to the application;
- (b) the nature and extent of any loss suffered by a person as a result of the alleged contravention;
- (c) the circumstances of the alleged contravention;
- (d) any prior conduct of the offending licensee or person; and
- (e) any previous determination against the offending licensee or person.

PART VII - Administrative Fines

59. (1) Where, upon investigation, the Authority is satisfied that reasonable grounds exist for believing that a licensee may have failed to comply with or contravened this Law or one or more terms, conditions or requirements of any licence or regulation made under this Law, the Authority shall-

Administrative fines

- (a) notify the licensee in writing, stating the nature of such suspected failure to comply or contravention and of the Authority's intention to make a determination in respect of any such suspected failure to comply or contravention; and
- (b) provide to the licensee documents, if any, in support of the suspected failure or contravention, including the scope of the Authority's investigation and the Authority's findings upon investigation under subsection (1).

(2) A licensee notified in accordance with subsection (1) shall, within fourteen days of the date of the notice, provide to the Authority a written response in respect of such suspected failure to comply or such contravention, and shall also provide any other documentation which the licensee wishes the Authority to consider in making a determination in relation to a suspected failure to comply or contravention.

(3) A licensee in a response submitted to the Authority as specified in subsection (2), may request that the Authority hear the licensee in person or through a representative and, if so requested, the Authority shall allow such request.

(4) Where a licensee, notified as specified in subsection (1), makes no submission as specified in subsection (2) in respect of a suspected failure to comply or contravention, then the licensee shall be considered by the Authority to have no evidence to refute the allegation of failure to comply or the contravention.

(5) Where, under subsection (3), the Authority has decided to hold a hearing it shall hold such hearing within twenty-eight days next following the period set out in subsection (2) and in accordance with such procedure as it may determine.

(6) At every hearing under this section where the licensee or his representative is present, the licensee or his representative shall be given an opportunity to address the Authority.

(7) After a hearing under this section, the Authority shall set out its findings in writing and shall make a determination in regard to any suspected failure to comply or contravention as specified in subsection (1).

(8) Where the Authority determines that a licensee has failed to comply or contravened under subsection (1), the Authority may consider the nature, circumstances and any actual or potential consequences of each and any such failure to comply or contravention by the licensee as well as any prior determinations in respect of that licensee by the Authority and may-

- (a) issue a warning to the licensee;
- (b) direct the licensee to rectify the failure or contravention within a reasonable time as the Authority may direct; and
- (c) impose a fine of fifty thousand dollars in respect of each such failure to comply or contravention.

(9) The Authority shall, within twenty-eight days of its determination, notify the licensee in writing of its findings, determinations and reasons therefor and any fine, directive or warning and following the period provided for an appeal

as specified in subsection (10), may cause its findings and any warning and the quantum of any fine imposed to be published in its discretion.

(10) An appeal against a determination of the Authority made under subsection (8) shall be made to the Court within twenty-eight days next following the date of the notification under subsection (9).

(11) The notification of a fine under subsection (9) shall be deemed to also be notice of an intention to suspend any and all licences of the licensee at the expiration of twenty-eight days following notification as specified in subsection (9) unless the fine imposed by the Authority shall be paid in full by the licensee within that same period of twenty-eight days of notification, and the reasonable time to rectify specified in subsection (8)(b) shall similarly be deemed to be that same period of twenty-eight days.

(12) Failure to pay a fine imposed by the Authority within the period specified in subsection (11) shall be deemed to be a contravention of this Law and is sufficient grounds for the suspension of any and all licences of the licensee by the Authority.

(13) Representatives appearing on behalf of a licensee need not be persons having legal qualifications.

(14) The power to impose fines under this Part is in addition to or in the alternative to any other penalty or remedy provided under this Law.

PART VIII - Interconnection and Electricity Infrastructure Sharing.

60. (1) Subject to this Part, a T&D licensee that operates a transmission and distribution system shall not refuse, obstruct or in any way impede a Generator in the making of any interconnection with that T&D licensee's T&D system and shall, in accordance with this Part, ensure that the interconnection provided to a Generator is made at any technically feasible physical point as the Generator may reasonably require.

Interconnection
generally

(2) An applicant for a generation licence or a Generator who wishes to interconnect with a T&D licensee's T&D system shall, in writing, request interconnection by that T&D licensee not less than six months before the date on which interconnection may be required.

(3) A T&D licensee to whom a request is made in accordance with subsection (2) shall respond in writing to the request within a period of twenty-eight days from the date on which the request is made and, subject to subsection

(4), shall provide the interconnection service on the date required by the applicant unless formally extended by the Authority in writing for cause being shown.

(4) A request by an applicant for a generation licence or a Generator to interconnect with a T&D licensee's T&D system shall not be refused except on reasonable grounds, and such refusal and the grounds therefor shall be in writing.

(5) The reasonable grounds to which reference is made in subsection (4) are, among other things -

- (a) there is insufficient capacity on the T&D system, taking into account reasonably anticipated requirements;
- (b) there are reasons of safety or security; or
- (c) there are technical or engineering reasons which would make such interconnection unfeasible.

(6) Where interconnection is provided to an applicant or Generator by a T&D licensee under this section it shall be provided on reasonable commercial terms and conditions, and all reasonable direct and indirect costs and expenses associated with the construction, maintenance and operation of the interconnection facilities will be paid by the applicant or Generator.

Terms for back up connection to a transmission and distribution system

61. (1) Where an application for back-up electricity supply and standby connection is made to a T&D licensee by another person for his own exclusive consumption, the T&D licensee shall within a reasonable period offer the applicant the opportunity to enter into an agreement for back-up electricity supply and connection to the T&D licensee's T&D system on reasonable commercial terms and conditions as approved by the Authority from time to time.

