

Supplement No. 3 published with Gazette No. 16 of 8th August, 2005.

ELECTRICITY REGULATORY AUTHORITY LAW

(2005 Revision)

Law 10 of 2005.

Revised under the authority of the Law Revision Law (1999 Revision).

Originally enacted - 2nd March, 2005.

Revised this 12th day of July, 2005.

ELECTRICITY REGULATORY AUTHORITY LAW

(2005 Revision)

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ELECTRICITY REGULATORY AUTHORITY LAW

(2005 Revision)

PART I - Introductory

1. This Law may be cited as the Electricity Regulatory Authority Law (2005 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 in addition thereto;

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

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

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

“chairman” means chairman of the Board;

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

“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;

“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 among other things for carrying 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 for the purpose of carrying electricity or other services; and
- (c) wire, cable, tube, pipe or similar thing, 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;

“electric plant” means any plant, apparatus or appliance used for, or for purposes connected with, the generation, transmission and distribution or storage of electricity, other than-

- (a) an electric line;
- (b) a meter used for ascertaining the quantity of electricity supplied to any premises; or
- (c) an electrical appliance under the control of a consumer;

2005 Revision

“Electricity Law” means the Electricity Law (2005 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 third official member of the Cabinet;

“functions” includes powers and duties;

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

“generation charge” means all sums periodically payable to a generator by a T&D licensee for the generation and sale of electricity by that generator and includes all energy payments, capacity payments, and organisation and management payments and any temporary adjustment as may be applied from time to time;

“generation licence” means a licence which permits a generator *inter alia*-

- (a) to generate electricity for sale to a T&D licensee for further transmission and distribution to consumers; or
- (b) to construct, reconstruct, replace or modify a generating station or any generator therein for the purpose of generating electricity for sale to a T&D licensee;

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

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

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

“Governor” 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;

“Governor” means the Governor acting in accordance with the advice of the Cabinet;

“interconnection” means the physical connection of a generating station to a transmission and distribution system operated by a T&D licensee;

“Judge” means a judge of the Grand Court;

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

“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;

“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 9 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 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;

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

“price cap mechanism” means the mechanism for fixing prices for electricity delivered by a T&D licensee to consumers for reward as approved by the Authority and specified in that licensee’s T&D licence;

“public officer” has the meaning assigned to it by section 50(1) of the Constitution;

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

“Registrar” means the Registrar of Companies;

“renewable, sustainable or alternative forms of energy” means energy used in the generation of electricity which uses as its dominant source energy derived not from fossil fuel sources but 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;

“service” means personal service or, in the case of a company, delivery at its registered office in the Islands;

“T&D” means transmission and distribution;

“T&D code” means a code 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 relating to interconnection and connection to and operation of the transmission and distribution system operated by 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 a system for transmission and distribution of electricity;

“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”, in relation to electricity, means the transport of electricity by means of a system that consists wholly or mainly of electric lines, electric plant, transformers and switchgear and which is used for conveying electricity from one substation to another or from any interconnection and conveying and supplying electricity via electric lines to consumers for reward.

PART II - Establishment, Capital and Administration of Authority

Establishment 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.

(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) There is a Board of directors of the Authority which is responsible for the policy and general administration of the affairs and business of the Authority. Board of directors

(2) The Board shall consist of not less than five and not more than seven individuals, all of whom shall have demonstrated to the satisfaction of the Governor substantial knowledge and experience in one or more of the following areas-

- (a) electricity transmission and distribution or generation;
- (b) finance and accounting;
- (c) economics;
- (d) law;
- (e) electrical mechanics; or
- (f) 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.

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 the directors shall- Appointment of directors

- (a) not act as delegates on the Board from any commercial, financial, or such other interests with which they may be or have been connected;
- (b) hold office for a term not more than three years and shall be eligible for re-appointment; and
- (c) be paid out of the funds of the Authority such remuneration and allowances as may be determined by the Authority.

