

CAYMAN ISLANDS



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**THE ELECTRICITY REGULATORY AUTHORITY (AMENDMENT)
LAW, 2008**

(LAW 1 OF 2008)

**THE ELECTRICITY REGULATORY AUTHORITY
(AMENDMENT) LAW, 2008**

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CAYMAN ISLANDS

Law 1 of 2008.

I Assent

Stuart Jack

Governor.

6th February, 2008

**A LAW TO AMEND THE ELECTRICITY REGULATORY AUTHORITY
LAW (2005 REVISION) FOR THE PURPOSE OF RE-STRUCTURING
THE POWER INDUSTRY IN THE CAYMAN ISLANDS; TO
STRENGTHEN THE ENFORCEMENT PROVISIONS OF THE LAW;
AND TO MAKE PROVISION FOR RELATED MATTERS**

ENACTED by the Legislature of the Cayman Islands.

1. (1) This Law may be cited as the Electricity Regulatory Authority (Amendment) Law, 2008.

Short title and
commencement

(2) This Law shall come into force on such date as may be appointed by order made by the Governor in Cabinet.

2. The Electricity Regulatory Authority Law (2005 Revision), in this Law referred to as the “principal Law”, is amended in section 2 as follows -

Amendment of section 2
of the Electricity
Regulatory Authority
Law (2005 Revision) -
definitions

- (a) in the definition of the term “additional electricity generation” by inserting the words “generating unit therein or” after the words “generating station or”;
- (b) by inserting, in the appropriate alphabetical sequence, the following definitions -

“ “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;

“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;

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

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

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

“General Regulatory Principles” means the overall guidelines relating to the regulation of the electricity industry in the Islands set out in Schedule 2;

“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;

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

“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;

“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 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;”;

- (c) by deleting the definitions of the terms “electric line”, “generation licence”, “interconnection”, “licence”, “publish”, “T&D code”, “T&D system” and “transmission and distribution” and substituting the following definitions respectively -

“ “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;

“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;

“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 system of a T&D Licensee;

“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;

“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;

“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 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;

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

- (d) by deleting the definitions of the terms “electric plant”, “generation charge”, “price cap mechanism” and “service”;
- (e) in the definition of the term “generation solicitation process” by inserting after the words “set out in” the words “the regulations made under”;
- (f) by deleting the definition of the term “generator” and substituting the following definition in its appropriate alphabetical place -
“ “Generator” means a person possessing a valid licence to generate and deliver electricity to a T&D licensee;”;
- (g) by deleting the two definitions of the term “Governor” and substituting the following definition -
“ “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 1 of Schedule 2 to the Constitution, and to the extent to which a Deputy appointed under section 4 of Schedule 2 to the Constitution is authorised to act, that Deputy;”;
- (h) by deleting the definition of the term “ “PPA” or “Power Purchase Agreement” ” and substituting the following definition -

“ “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;”;

and
- (i) by deleting the definition of the term “renewable, sustainable or alternative forms of energy” and substituting the following definition –

“ “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;”.

3. The principal Law is amended by repealing sections 4 and 5 and substituting the following sections -

Repeal and substitution
of sections 4 and 5 -
Board of directors;
appointment of directors

“Board of directors

4. (1) The Authority shall have a Board consisting of a chairman and not less than four and not more than six other 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.

Appointment of directors

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;
- (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) When appointing directors the Governor shall ensure that, between them, the directors have substantial knowledge, experience and understanding of one or more of the following areas -

- (a) electricity transmission and distribution;
- (b) electricity generation;
- (c) finance and accounting;
- (d) economics;
- (e) law;
- (f) electrical engineering; and
- (g) other related fields;

and at least one of the directors shall be a person of recognised standing and experience in electricity generation and at least one shall be a person of recognised standing and experience in electricity transmission and distribution.

(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.

(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), (3) 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) Whoever 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.”.

4. The principal Law is amended by repealing sections 7, 8 and 9 and substituting the following sections -

“Resignation of directors and termination of office

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

- (a) by reason of physical or mental illness is incapable of carrying out the duties of a director;

Repeal and substitution of sections 7, 8 and 9 - resignation of directors and termination of office; procedure of Board; functions of Authority

- (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.