(2) Without prejudice to subsection (1), "reasonable commercial terms and conditions as approved by the Authority from time to time" shall include -

- (a) the methods for determining the costs to be borne by the applicant for standby connection to the T&D licensee's T&D system, being reasonable costs that are incurred in carrying out works under an agreement for making a standby connection or modifying an existing standby connection and reasonable costs that are incurred in providing backup service to the applicant;
- (b) the period of time within which an offer or refusal pursuant to an application is to be made by the T&D licensee; and
- (c) any other matters which the Authority considers necessary or expedient for the purpose of an application to make a standby connection to the T&D licensee's T&D system.

(3) A T&D licensee shall not be required to enter into an agreement under subsection (1) where -

- (a) it has demonstrated to the satisfaction of the Authority that it is not in the public interest to provide additional electricity generation to meet the requirements to be imposed by that agreement;
- (b) to enter into an agreement under this section would be likely to involve the T&D licensee in a breach of -
 - (i) this Law;
 - (ii) the conditions of its T&D licence; or
 - (iii) the T&D code applicable to that T&D licensee's T&D system; or
- (c) the T&D licensee can prove to the Authority's satisfaction that there are, or would be, legitimate technical, financial or legal reasons why it should not be required to enter into such an agreement.

(4) Where a T&D licensee fails or refuses to offer to enter into an agreement under this section, it shall, within fourteen days, serve written notice on the applicant stating the reasons for such failure or refusal and shall at the same time serve a copy of that notice and reasons upon the Authority which may determine the issue using dispute resolution procedures provided under this Law.

62. (1) Where directed by the Authority, a T&D licensee shall prepare a statement for the approval of the Authority setting out the basis upon which charges are imposed for interconnection by an applicant under section 60 or 61 to the T&D system of that T&D licensee.

Charges for interconnection to a transmission and distribution system by a generator

(2) The Authority may review and approve charges by a T&D licensee for interconnection by an applicant under section 60 or 61 to the T&D system of the T&D licensee including -

- (a) the level and methods of charging to be included in the statement to be prepared by a T&D licensee; and
- (b) the form and extent of the information to be provided by a T&D licensee to applicants under section 60 or 61 regarding interconnection.

(3) A charge for interconnection to the T&D system of a T&D licensee shall be calculated so as to enable a T&D licensee to recover all reasonable direct and indirect costs incurred in carrying out any necessary works to provide interconnection to an applicant under section 60 or 61.

63. (1) A T&D licensee shall send each statement prepared in accordance with section 62 to the Authority for approval and the statement, and in particular any charges referred to therein, shall not apply until such time as the statement has been approved by the Authority, but once approved shall, as appropriate, have retroactive effect to the date the interconnection was established.

Approval of statement of charges by Authority

(2) The Authority shall consult with, and have regard to any submission made by, the T&D licensee, the applicant under section 60 or 61 or a Generator to the Authority prior to making a decision whether or not to approve a statement submitted under subsection (1).

Access to fuel pipelines

64. (1) Where access by a licensee to any fuel pipeline owned and operated by another licensee is requested not less than six months in advance of the date on which access may be required, the licensee owning such pipeline shall grant access to the said pipeline to the requesting licensee subject to this section.

(2) A permission to access a fuel pipeline granted under this section shall require the licensee to whom the permission was granted to comply with such technical and other commercial conditions, including those which may be necessary to ensure that its method of access to the pipeline is compatible with the pipeline, its fittings and capacity, to such extent as the licensee that owns the pipeline may reasonably specify in the permission.

(3) Where permission to access the pipeline is granted under this section such access shall be provided on reasonable commercial terms and conditions, and all reasonable direct and indirect costs and expenses associated with the construction, maintenance and operation of the access to the pipeline and a prorated share of the maintenance costs of the pipeline shall be paid by the licensee to whom the permission was granted.

Estimate of capacity, forecast flows and loading, and capital investment requirements

65. (1) Within sixty days of the end of each calendar year or within such deadlines as the Authority may direct, but at least annually or as the Authority may direct, each T&D licensee shall prepare a forecast statement (in this section referred to as a "statement") based on the information available to it in a form approved by the Authority.

(2) A statement shall include five year forecasts in respect of capacity, additional electricity generation requirements, peak system demand, forecast flows and loading on each part of the transmission system of the T&D licensee together with -

- (a) identification of those parts of the T&D system of a T&D licensee considered by the T&D licensee to be suitable for new interconnections;
- (b) information on generation and consumption of electricity generated from renewable or alternative sources of energy generally; and
- (c) a Capital Investment Plan including information as to the level of generation and T&D investment required to carry out and complete the Plan, with specification of all major items on a project-by-project basis for review and approval by the Authority.

(3) A T&D licensee may, from time to time, revise the information set out in each statement prior to submission of the next annual statement and may, with the approval of the Authority, alter the form of such statement.

(4) Each T&D licensee shall give a copy of the statement and of each revision of the statement under subsection (3) to the Authority.

(5) The T&D licensee may, with the prior consent of the Authority, identify in the statement given under subsection (4) any confidential details as to the cost, capacity, loading or other information where disclosure of that information would, in the opinion of the Authority, prejudice the commercial interests of the T&D or Generator or any other person; and the Authority shall require full information as to why the details are considered confidential information.

(6) In this section, the period to which the statement relates shall be five calendar years on or after the date on which the statement is submitted by the respective T&D licensee.