(2) Subsection (1)(b) and (c) shall not apply to a director appointed as managing director under section 6.

(3) Prior to accepting an appointment under this section, a person shall make a written declaration to the Governor disclosing whether that person has or has had any commercial, financial or other interests that might reasonably be considered to create a conflict of interest with the duties of a director, and upon receipt of the declaration, the Governor may either confirm (where there is no such conflict) or revoke (where there is an irresolvable conflict) the said appointment.

(4) 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, subject to subsection (3), be appointed by the Governor for the unexpired period of the term of office of the director in whose place that person is appointed.

(5) Whoever makes a disclosure under subsection (3) 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.

Managing director of
Authority

6. (1) The Governor shall appoint one of the directors appointed under section 5 to be the managing director.

(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.

Resignation of directors
and termination of office

7. The Governor shall terminate the appointment of any director who-

- (a) resigns office as a director;
- (b) becomes of unsound mind or incapable of carrying out the duties of a director;
- (c) is declared bankrupt, suspends payment to, or compounds with creditors;
- (d) is convicted in any jurisdiction of an indictable offence or any offence involving dishonesty or fraud;
- (e) is guilty of serious misconduct in relation to the duties as a director;

- (f) is absent, without leave of the chairman, from three consecutive meetings of the Board;
- (g) fails to disclose a conflict of interests in accordance with this Law; or
- (h) in the Governor's reasonable opinion, fails to discharge the duties of a director competently under this Law or any other applicable law of the Islands.

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

Procedure of Board

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.

Functions of Authority

(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 price cap mechanism;
- (b) to monitor and regulate the rate, price, terms and conditions of electricity generated by generators and supplied to T&D licensees for reward;
- (c) to establish and enforce regulations and standards regarding the granting of licences and the generation solicitation process and, in that context, review and approve separate licences for-
 - (i) transmission and distribution; and
 - (ii) generation;
- (d) to solicit additional generation capacity and to conduct the generation solicitation process;
- (e) to monitor and regulate the generation solicitation process including, but not limited to, the review and approval of all processes, criteria, requirements, evaluations, agreements and contracts;
- (f) to conduct the tender process for applicants for any new T&D licence, and to select the successful tender;
- (g) to monitor and regulate the divestiture of T&D assets by one T&D licensee to another licensee when required;
- (h) to review and approve rates for backup electricity supply and for interconnection charged by a T&D licensee to another licensee in accordance with this Law;
- (i) 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;

- (j) to review the costs associated with generation that are passed through to the consumer by a T&D licensee (including the monthly generation charge and fuel factor calculations);
 - (k) 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; and
 - (l) to formulate and implement appropriate dispute resolution procedures for use in cases where licensees may have a dispute between themselves or with the Authority.
- (3) The Authority shall also-
- (a) upon receipt of any direction given by the Minister under section 11, develop and implement a system of contracts and other arrangements, including appropriate rights and obligations pertaining to the electricity industry in the Islands;
 - (b) engage in a public consultation process on the procedures to be adopted by the Authority to implement the system developed under paragraph (a);
 - (c) advise the Minister on the effect of electricity generation or transmission and distribution upon the environment, sustainability and international agreements on the environment to which the Islands are or may become a party;
 - (d) formulate 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 Minister on the development and regulation of the electricity industry in the Islands and on the exercise of the functions and discretions of the Minister 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; and
 - (d) protects the security and public interests of the Islands.
- (5) In carrying out the duties imposed by subsections (2), (3) and (4) the Authority shall have regard to -