Procedure of Board
Schedule 1

8. Schedule 1 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;
 - (iv) pursuant to 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 (2005 Revision) and any 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 and 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.”.

Amendment of section
10 - additional powers of
Authority

5. The principal Law is amended in section 10 as follows -

- (a) by re-lettering paragraph (a) as paragraph (aa) and inserting before paragraph (aa) the following paragraph -
“(a) convene hearings to consider any matter;”; and
- (b) in paragraph (e) by deleting the words “in paragraphs (a),” and substituting the words “in paragraphs (a), (aa),”.

Amendment of section
11 - directions by the
Minister

6. The principal Law is amended in section 11 by deleting the word “Minister” wherever it appears in the marginal note and the section and substituting the word “Governor”.

Amendment of section
14 - financial procedure

7. The principal Law is amended in section 14 as follows -

- (a) by repealing subsection (2) and substituting the following subsection -

“ (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.”; and

- (b) by repealing subsections (4), (5) and (6) and substituting the following subsections -

“ (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.”.

8. The principal Law is amended in section 21 as follows -

Amendment of section 21 - publication of accounts and annual report

- (a) in subsection (1) by inserting after the words “expenditure accounts as” the words “approved by the Board as”; and
- (b) by repealing subsection (3) and substituting the following subsection -

“ (3) The Authority shall, with the approval of the Board, publish a statement of its assets and liabilities as at the 31st December and the 30th June of each year, not later than two months after such dates.”.

9. The principal Law is amended in section 22(1) by deleting the words “such offices and” and substituting the words “such offices or”.

Amendment of section 22 - power to employ staff, etc.

10. The principal Law is amended in section 23 as follows -

Amendment of section 23 - procedure for the grant of a licence

- (a) by re-numbering subsection (1) as subsection (1a) and inserting before subsection (1a) the following subsection -

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

- (b) by repealing subsection (3) and substituting the following subsection -

“ (3) 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 fully perform 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.”;
- (c) in subsection (4)(b) by deleting the word “experience” and substituting the words “experience, reliability”;
- (d) by inserting after subsection (5) the following subsection -
- “ (5a) 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.”; and
- (e) by repealing subsection (7) and substituting the following subsection -
- “ (7) 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.”.

11. The principal Law is amended by repealing section 24 and substituting the following section -

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

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 percent of the issued share capital or total voting rights of the licensee without the prior written consent of the Authority.

Repeal and substitution of section 24 - 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.”.

Repeal and substitution of sections 26 and 27 - duration of licence; renewal of licence

12. The principal Law is amended by repealing sections 26 and 27 and substituting the following sections -

“Duration of licence

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

(1a) A generation licence shall be for a period not exceeding twenty-five years from its date of commencement.

(2) Where a Generator is awarded the right to supply additional electricity generation pursuant to 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.

(3) 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.

(4) 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.

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

(6) Generation licences shall not be exclusive.

Renewal of licence

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.

(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.”.

13. The principal Law is amended in section 28(2) by deleting the words “for reasons of security” and substituting the words “for reasons of the security or the public interest”.

Amendment of section
28 - modification of
licence

14. The principal Law is amended in section 29 -

Amendment of section
29 - licence and
regulatory fees

- (a) by re-numbering the section as subsection (1) of section 29; and
- (b) by inserting after subsection (1) the following subsection -

“ (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.”.

Amendment of section 30 - suspension or revocation of licence

15. The principal Law is amended in section 30 as follows -

- (a) in subsection (1) -
 - (i) by repealing paragraph (e) and substituting the following paragraph -

“(e) is convicted of an offence under this Law and punished by a fine in excess of three hundred thousand dollars;”; and
 - (ii) in paragraph (h) by deleting the word “Authority” and substituting the words “public interest”;
- (b) in subsection (2) by deleting the words “for reasons of security” and substituting the words “for reasons of the security or the public interest”; and
- (c) by deleting subsections (4), (5) and (6) and substituting the following subsections -

“ (4) Before suspending or revoking a licence pursuant to 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 the provisions of 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.”.

Insertion of section 30A - power to take possession of electricity infrastructure in certain cases

16. The principal Law is amended by inserting after section 30 the following section -

“Power to take possession of electricity infrastructure in certain cases

30A. 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 –

- (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.”.