PART IX - Service Standards

66. (1) Licensees shall use their best endeavours to ensure that their services Quality of service
are-

- (a) reliable;
- (b) provided with due care and skill; and
- (c) rendered in accordance with this Law and their licence to the standards reasonably expected of a competent provider of those services.

(2) A complaint may be made to the Authority by any person who is dissatisfied with the service provided to him by, or who claims to be adversely affected by, the actions or omissions of a licensee.

(3) The Authority shall prescribe standards for the provision of service for and by all licensees.

(4) The Authority shall review and may approve rules and procedures to be established by T&D licensees relating to the provision, refusal, disconnection or interruption of service.

(5) The Authority shall make rules and establish procedures relating to the administration and resolution of complaints, without limitation, including requirements for and the determinations relating to the payment of the costs of

proceedings and procedures for the resolution of complaints and the payment of compensation to a complainant, which shall be binding upon licensees.

Non-discrimination and continuity of supply

67. Licensees may, subject to the rules and procedures established under section 66(4)-

- (a) refuse to provide service to a consumer; or
- (b) discontinue or interrupt the provision of such service to a consumer pursuant to an agreement with that consumer, or where the consumer has illegally abstracted electricity from the licensee, or the connection to the consumer creates a hazard to health or property,

only on grounds which are reasonable and non-discriminatory and where any such action is taken, the licensee shall, not less than seven days prior to the intended service interruption, provide notice in writing to the consumer specifying the reasons therefor and permit the consumer to remedy or cure any defect on the consumer's part insofar as such defect may be capable of remedy.

Equipment standards and technician certification

68. (1) The Authority shall review and may approve as part of any T&D code, rules and procedures to be established or adopted by T&D licensees which provide appropriate standards for equipment that may be connected to or used in the generation or transmission and distribution of electricity and for certification of technicians, electricians and electrical engineers.

(2) Licensees shall, as a condition of licensing, connect only equipment meeting such standards to systems used in the generation or transmission and distribution of electricity.

(3) It shall be a condition of access to systems used in the generation or transmission and distribution of electricity that licensees and consumers shall connect only equipment that meets such standards as are established or adopted under this section, and failure to comply with such standards is a reasonable ground to refuse to provide, to discontinue or to interrupt the provision of the relevant service under section 67.

(4) Notwithstanding subsections (1), (2) and (3), the Authority may, by published notice, exempt upon such reasonable terms and conditions as it thinks fit any equipment from the requirements of this section for such period of time as the Authority considers appropriate and in granting such exemption the Authority shall indicate in the notice-

- (a) the particular licensee, individual or company to which the exemption applies;
- (b) the reasons why the exemption is being granted;
- (c) the purpose for which the equipment may be used; and

(d) the period of time for which the equipment may be used.

(5) No licensee shall incur any liability for any exemption granted to another licensee or other person under this section.

69. (1) Subject to subsection (2), a licensee who intentionally discloses any consumer information is guilty of an offence and liable for each such disclosure- Privacy of consumer information

- (a) on summary conviction to a fine of ten thousand dollars; or
- (b) on conviction on indictment to a fine of twenty thousand dollars and to imprisonment for two years.

(2) Subsection (1) does not apply to a disclosure-

- (a) which is made to a constable for the prevention or detection of crime or for the purposes of criminal proceedings;
- (b) under any law which requires such disclosure;
- (c) which is made with the written consent of the consumer;
- (d) which is made under a Court order;
- (e) which is made in obedience to a warrant or order issued by the Governor; or
- (f) which is made to the Authority for purposes connected with the execution of its functions under this Law.

(3) A licensee shall not be liable for any action or suit for any injury, loss or damage resulting from disclosure of consumer information made under subsection (2).

(4) In this section-

“consumer information” means any data that relate to a consumer’s (or any group of consumers’) identity, billing address, service address, consumption of electricity, patterns of electricity consumption, credit history, payment history, references, applications or other service related forms completed by or on behalf of a consumer and information contained therein.

70. Where a licensee receives confidential information from another licensee for the purpose of interconnection or the provision of generation or transmission and distribution services generally and such information is declared by the latter licensee to be confidential in that the information relates to matters including the following - Confidential information

- (a) consumer information or statistics;
- (b) market forecasts;
- (c) plans for the development of new services or capacity;
- (d) generation or system plans;
- (e) requests for proposals, PPAs or bids of a commercial nature; or
- (f) current or proposed business plans,

the recipient licensee shall treat such information in confidence and may only share it amongst such of its employees who need the information in order to provide services to the licensee providing the information.

PART X - Reconsideration of Decisions and Appeals

Reconsideration of
decisions by Authority

71. (1) This section shall apply to the following decisions of the Authority namely, a decision-

- (a) made under section 9(2)(e) relating to the generation solicitation process;
- (b) not to grant a licence under section 23;
- (c) made under section 24 or 25;
- (d) not to renew a licence under section 27(1);
- (e) to modify a licence under section 28;
- (f) to suspend or revoke a licence under section 30;
- (g) that a section 38 prohibition has been infringed;
- (h) that a section 42 prohibition has been infringed;
- (i) with regard to an exemption under section 39-
 - (i) to grant or refuse an exemption;
 - (ii) to impose any condition or requirement and on the type of condition or requirement where such has been imposed;
 - (iii) of the date and duration of the exemption;
 - (iv) to extend or not to extend the period for which an exemption has effect; or
 - (v) on the duration of the extension referred to in subparagraph (iv);
- (j) to cancel an exemption under section 41;
- (k) to give a directive under Part IV;
- (l) to impose a penalty in accordance with Part V or in respect of the amount of such penalty;
- (m) made under section 65 in respect of a Capital Investment Plan; or
- (n) as may be prescribed by the Governor or the Authority.