- (a) the aim of promoting the development of sustainable competition in the electricity industry in the Islands generally;
- (b) the need to develop and promote sustainable competition in the generation solicitation process in accordance with this Law;
- (c) the need to regulate and supervise licensees in such a manner as to ensure that all reasonable demands by consumers for electricity are satisfied;
- (d) the need to ensure that applicants and licensees are capable of financing the activities they are, or seek to be, licensed to undertake;
- (e) whether licensees have promoted or will promote safety, sound environmental practices, technical proficiency, generation, transmission and distribution of electricity;
- (f) whether licensees have ensured or will ensure the continuity, security and quality of supplies of electricity within the Islands;
- (g) whether licensees have promoted or will promote the development and use of renewable, sustainable or alternative forms of energy by licensees and consumers;
- (h) whether licensees have promoted or will promote the efficient consumption and use of electricity by consumers; and
- (i) the need to permit and promote the use of renewable, sustainable 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 may require licensees to-

- (a) take effective measures for the protection of the environment;
- (b) take account of the needs of rural consumers, the disadvantaged and the elderly;
- (c) promote and sponsor research and development into methods of-
 - (i) generating electricity using renewable, sustainable and alternative forms of energy; and
 - (ii) increasing efficiency in the generation, transmission and distribution, and consumption of electricity; and
- (d) give priority to generating methods using renewable, sustainable or alternative energy sources when selecting generators or generating stations.

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) summon and examine witnesses;
- (b) call for, from any person, and examine documents including, but not limited to, financial records;
- (c) administer oaths;

	<ul style="list-style-type: none">(d) require that any document submitted to the Authority be verified by affidavit;(e) do anything which is related or incidental to what is specified in paragraphs (a), (b), (c) and (d); and(f) do anything it is authorised to do by this Law or any other law.
Directions by the Minister	<p>11. (1) The Minister 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 Minister to concern the public interest, and the Authority shall give general effect to any such directions.</p> <p>(2) The Authority shall cause any such directions to be published as soon as reasonably practicable after being given by the Minister, but no such directions shall apply in respect of a matter pending before the Authority on the day on which the directions are given.</p>
Financial year	<p>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.</p>
Repayment of set up loan	<p>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.</p>
Financial procedure	<p>14. (1) The revenue of the Authority shall be classified under the following heads of receipt-</p> <ul style="list-style-type: none">(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, <p>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.</p> <p>(2) The revenue of the Authority shall be applied to meet the following heads of expenditure-</p> <ul style="list-style-type: none">(a) interest on loans;(b) repayment of overdraft on current account;(c) current expenses;(d) salaries, pensions and gratuities;(e) reserve fund; and(f) miscellaneous expenditure approved by the Financial Secretary.

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

(4) The Authority shall cause estimates of expenditure and revenue to be prepared and adopted each year in respect of the financial year following and such estimates, when adopted, 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, be paid into the general revenue of the Islands.

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

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

(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 Repayment of advances

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.

Reserve fund

18. (1) The Authority shall maintain a general 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 (2005 Revision).

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(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 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 publish a statement of its assets and liabilities as at the 31st December and the 30th June of each year, not later than one month after such dates.

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 and such purposes as may be necessary for the performance of the functions of the Authority.

Power to employ staff, etc.

(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 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.

Procedure for the grant of a licence

(2) 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.

(3) Before granting a licence under this section the Authority shall, where relevant, take into account -

- (a) whether 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) 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;
- (c) the safety and security of the electricity transmission and distribution system, electric plant and electric lines;
- (d) the protection of the environment generally including plans for the limitation of emissions to the atmosphere, water or land;
- (e) 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;
- (f) the efficient use of energy by the applicant in the generation or transmission and distribution of electricity;
- (g) 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);
- (h) whether the applicant intends to perform the obligations attached to the licence for which the applicant is applying in a period of time which, in the opinion of the Authority, is reasonable;
- (i) whether the persons directly associated with the application are fit and proper persons to be granted a licence;
- (j) whether the best interests of consumers will be promoted or enhanced;
- (k) whether the aim of achieving sustainable competition in the electricity industry in the Islands generally or competition in the generation solicitation process in Grand Cayman specifically may be promoted or enhanced;
- (l) whether research, development and introduction of methods of generating electricity using renewable, sustainable and alternative forms of energy and methods of increasing efficiency in the use and production of electricity will be promoted or enhanced;
- (m) whether foreign and domestic investors will be encouraged to invest in the electricity industry in the Islands; and
- (n) whether the security and public interests of the Islands will be preserved and protected.