17. The principal Law is amended in section 32 as follows -

Amendment of section 32 - directives by Authority to protect public health, etc.

- (a) in subsection (2) by repealing paragraph (d) and substituting the following paragraph -
“(d) the Labour Law (2007 Revision); or”; and
- (b) by repealing subsection (3) and substituting the following subsection -

“ (3) Subject to section 33, 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.”.

18. The principal Law is amended in section 36 by repealing subsection (4).

Amendment of section 36 - interpretation for the purposes of this Part

19. The principal Law is amended in section 37 by repealing subsection (3) and substituting the following subsection -

Amendment of section 37 - agreements, etc. preventing, restricting or distorting competition

“ (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.”.

- | | |
|---|--|
| Amendment of section 40 - cancellation, etc. of exemptions | 20. The principal Law is amended in section 40 as follows - <ul style="list-style-type: none">(a) in subsection (2) by deleting the words “a reasonable suspicion” and substituting the words “reasonable grounds for believing”;(b) by repealing subsection (3) and substituting the following subsection -<p style="margin-left: 40px;">“ (3) Where a term, condition or requirement of an exemption has been breached the Authority may, in its sole discretion, cancel the exemption.”; and</p>(c) in subsection (4) by deleting the words “reasonably suspects” and substituting the words “has reasonable grounds for believing”. |
| Amendment of section 42 - Authority’s power to investigate | 21. The principal Law is amended in section 42 by deleting the word “suspecting” and substituting the word “believing”. |
| Amendment of section 44 - power to enter premises under a warrant | 22. The principal Law is amended in section 44 as follows - <ul style="list-style-type: none">(a) in subsection (1) by deleting the word “suspecting” wherever it appears and substituting the word “believing”; and(b) in subsection (3) by deleting the word “suspect” and substituting the word “believe”. |
| Amendment of section 51 - interim measures | 23. The principal Law is amended in section 51 as follows - <ul style="list-style-type: none">(a) in subsection (1) by deleting the word “a reasonable suspicion” and substituting the words “grounds for believing”;(b) in subsection (3)(a) by inserting after the words “written notice” the words “of the contents of the directive”; and(c) by repealing subsections (6) and (7) and substituting the following subsections -<p style="margin-left: 40px;">“ (6) In any case where the section 37 prohibition is believed to have been infringed, sections 48(1) and 50 also apply to directives given under this section.</p><p style="margin-left: 40px;">(7) In any case where the section 41 prohibition is believed to have been infringed, sections 49(1) and 50 also apply to directives given under this section.”.</p> |
| Amendment of section 52 - notice to show cause | 24. The principal Law is amended in section 52 as follows - <ul style="list-style-type: none">(a) in subsection (4) by inserting after the words “a licensee or person” the words “or suspend or revoke a licence”; and(b) in subsection (7) by deleting the words “one million dollars” and substituting the words “five hundred thousand dollars”. |

25. The principal Law is amended by repealing section 54. Repeal of section 54 - level of penalty
26. The principal Law is amended in section 56(1) by deleting the word “specified” and substituting the words “referred to”. Amendment of section 56 - cease-and-desist orders
27. The principal Law is amended in section 58(1) by repealing paragraph (a) and substituting the following paragraph - Amendment of section 58 - powers of Court in respect of cease-and-desist orders
- “(a) order the offending licensee or person to pay to the Government such pecuniary penalty of fifty thousand dollars in the case of an individual and five hundred thousand dollars in the case of any other person;”.
28. The principal Law is amended in section 59 as follows - Amendment of section 59 - administrative fines
- (a) in subsection (1) by inserting after the word “regulation” the words “made pursuant to this Law”; and
- (b) in subsection (8)(c) by deleting the words “one hundred thousand dollars” and substituting the words “fifty thousand dollars”.
29. The principal Law is amended by repealing Part VIII and substituting the following Part - Repeal and substitution of Part VIII - Interconnection and Electricity Infrastructure Sharing

“PART VIII - Interconnection and Electricity Infrastructure Sharing

“Interconnection generally

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.

(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.

(5) 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.