(2) Except in the case concerning the imposition, or the amount, of a penalty, the making of an application under this section does not suspend the effect of any decision under subsection (1)(f), (g), (h), (i), (j) or (k) to which the reconsideration relates.

(3) Where-

- (a) a licensee;
- (b) an applicant for a licence;
- (c) a party to an agreement in respect of which the Authority has made a decision under Part V; or

- (d) a person in respect of whose conduct the Authority has made a decision under Part V,

is aggrieved by a decision specified in subsection (1) (hereinafter called “the original decision”) he shall, within fourteen days of the receipt of the original decision and written reasons therefor, apply in the prescribed manner to the Authority for a reconsideration of that original decision and may present further relevant information to the Authority upon such reconsideration.

(4) After reconsidering its original decision, under subsection (3), the Authority shall confirm, modify or reverse its original decision or any part thereof and render its determination within a reasonable period of time not to exceed twenty-eight days after conclusion of the proceedings constituting the reconsideration of the original decision.

(5) Where the original decision is confirmed, the confirmation shall be deemed to take effect from the date on which the original decision was first made notwithstanding the reconsideration proceedings.

(6) Where an application is made under subsection (3), the Authority may, at the applicant’s request, order that the original decision shall not take effect until a reconsideration is made under subsection (4).

72. (1) A licensee who-

- (a) is not a party to an agreement in respect of which the Authority has made an original decision as specified in section 71;
- (b) is not a person in respect of whose conduct the Authority made the original decision; and
- (c) has no right of appeal under section 71,

Third party applications
for reconsideration by
Authority

may, where the licensee can show cause to the Authority’s satisfaction why the licensee is affected by the original decision and that the licensee has sufficient interest in the original decision, apply to the Authority asking it to reconsider the original decision.

(2) The application made under subsection (1) shall-

- (a) be made in writing, within such period as the Authority may specify in rules; and
- (b) give the applicant’s reasons for considering that the original decision should be reconsidered.

(3) Where the Authority decides that-

- (a) the licensee does not have a sufficient interest in the original decision;
- (b) the licensee is not affected by the original decision; or

(c) it has other reasons to justify its decision,
it shall notify the applicant of its decision in that regard.

(4) Where the Authority, having considered the application, decides that the application does not show sufficient reason why the Authority should withdraw or vary the original decision, it shall notify the applicant of its decision within a reasonable time; otherwise, the Authority shall deal with the application in accordance with the procedure specified in section 71(4).

(5) The making of an application does not suspend the effect of the relevant decision.

Dispute resolution and
appeals to the Court

73. (1) An appeal from a reconsideration made by the Authority under section 71 or 72 may be made -

- (a) in accordance with the dispute resolution procedures under regulations made pursuant to section 89(1)(c); or
- (b) to the Court upon leave,

on one or more of the following grounds namely, that the reconsideration is-

- (i) erroneous in law;
- (ii) unreasonable;
- (iii) contrary to the principles of natural justice; or
- (iv) not proportionate.

(2) An application for leave to appeal to the Court from a reconsideration by the Authority shall be to the Court by motion and the Court shall not grant leave or hear any appeal arising from any original decision specified in section 71 unless the Authority has made its reconsideration under section 71(4) or 72(4).

(3) Where leave to appeal is sought from the Court, the appellant shall, within twenty-eight days after the day on which the Authority has delivered its reconsideration, serve upon the Authority a notice in writing signed by the appellant or his attorney-at-law of intention to seek leave to appeal the reconsideration and of the grounds of appeal.

(4) The appellant may, upon notice to the Authority, apply to the Court for leave to extend the time within which the application for leave to appeal prescribed by this section may be made, and the Court upon the hearing of such application may extend the time prescribed by this section, or not, as it considers fit.

(5) The Authority shall, upon receiving the notice of an application for leave to appeal, transmit to the Court a copy of the reconsideration and all papers relating to the appeal but the Authority may seek an order from the Court

directing the Authority to file under seal any information if it is considered that the public interest would suffer by disclosure of such information.

(6) At the hearing of the application for leave to appeal, the applicant shall, before going into the case, state all the grounds on which the applicant intends to rely and shall not, unless by leave of the Court, go into any matters not touching upon such grounds of appeal.

(7) Once leave is granted, the Court may adjourn the hearing of an appeal and may, upon the hearing thereof confirm, reverse or vary the reconsideration of the Authority or remit the matter with the opinion of the Court thereon to the Authority for the Authority to implement as an original decision.

(8) The Court may summarily dismiss an appeal if it is of the opinion that the appeal is frivolous, vexatious or not made in good faith.

(9) An appeal to the Court against a reconsideration of the Authority shall not have the effect of suspending the execution of the original decision unless the Court so orders.

PART XI - Offences

74. (1) All installations, equipment, apparatus, electricity infrastructure, facilities, plant, lines, generating or other stations used in connection with a licence issued or applied for under this Law shall be subject to inspection by an authorised officer. Inspections

(2) A person who-

- (a) intentionally impedes or interferes with the inspection referred to in this section;
- (b) does not give information requested in the course of such inspection; or
- (c) gives information in response to an inquiry made by the authorised officer knowing or suspecting it to be misleading or incorrect,

is guilty of an offence and liable-

- (i) on summary conviction to a fine of ten thousand dollars and to imprisonment for one year; or
- (ii) on conviction on indictment to a fine of twenty thousand dollars and to imprisonment for two years.