(4) 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, competence and capability; and
- (c) financial capacity and soundness.

(5) 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.

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

(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 or under the Electricity Law to do so, is guilty of an offence and liable on conviction on indictment to a fine of ten thousand dollars for each day that the offence continues.

(8) No licensee is required to be licensed under the Trade and Business Licensing Law (2003 Revision), and all licensees shall be exempt from the Local Companies (Control) Law (1999 Revision).

2003 Revision
1999 Revision

24. (1) A licensee that is a company (other than a company referred to in subsection (5)) 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 that interest 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, as soon as reasonably practicable, notify the Authority of-
 - (i) any change in control thereof;

- (ii) the acquisition by any person or group of persons of shares representing more than ten per cent of the issued share capital or total voting rights thereof; or
- (iii) the acquisition by any person or group of persons of shares representing 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, and within such period of time as the Authority may require, for the purpose of enabling the Authority to make an assessment as to whether persons acquiring control or ownership in the circumstances set out in paragraph (a) are fit and proper persons to have such control or ownership; and
- (c) such terms and other conditions as the Authority may deem necessary.

(6) Where shares in a company which is a licensee and not granted a waiver under subsection (5) vest automatically through process of law in another person, 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 power to impose conditions on the licence and to issue directives as to the management and operations of the licensee.

(7) 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) or (6),

that licensee is guilty of an offence and liable on conviction on indictment to a fine of one hundred thousand dollars for each day that the offence continues and the Authority may, in accordance with this Law, suspend or revoke the licence.

Assignment or transfer
of licence

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.

(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(2), (3) and (4).

(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 licence shall not be exclusive, shall be for the period specified in the licence and- Duration of licence

- (a) shall initially be for a period not exceeding twenty years from its date of commencement;
- (b) shall thereafter not be granted for a period exceeding fifteen years; and
- (c) for any generation licence granted in relation to wholesale generation sale or supply to a T&D licensee, the generation licence shall remain valid and not expire until the latest termination or expiry date of a PPA between the generator and a T&D licensee.

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

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 but not limited to whether the licensee is or has engaged in conduct that contravenes this Law or is otherwise in breach of that T&D licence. Renewal of licence

(2) Where the Authority has reasonable grounds 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 grounds upon which the Authority relies for refusing to renew the T&D licence.

(3) A T&D licence may be automatically renewed for further fifteen year periods 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 three years prior to the expiry of the T&D licence, and if, within one year of service of the said notice given by the Authority, 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 transmission and distribution 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 Transmission and Distribution 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) A licensee referred to under subsection (2) shall have sixty days 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.

(6) The Authority shall consider any written submissions made under subsection (5), and shall inform the licensee of its decision on the matter and provide written reasons for its decision within twenty-eight days 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 security 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).

29. 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.

Licence and regulatory fees

30. (1) The Authority may suspend or revoke a licence where the licensee-

Suspension or revocation of licence

- (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 punishable by a fine in excess of one 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 Authority;
- (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 security 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 the Authority may, in the case of a fundamental breach by a licensee of a licence, or non-compliance with this Law, 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 and security of the Islands are not harmed in so doing.

(5) Where a generation licence is revoked under this section the Authority shall compel compulsory divestiture of the generation assets of the generation

licensee upon expiry of the generation licence at a value equal to the average of the values determined by a panel of three qualified valuers with experience in the valuing of generation assets.

(6) The panel referred to in subsection (5) shall be-

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

Register of applications
and licences

31. (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.