Charges for
interconnection to a
transmission and
distribution system by a
Generator or an
applicant under section

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 section

60 or section 61

61 to the T&D system of that T&D licensee.

(2) The Authority may review and approve charges by a T&D licensee for interconnection by an applicant under section 60 or section 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 section 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 section 61.

Approval of statement of charges by Authority

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.

(2) The Authority shall consult with, and have regard to any submission made by, the T&D licensee, the applicant under section 60 or section 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 pro-rated 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.”.

Amendment of section 66 - quality of service

30. The principal Law is amended in section 66 by repealing subsection (3) and substituting the following subsection -

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

Amendment of section 67 - non-discrimination and continuity of supply

31. The principal Law is amended in section 67 by repealing paragraph (b) and substituting the following paragraph -

“(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,”.

Amendment of section 68 - equipment standards and technician certification

32. The principal Law is amended in section 68 by repealing subsection (5) and substituting the following subsection -

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

Repeal and substitution of section 70 - licensee confidential information

33. The principal Law is amended by repealing section 70 and substituting the following section -

“Confidential
information

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 -

- (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.”.

34. The principal Law is amended in section 71(1) as follows -

Amendment of section
71 - reconsideration of
decisions by Authority

(a) by inserting after paragraph (b) the following paragraph -

“(ba) made under section 24 or 25;” and

(b) by repealing paragraphs (k) and (l) and substituting the following paragraphs -

“(k) to impose a penalty in accordance with Part V or in respect of the amount of such penalty;

(l) made under section 65 in respect of a Capital Investment Plan; or

(m) as may be prescribed by the Governor or the Authority.”.

35. The principal Law is amended in section 73 by repealing subsection (1) and substituting the following subsection -

Amendment of section
73 - dispute resolution
and appeals to the Court

“ (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)(d); 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.”.

Amendment of section 75 - engaging in licensed activities for reward without a licence - further penalties

36. The principal Law is amended in section 75 by repealing subsection (1) and substituting the following subsection -

“ (1) Where a person is guilty of an offence under section 23(7), in addition to any fine imposed thereby that person is also liable on conviction to imprisonment for five years.”.

Amendment of section 84 - offences under Part V

37. The principal Law is amended in section 84(5) by deleting “or (5)”.

Repeal and substitution of section 88 - power to take possession of electricity infrastructure or permit another licensee to do so in certain cases

38. The principal Law is amended by repealing section 88 and substituting the following section -

“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.”.

Amendment of section 89 - power to make regulations

39. The principal Law is amended in section 89 as follows -

- (a) in subsection (1) by inserting after paragraph (b) the following paragraph -
“(ba)prescribing dispute resolution procedures for use in cases where the licensees have a dispute between themselves or with the Authority;”;
- (b) by repealing subsection (3) and substituting the following subsection -
“ (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.”.

40. The principal Law is amended by inserting after section 90 the following section -

Insertion of section
90A - service of notices

“Service of notices

90A. Any notice, order or other document required or authorised to be served on any person pursuant to this Law shall be deemed to have been served on him -

- (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.”.

Repeal and substitution
of section 92 -
transitional provisions

41. The principal Law is amended by repealing section 92 and substituting the following section -

“Transitional provisions

92. (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 date of commencement of this Law 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.”.

Amendment of
Schedule - Procedure of
Board

42. The principal Law is amended in the Schedule as follows -

- (a) by numbering the Schedule as “Schedule 1”;

- (b) in paragraph 3 by inserting after the words “the Authority” the words “, and any such meeting may, at the discretion of the chairman, be open to the public”;
- (c) in paragraph 5 by deleting the word “preside” and substituting the words “act as chairman”; and
- (d) by repealing paragraph 8 and substituting the following paragraph -

“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.”.

43. The principal Law is amended by inserting after Schedule 1 the following schedule -

Insertion of Schedule 2-
General Regulatory
Principles

“SCHEDULE 2

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 and 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.

Promotion of stability

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.

(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.

Promotion of
transparency

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.

(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-through all regulatory fees and licence fees to consumers but shall not be entitled to pass-through 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.”.

Passed by the Legislative Assembly the 23rd day of January, 2008.

EDNA MOYLE

Speaker.

WENDY LAUER EBANKS

Clerk of the Legislative Assembly.