- Engaging in licensed activities for reward without a licence - further penalties
75. (1) A person who is guilty of an offence under section 23(7), in addition to any fine imposed thereby, is also liable on conviction to imprisonment for five years.
- (2) On application by the Authority, the Court may-
- (a) make an order for forfeiture of the equipment used for the commission of the offence; and
 - (b) grant an order restraining the person or licensee from continuing to engage in similar activities.
- Malicious damage to apparatus
76. (1) No person shall remove, alter, damage, disrupt, disable or destroy any apparatus used in connection with the generation or transmission and distribution of electricity except in accordance with this Law.
- (2) A person who contravenes subsection (1) is guilty of an offence and liable-
- (a) on summary conviction to a fine of one hundred thousand dollars; or
 - (b) on conviction on indictment to a fine of two hundred thousand dollars and to imprisonment for five years.
- Obstruction of investigation by Authority
77. A person who, in any manner, impedes, prevents or obstructs an investigation being carried out by the Authority under this Law is guilty of an offence and liable-
- (a) on summary conviction to a fine of ten thousand dollars; or
 - (b) on conviction on indictment to a fine of twenty thousand dollars and to imprisonment for two years.
- Refusal to produce documents, etc.
78. A person who, without reasonable excuse-
- (a) refuses to produce a document, record, thing or information required by the Authority under this Law; or
 - (b) destroys or alters, or causes to be destroyed or altered, a document, record, thing or information required to be produced under this Law,
- is guilty of an offence and liable-
- (i) on summary conviction to a fine of ten thousand dollars; or
 - (ii) on conviction on indictment to a fine of twenty thousand dollars and to imprisonment for two years.
- Giving false information
79. A person who knowingly gives false or misleading information to the Authority is guilty of an offence and liable-
- (a) on summary conviction to a fine of ten thousand dollars; or

- (b) on conviction on indictment to a fine of twenty thousand dollars and to imprisonment for two years.

80. A person who, without reasonable excuse-

Failure to attend to give evidence

- (a) refuses or fails to appear before the Authority after having been required to do so; or
- (b) refuses to take an oath or make an affirmation having appeared before the Authority as a witness,

is guilty of an offence and liable on summary conviction to a fine of ten thousand dollars and to imprisonment for three months.

81. (1) No person shall with intent-

Dangerous acts or omissions

- (a) perform an act; or
- (b) fail or omit to perform an act,

in relation to the generation or transmission and distribution of electricity where such performance or failure of performance is dangerous to the security of the Islands or contrary to the public interest or public order.

(2) A person who contravenes subsection (1) is guilty of an offence and liable-

- (a) on summary conviction to a fine of one hundred thousand dollars; or
- (b) on conviction on indictment to a fine of two hundred thousand dollars and to imprisonment for ten years.

(3) In addition to any other penalty provided by this section, equipment used to commit an offence under this section may by order of the Court be forfeited to the Government on conviction of the owner or other person having control of such equipment or apparatus.

82. (1) On a charge of conspiracy to commit an offence under this Law, the following questions are immaterial to the accused's guilt:

Territorial scope of inchoate offences

- (a) where a person became a party to the conspiracy; and
- (b) whether any act, omission or other event occurred in the Islands.

(2) On a charge of attempting to commit an offence under this Law, the following questions are immaterial to the accused's guilt namely-

- (a) where the attempt was made; and
- (b) whether it had an effect in the Islands.

(3) On a charge of incitement to commit an offence under this Law, the question where the incitement took place is immaterial to the accused's guilt.

- Offences by bodies corporate
83. (1) Where an offence under this Law has been committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, that person as well as the body corporate is guilty of that offence and liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with the functions of management as if that member was a director of the body corporate.
- Offences under Part V
84. (1) A person who fails to comply with a requirement imposed on him under section 44 or 45 is guilty of an offence.
- (2) Where a person is charged with an offence under subsection (1) in respect of a requirement to produce a document, it is a defence for him to prove-
- (a) that the document was not in his possession or under his control; and
 - (b) that it was not reasonably practicable for him to comply with the requirement.
- (3) Where a person is charged with an offence under subsection (1) in respect of a requirement-
- (a) to provide information;
 - (b) to provide an explanation of a document; or
 - (c) to state where a document is to be found,
- it is a defence for him to prove that he had a reasonable excuse for failing to comply with the requirement.
- (4) Failure to comply with a requirement imposed under section 43 is not an offence if the person imposing the requirement has failed to act in accordance with that section.
- (5) A person who is guilty of an offence under subsection (1) is liable-
- (a) on summary conviction, to a fine of ten thousand dollars; or
 - (b) on conviction on indictment to imprisonment for two years and to a fine of twenty thousand dollars.
- (6) A person who intentionally obstructs an officer in the exercise of his powers under a warrant issued under section 45 is guilty of an offence and liable-
- (a) on summary conviction to a fine of ten thousand dollars ; or

- (b) on conviction on indictment to imprisonment for two years and to a fine of twenty thousand dollars.

85. (1) A person is guilty of an offence where, having been required to produce a document under section 44 or 45-

Destroying or falsifying documents

- (a) he intentionally or recklessly destroys or otherwise disposes of, falsifies or conceals the document; or
- (b) he causes or permits the destruction, disposal, falsification or concealment of the document.

(2) A person who is guilty of an offence under subsection (1) is liable-

- (a) on summary conviction to a fine of ten thousand dollars; or
- (b) on conviction on indictment to imprisonment for two years and to a fine of twenty thousand dollars.