32. (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 (2000 Revision);
- (b) the Health Insurance Law (2005 Revision);
- (c) the Workmen's Compensation Law (1996 Revision);

2000 Revision
2005 Revision
1996 Revision

- (d) the health and safety provisions of the Labour Law (2001 Revision); or
- (e) matters relating to an industrial dispute.

(3) Subject to section 33, a failure or refusal by a licensee to immediately discontinue or refrain from a practice specified in the said notice is an offence the penalty for which on conviction on indictment is a fine of one hundred thousand dollars for each day that the offence continues.

33. (1) The notice referred to in section 32 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.

34. In order to ensure compliance with a directive given under section 32, 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 complied with the notice to do all necessary things to comply with such notice or to refrain from practices as specified in the notice.

Compliance with
directive

Powers of Court in respect of directives	35. 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 34.
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PART V - Anti-competitive Practices

Interpretation for the purposes of this Part	36. (1) This Part deals with- <ul style="list-style-type: none">(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.
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(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 37 prohibition” means the prohibition specified in section 37; and

“section 41 prohibition” means the prohibition specified in section 41.

(4) For the avoidance of doubt, no single legal entity shall be permitted to be both a T&D licensee and a generation licensee at the same time unless validly exempted by the Authority under this Law.

Agreements, etc. preventing, restricting or distorting competition	37. (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.
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(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;

- (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 effect generation or transmission and distribution of electricity.

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

38. (1) The Authority may grant an exemption from section 37 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 39 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.

39. The Authority may declare provisions of section 37 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

40. (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 a reasonable suspicion 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) A breach of a term, condition or requirement of an exemption shall, in the Authority's sole discretion, cancel the exemption from the time the breach occurred.

(4) The Authority may, by notice in writing, take a step under subsection (1) where it reasonably suspects 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

41. (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.

42. 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 suspecting that either-

Authority's power to investigate

- (a) the section 37 prohibition; or
- (b) the section 41 prohibition,

has been infringed.

43. (1) For the purposes of an investigation under section 42, 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 44. (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 suspecting that there are on any premises documents or information-
 - (i) the production of which has been required under section 43; and
 - (ii) which have not been produced as required; or
 - (b) there are reasonable grounds for suspecting that-
 - (i) there are, on any premises, documents or information which the Authority has power to require to be produced under section 43; 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 suspect 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.

45. (1) A warrant issued under section 44 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 44 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

46. (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

47. (1) Subsection (2) applies where, as the result of an investigation conducted under section 42 the Authority proposes to make a decision that-

- (a) the section 37 prohibition; or
- (b) the section 41 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.

48. (1) Where the Authority has made a decision that an agreement, arrangement or practice infringes the section 37 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.

49. (1) Where the Authority has made a decision that conduct infringes the section 41 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.

50. (1) Where a person fails, without reasonable excuse, to comply with a directive under section 48 or 49, 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.

51. (1) This section applies where the Authority has a reasonable suspicion that-

Interim measures

- (a) the section 37 prohibition; or
- (b) the section 41 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 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 48 or, as appropriate, section 49.

(6) In the case of a suspected infringement of the section 37 prohibition, sections 48(1) and 50 also apply to directives given under this section.

(7) In the case of a suspected infringement of the section 41 prohibition, sections 49(1) and 50 also apply to directives given under this section.

Notice to show cause

52. (1) Where the Authority has decided that an agreement has infringed either or both of the section 37 prohibition or section 41 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 37 prohibition or section 41 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 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 37 or section 41 by a licensee shall not exceed one million dollars.

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

53. (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 52(5); and

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

54. The Authority, after consultation with the Minister and with the approval of the Governor, may make rules providing for the appropriate amount of any penalty under this Part.

Level of penalty

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 37 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 38 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 37 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 specified 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.