86. (1) Where information is provided by a person to the Authority in connection with a function of the Authority under Part V, that person is guilty of an offence if-

False or misleading information

- (a) the information is false or misleading in a material particular; and
- (b) he knows that it is false or misleading in a material particular or is reckless as to whether it is.

(2) A person who -

- (a) provides information to another person, knowing the information to be false or misleading in a material particular; or
- (b) recklessly provides information to another person which information is false or misleading in a material particular,

knowing that the information is to be used for the purpose of providing information to the Authority in connection with its functions under Part V, is guilty of an offence.

(3) A person who is guilty of an offence under this section is liable-

- (a) on summary conviction to a fine of ten thousand dollars; or
- (b) on conviction on indictment to imprisonment for two years and to a fine of twenty thousand dollars.

87. (1) Where a person is convicted of an offence under this Law, the Court may make an order for the payment of compensation to any person for damage caused by the offence.

Order for payment of compensation

(2) A claim by a person for damages sustained by reason of the offence shall be deemed to have been satisfied to the extent of any amount which has been paid to him under an order for compensation, but the order shall not prejudice any

right to a civil remedy for the recovery of damages from the person convicted of the offence beyond the amount of compensation paid under the order.

Compliance with
General Regulatory
Principles

88. All licences, PPAs, regulations, directives, acts, functions, decisions, approvals, orders and directions issued, granted, approved, made or performed under or pursuant to this Law shall be consistent with the General Regulatory Principles.

PART XII - General

Power to make
regulations

89. (1) Without derogating from the powers to make regulations conferred elsewhere in this Law, the Governor may make regulations-

- (a) prescribing matters required or permitted by this Law to be prescribed;
- (b) facilitating-
 - (i) the investigation of; or
 - (ii) the bringing of criminal proceedings in respect of, the operation of any part of the electricity generation or transmission and distribution systems of the Islands that may be, or is, an offence under this or any other law;
- (c) prescribing dispute resolution procedures for use in cases where the licensees have a dispute between themselves or with the Authority;
- (d) on the recommendation of the Authority, prescribing matters for the better carrying out of the duties and powers of the Authority; or
- (e) for carrying the purpose and provisions of this Law into effect.

(2) Regulations made under this section may provide that the contravention of any provision constitutes an offence and may prescribe penalties for any such offence not exceeding the maximum fine and term of imprisonment prescribed in this Law for any offence under this Law.

(3) The Authority may, in accordance with this Law, make rules relating to-

- (a) regulatory and any other fees (except licence fees) duly payable;
- (b) penalties payable under this Law;
- (c) interconnection to a T&D system and backup connection services;
- (d) T&D codes, including equipment, specifications and standards, operating and maintenance procedures, performance specifications, reliability requirements, safety standards and customer service standards;

- (e) forecasts of load growth and generation supply requirements;
- (f) additional electricity generation requirements and criteria;
- (g) additional capacity solicitation and bid processes;
- (h) environmental standards;
- (i) procedure on show-cause applications, hearings, reconsiderations or other aspects of the Authority's regulatory or administrative operations;
- (j) licensees' rights to installations on the land or property of other persons or authorities and ancillary rights;
- (k) service standards; and
- (l) financial reports to be submitted by licensees,

and the Authority shall consult with the Governor and the licensees before making such rules.

90. (1) Neither the Authority, nor a director or employee of the Authority is liable in damages for anything done or omitted in the discharge of their respective functions under this Law unless it is shown that the act or omission was in bad faith. Immunity and Indemnity

(2) The Authority shall indemnify a director or employee against all claims, damages, costs, charges or expenses incurred by that director or employee in the discharge of his functions or duties under this Law except claims, damages, costs, charges or expenses caused by the bad faith of that director or employee.

91. Any notice, order or other document required or authorised to be served on any person under this Law shall be deemed to have been served on him - Service of notices

- (a) if served on him personally;
- (b) if served on an attorney-at-law who has conduct on behalf of such person of any matter to which the notice, order or document relates;
- (c) if sent by prepaid registered post to him at his last known postal address, and a receipt purporting to have been signed by him has been received in return;
- (d) in the case of a company, if the notice, order or document has been handed to an officer of the company or left at the company's registered office; or
- (e) if service cannot be effected by way of one of the foregoing means, by publishing the notice, order or document in at least three issues for two consecutive weeks in a local newspaper.

92. Where there is any inconsistency between this Law and any other law, this Law shall, to the extent of such inconsistency, prevail. Conflict with other laws

Transitional provisions 93. (1) A licence or other enabling instrument issued to a person to provide any aspect of generation or transmission and distribution of electricity in the Islands granted by the Governor and valid and in force immediately prior to the 13th February, 2008 shall continue valid and in force for the remainder of the term as if it were a licence granted under this Law and such licence shall continue to be subject to each and every one of the terms, conditions and exemptions attaching to such licence as if the terms, conditions and exemptions had been imposed or granted under this Law but shall otherwise be subject to the provisions of this Law.

(2) Where a person who possesses such a licence or enabling instrument as described in subsection (1) –

- (a) has entered into an agreement with the Authority; or
- (b) in a case where the Board has not yet been appointed pursuant to section 5 or there is otherwise no extant Board, has entered into an agreement with the Governor,

being an agreement to surrender and terminate such licence or enabling instrument and to replace the same with a new licence or licences, immediately upon the surrender and termination of such licence or enabling instrument, the Authority or the Governor, as the case may be, shall grant to such person such new licences on such terms, conditions and exemptions as have been so agreed, but such licences shall otherwise be subject to this Law; and the Governor may, for such period of time as he shall determine, appoint such persons as he considers necessary to assist in carrying out such functions as are deemed reasonably necessary to effect the issuance of such licences.