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

Application for enforcement

- (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 such pecuniary penalty of one hundred thousand dollars in the case of an individual and one million 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, 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 one hundred 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 transmission and distribution 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 (5), shall provide the interconnection service in a reasonable time thereafter, not to exceed two months 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 transmission and distribution 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, *inter alia*-

- (a) there is insufficient capacity on the transmission and distribution system taking into account reasonably anticipated requirements;
- (b) there are reasons of safety or security;
- (c) there is no provable demand for the capacity of electricity proposed to be generated by the applicant or generator; or
- (d) there are technical or engineering reasons which would make such interconnection impossible.

(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 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 T&D licensee, the first 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 first T&D licensee's transmission and distribution 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 proportion of the costs to be borne by the applicant for back up connection to the first T&D licensee's transmission and distribution system, being reasonable costs that are incurred in carrying out works under an agreement for making a back up connection or modifying an existing back up connection;

- (b) the period of time within which an offer or refusal pursuant to an application is to be made by the first T&D licensee; and
- (c) any other matters which the Authority considers necessary or expedient for the purpose of an application to make a back up connection to the first T&D licensee's transmission and distribution system.

(3) The offer made under subsection (1) to an applicant for a licence under section 23 shall be contingent upon the grant of that licence.

(4) 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) of the conditions of its T&D licence; or
 - (iii) the T&D code applicable to that T&D licensee's transmission and distribution 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 T&D licensee 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 in 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 a generator to the transmission and distribution 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 a generator to the transmission or distribution system of the T&D licensee including-

- (a) the level and methods of charging to be included in the statement to be prepared by the T&D licensee; and

- (b) the form and extent of the information to be provided by the T&D licensee to generators regarding interconnection.

(3) A charge for interconnection to the transmission and distribution system of a T&D licensee shall be calculated so as to enable the T&D licensee to recover the appropriate proportion of the reasonable costs incurred in carrying out any necessary works to provide interconnection to a generator.

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.

(2) The Authority shall consult with, and have regard to any submission made by, the T&D licensee, the applicant or 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 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

65. (1) At such intervals as the Authority may direct, each T&D licensee having a transmission and distribution system shall prepare a statement (hereinafter referred to in this section as a "forecast statement") based on the information available to it in a form approved by the Authority.

(2) A forecast statement shall include forecasts in respect of capacity, additional electricity generation requirements, peak system demand, forecast

flows and loading on each part of the transmission and distribution system of the T&D licensee together with-

- (a) a statement identifying those parts of the transmission and distribution system of the T&D licensee considered by the T&D licensee to be suitable for new interconnections;
- (b) the generating capacity which is likely to be connected to the transmission and distribution system in the future based on forecasts developed; and
- (c) a statement on the demand for, generation and consumption of electricity generated from renewable, sustainable or alternative sources generally.

(3) A T&D licensee may revise, from time to time, the information set out in each forecast statement and may, with the approval of the Authority, alter the form of and shall, at least once in every year, revise such statements.

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

(5) A T&D licensee may, with the prior consent of the Authority, omit from a forecast statement given under subsection (4) any confidential details as to the 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 licensee or any other person.

(6) In this section, the period to which the forecast statement relates shall be five calendar years on and after the date on which the statement is prepared 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 Governor, after consultation with the Authority, may prescribe quality 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,

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 other licensee shall incur any liability for any exemption granted to a 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 relates 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. (1) 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-

Licensee 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, power purchase agreements or bids of a commercial nature; or
- (f) current or proposed business plans,

the recipient licensee shall treat such information in confidence and-

- (i) may only share it amongst such of its employees who need the information in order to provide services to the licensee providing the information; and
- (ii) shall not provide such information to its employees or other persons who are involved in providing generation or transmission and distribution services offered in competition to the licensee providing the information.

(2) The Authority may establish such rules and procedures as it considers necessary to enable licensees to declare any information imparted to another licensee to be confidential information for the purpose of this section.

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) not to renew a licence under section 27(1);
- (d) to modify a licence under section 28;
- (e) to suspend or revoke a licence under section 30;
- (f) that a section 37 prohibition has been infringed;
- (g) that a section 41 prohibition has been infringed;
- (h) with regard to an exemption under section 38-
 - (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);
- (i) to cancel an exemption under section 40;
- (j) to give a directive under Part IV;

- (k) to impose a penalty in accordance with Part V or the amount of such penalty; or
- (l) 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 shall be to the Court upon leave on one or more of the following grounds namely, that the reconsideration is-

- (a) erroneous in law;
- (b) unreasonable;
- (c) contrary to the principles of natural justice; or
- (d) 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 license issued or applied for under this Law shall be subject to inspection by an authorised officer. Inspections

(2) Whoever-

- (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) 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 and if the offence is a continuing one to a further fine of one hundred thousand dollars for every day or part of a day during which the offence has continued.

(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) Whoever 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. Whoever, 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. Whoever, 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.

79. Whoever knowingly gives false or misleading information to the Authority is guilty of an offence and liable- Giving false 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.

80. Whoever, 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) Whoever 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) Whoever fails to comply with a requirement imposed on him under section 43 or 44 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) Whoever is guilty of an offence under subsection (1) or (5) 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) Whoever intentionally obstructs an officer in the exercise of his powers under a warrant issued under section 44 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 43 or 44-

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) Whoever 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) Whoever -

- (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) Whoever 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.

Order for payment of compensation 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.

(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.

Power to take possession of electricity infrastructure or permit another licensee to do so in certain cases 88. (1) Where, at any time from insolvency or other cause, a licensee is unable to continue to generate, transmit or distribute electricity for which that licensee was licensed under this Law, it shall be lawful for the Governor to enter upon and take possession of all the premises or facilities of the said licensee, together with all wires, plant and electricity infrastructure belonging thereto, and to maintain them in working order for twelve months, or for such time as may be necessary for their sale or disposal.

(2) Where, at any time from insolvency or other cause, a licensee is unable to continue to generate, transmit or distribute electricity for which that licensee was licensed under this Law, it shall be lawful for the Governor to permit another licensee or person whom the Governor is satisfied has the requisite skills, competence and capacity to enter upon and take possession of all the premises or facilities of the first mentioned licensee, together with all wires, plant and electricity infrastructure belonging thereto, and to maintain them in working order for twelve months, or for such time as may be necessary for their sale or disposal.

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) on the recommendation of the Authority, prescribing matters for the better carrying out of the duties and powers of the Authority; or
- (d) 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) licence fees, regulatory and any other fees duly payable;
- (b) interconnection to a transmission and distribution system and backup connection services;
- (c) T&D codes including equipment, specifications and standards; operating and maintenance procedures, performance specifications, reliability requirements and customer service standards;
- (d) dispute resolution;
- (e) forecasts of load growth and generation supply requirements;
- (f) additional electrical generation requirements and criteria;
- (g) incremental 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; and
- (k) service standards,

and the Authority shall consult with the Minister 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. 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

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

Transitional provisions

Islands and which is valid immediately before the 12th April, 2005 shall, until a licence is issued to such person under this Law, continue to be valid except to the extent inconsistent with this Law.

(2) Notwithstanding subsection (1), nothing in this Law or any other law shall alter the terms of a licence granted prior to the 12th April, 2005 unless the Authority and the licensee agree in writing to such alteration or the licence is otherwise varied by operation of law.

(3) Where the Authority has not been established at the 12th April, 2005 the Governor shall have the power to issue a licence that the Authority is empowered by this Law to issue, 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.

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.
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 preside at that meeting of the Board.
6. (1) At every meeting of the Board, a quorum shall consist of three 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 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. Whoever 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.

Publication in revised form authorised by the Governor in Cabinet this 12th day of July, 2005.

Carmena Watler
Clerk of Cabinet

(Price \$ 12.80)