FIRST SCHEDULE

PROCEDURE OF BOARD

1. The Governor shall appoint one of the directors to be the chairman of the Board, and the managing director shall, *ex officio*, be secretary to the Board.
2. The validity of a meeting of the Board shall not be affected by a vacancy in the directorship of the Board or by a defect in the appointment of a director, or by reason that an individual, not entitled to do so, took part in the meeting.
3. The Board shall meet at least four times each year and at such other times and at such places as the chairman considers necessary or expedient for the transaction of the business of the Authority, and any such meeting may, at the discretion of the chairman, be open to the public.
4. The chairman may at any time call a special meeting of the Board and shall call a special meeting of the Board within fourteen days of receipt of a request for that purpose addressed to him in writing and signed by two directors.
5. In the absence of the chairman, the directors present shall elect from their number a director to act as chairman at that meeting of the Board.
6. (1) At every meeting of the Board, a quorum shall consist of a majority of the appointed directors, and decisions shall be adopted by a simple majority of the votes of the directors present and voting except that in the case of an equality of votes the chairman shall in addition have a casting vote.

(2) Members of the Board or a sub-committee of the Board may participate in a meeting of the Board or of the sub-committee by means of a conference telephone or similar communications equipment where such equipment allows all persons participating in the meeting to hear one another at the same time, and participation by such means shall constitute presence in person at the meeting of the Board or sub-committee.
7. The Board shall have power to-
 - (a) act by sub-committee; and
 - (b) delegate its daily administrative duties and powers from time to time to such sub-committees and to any of their own number and to the officers, servants and agents of the Authority,

except that where the Board sets up a sub-committee which consists of members other than directors, officers or servants of the Authority, it may only act or

delegate its duties or powers to such sub-committee with the approval of the Governor.

8. The decisions, resolutions, orders, policies and rules made by the Board shall be recorded in the minutes and kept by the secretary to the Board, and the Board shall, subject to the requirements of any law and the requirements of necessary confidentiality of governmental, commercial or personal information of a sensitive nature, cause any decision, resolution order, policy or rule which affects the members of the public to be published.

9. The Board may invite a person to attend any meeting of the Board where the Board considers it necessary to do so, but that person shall not vote on a matter before the Board.

10. Subject to this Schedule, the Board may regulate its own procedure, and may delegate to any director power and authority to carry out on behalf of the Board such duties as the Board may determine.

11. Where a director has a pecuniary interest, direct or indirect, in a matter before the Authority in which his private capacity conflicts with his duties as a director and which matter is a subject of consideration by the Board, the director shall as soon as practicable after becoming aware of the interest in the matter, disclose his interest to the chairman.

12. A person who fails to comply with paragraph 11 is guilty of an offence and liable-

- (a) on summary conviction to a fine of twenty thousand dollars and imprisonment for two years; or
- (b) on conviction on indictment to a fine of fifty thousand dollars and imprisonment for five years,

unless he can prove on the balance of probabilities that he did not know that the matter in which he had a pecuniary interest was the subject of consideration by the Board.

13. (1) For the purposes of paragraph 11, a director shall be treated as having an indirect pecuniary interest in a contract, proposed contract, licence or other matter if-

- (a) he or his nominee is a member of a company or other body which has a direct or indirect pecuniary interest in the contract, proposed contract, licence or other matter under consideration;
- (b) he is a partner, or is in the employment of a person with whom the contract was made or is proposed to be made, or who has a

direct or indirect pecuniary interest in the contract, proposed contract, licence or other matter under consideration; or

- (c) he or his partner is a professional adviser to a person who has a direct or indirect pecuniary interest in a contract, proposed contract, licence or other matter under consideration.

(2) In the case of married or cohabiting persons, the interest of one spouse or co-habitant shall be deemed for the purpose of paragraph 11 to be also the interest of the other.

14. (1) The Governor may, subject to such conditions as he deems fit, appoint persons to act as directors for a specified period, in any case in which the number of directors disabled by paragraph 11 at any one time would be so great a proportion of the whole as to impede the transaction of business by the Board.

(2) Nothing in paragraph 11 precludes any director from taking part in the consideration or discussion of, or voting on, any question whether an application should be made to the Governor for the exercise of the powers conferred by subparagraph (1).

(3) Paragraph 11 does not apply to an interest in a contract, proposed contract, licence or other matter which a director has as a member of the public, or to an interest in a matter relating to the terms on which the right to participate is offered to the public.

(4) Where a director has an indirect pecuniary interest in a contract, proposed contract, licence or other matter by reason only of a beneficial interest in securities of a company or other body and the nominal value of those securities does not exceed one thousand dollars or one-thousandth of the total nominal value of the issued share capital of the company or other body, whichever is less and if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-thousandth of the total issued share capital of that class, paragraph 11 shall not prevent him from taking part in the consideration or discussion of the contract, proposed contract, licence or other matter or from voting on any question with respect to it, without prejudice, however, to his duty to disclose his interest.

(5) Paragraph 11 does not apply to membership of or employment by a public body.

15. The director referred to in paragraph 11 shall not, unless otherwise decided by the Board, take part in the consideration of the matter, and if allowed to take part in the consideration of the matter he shall not vote on the matter.

SECOND SCHEDULE

GENERAL REGULATORY PRINCIPLES

- Definitions
1. In this Schedule -
- “Regulatory Framework” means this Law and any regulations, directions or rules issued pursuant to this Law; and
- “Stakeholders”, in relation to the electricity industry, means consumers, licensees and the general public.
- Use of Regulatory Framework
2. In regulating the generation, transmission and distribution of electricity, the Regulatory Framework shall be utilised in a way that can be characterised as sustainable, stable, transparent, predictable and cost-effective.
- Promotion of sustainability
3. (1) In return for efficiently providing services to an acceptable quality and at a fair price to consumers, licensees shall receive the opportunity to recover appropriate costs and earn a fair and reasonable return for their investors.
- (2) The application of the Regulatory Framework shall promote sustainability, consistency and, as far as possible, certainty for all Stakeholders, and shall ensure that licensees do not take unfair advantage of positions of monopoly or market dominance.
- (3) In consultation with the respective licensees, the Authority shall establish performance standards in the electricity industry (in this Schedule referred to as “Performance Standards”) in each of the Islands.
- (4) The Performance Standards shall be used to identify the Authority’s expectations, and if actual performance is not within the range established, shall be a basis for consultation with the Authority.
- (5) After consultation, if Performance Standards are still not met, the Authority may provide rewards for excellent performance and penalties for sub-standard performance.
- (6) The level of service for each Island existing as at the date of the grant of the respective licence issued under the Law shall be used as the initial standard for service in the respective Island.
- (7) A licensee shall be entitled to recover all reasonable increases in costs that arise due to changes in the standard for service.
- (8) Licensees shall be financially sound and capable of financing their operations and any necessary capital expenditure, so that there is a reasonable

expectation that they can continue to operate while meeting the needs of consumers and other Stakeholders.

4. (1) To achieve stability, the Authority shall balance the interests of all Stakeholders in the electricity industry in the Islands in discharging its functions under the Law. Promotion of stability

(2) The procedures and principles applied by the Authority shall be sufficiently clear so as to lead to a high degree of confidence and encourage long-term investment and planning in the electricity industry.

(3) The Authority shall employ or retain competent staff or consultants who are qualified and knowledgeable with respect to the functions they are required to perform.

5. (1) The actions of the Authority shall be transparent and the Authority shall both give to and receive from licensees and other Stakeholders, all relevant and necessary information which is needed in order to perform its statutory functions. Promotion of transparency

(2) The Authority shall give adequate reasons for specific regulatory decisions and actions affecting Stakeholders, which shall be published by the Authority subject to the requirements of any other law and to necessary confidentiality of governmental, commercial or personal information of a sensitive nature.

(3) The Authority shall strive to make all procedures, notifications and relevant information made or given by the Authority clear to the electricity industry in the Islands and to provide them well in advance of any formal consideration of any issue on which a decision is required to be made.

(4) The management and operations of the Authority shall be subjected to a periodic financial and operational audit to ensure that the general public and licensees will have confidence that the Authority is complying with satisfactory regulatory standards and the Regulatory Framework in carrying out its functions under the Law.

(5) The management and operations of licensees shall be subjected to financial and operational audit from time to time to ensure that the general public and the Authority will have confidence that licensees are complying with the Performance Standards, their respective licences and the Regulatory Framework.

(6) Licensees shall be entitled to pass on all regulatory fees and licence fees to consumers but shall not be entitled to pass on any fines or penalties

imposed pursuant to this or any other law, or any costs awarded against them by any court.

(7) All reasonable legal and professional fees incurred by licensees relating to disputes in the generation solicitation process not covered by any award of costs shall be passed on to consumers upon review and approval by the Authority, provided that the licensee is successful in the relevant dispute.

(8) The decisions of the Authority shall apply the principles of administrative law relevant to all administrative decision-makers, such as legality, adherence to the principles of due-process and natural justice, fairness and rationality, and such decisions shall be the subject of fair and speedy dispute resolution procedures and ultimately be reviewable by the Grand Court in the last resort.

Promotion of
predictability

6. (1) The Authority shall strive to make rules, decisions and orders which are clear and unambiguous and predictable in the way they are applied in order to provide certainty and consistency for consumers, licensees and their shareholders.

(2) The formula for rate modifications shall be reviewed in accordance with the respective licence, and shall not be changed without the consent of the respective licensee.

(3) The actions and decisions of the Authority shall be even-handed and shall not unfairly discriminate among licensees and applicants for licences.

(4) There shall be a legitimate expectation that a licence will be renewed at the expiry of its term, if the licensee has operated in accordance with the provisions of the Regulatory Framework and has not breached any term or condition of its licence.

(5) The Authority may change its view on issues, or recommend changes to the Regulatory Framework as necessary and in response to unforeseen developments, provided that this is consistent with this Schedule; but the Authority shall -

- (a) seek to avoid changes which apply retroactively, with adverse consequences for Stakeholders;
- (b) take decisions following a due process of consultation and consideration of the relevant issues; and
- (c) provide adequate reasons for its decisions.

Promotion of cost
effectiveness

7. (1) The costs of monitoring (including the costs of data collection and analysis) and enforcing compliance with licences and codes shall be reasonable and sufficient to enable the Authority to discharge its functions under this Law.

(2) The Authority shall discharge its responsibilities in an economically efficient manner.

(3) Trading electricity over the transmission and distribution system through the process of wheeling is not desired and shall not be permitted in any event.

(4) Duplication of transmission and distribution infrastructure and facilities shall not be permitted.

(5) Subject to review and approval by the Authority, T&D licensees shall be responsible for determining the need for additional electricity generation based on projected load growth and operating reserve requirements, including provision for anticipated retirement of generation based on economics, reliability, obsolescence, safety, environmental and other prudent utility practices.

(6) Generation for self-supply is available to all consumers, no matter where located, and shall not require licensing by the Authority.

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Kim Bullings
Clerk of Cabinet

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