



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

Preliminary Report

Matter Number: 20210222

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Responses Due: 6 December 2021

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## 1 INTRODUCTION

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

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

2. The Electricity Act 2016 (“EA”) received Royal Assent on 27th February 2016. The EA came into operation on 28th October 2016 pursuant to the Electricity Act 2016 Commencement Day Notice 2016 (BR 101/2016). The EA repealed the Energy Act 2009.

3. The Regulatory Authority of Bermuda (“RA”) is the sole body responsible for the regulation of the electricity sector and its overarching responsibilities are to:

- regulate tariffs and the quality of service provision to end users;
- ensure that access to electricity infrastructure by current and prospective generators is transparent, fair, reasonable, and non-discriminatory; and
- investigate and respond to complaints from end users as regards the provision of electricity.

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

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

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

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

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

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

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

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

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

<sup>5</sup> Persons who are generating electricity using a system with an installed capacity at or above a specified threshold/licence threshold (as prescribed in Regulations made by the Minister).

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

## **2 BACKGROUND AND CONSULTATION PROCEDURE**

### **2.A Background**

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

8. The Consultation Document asked the following questions:

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

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

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

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

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

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

## **2.B Consultation Procedure**

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

15. Written comments should be submitted before 11:59pm (AST) on 6<sup>th</sup> December 2021.

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

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

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

[Click Here to Respond](#)

19. The RA intends to make responses to this Preliminary Report available on its website within 4 weeks of the close of the consultation. If a commenting party’s response contains any information that is confidential in nature, a clearly marked “Non-Confidential Version”, redacted to delete the confidential information, should be provided together with a complete version that is clearly marked as the “Confidential Version.” Redactions should be strictly limited to “confidential information,” meaning a trade secret, information whose commercial value would be diminished or destroyed by public disclosure, information whose disclosure would have an adverse effect on the commercial interests of the commenting party, or information that is legally subject to confidential treatment. The “Confidential Version” should highlight the information that

has been redacted. Any person claiming confidentiality in respect of the information submitted must provide a full justification for the claim. Requests for confidentiality will be treated in the manner provided for in Rule 30 of the RA's Interim Administrative Rules.

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

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

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

22. In this Preliminary Report, except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them by the EA, the RAA and the Interpretation Act 1951.

23. This Preliminary Report is not a binding legal document and does not contain legal, commercial, financial, technical, or other advice. The RA is not bound by this Preliminary Report, nor does it necessarily set out the RA's final or definitive position on particular matters. To the extent that there might be any inconsistency between the contents of this Preliminary Report and the due exercise by the RA of its functions and powers, and the carrying out of its duties and the achievement of relevant objectives under law, such contents are without prejudice to the legal position of the RA.

### 3 LEGISLATIVE CONTEXT RELATING TO ELECTRICITY LICENCES

24. The RAA established a cross-sectoral independent and accountable regulatory authority “to protect the rights of consumers, encourage the deployment of innovative and affordable services, promote sustainable competition, foster investment, promote Bermudian ownership and employment and enhance Bermuda’s position in the global market”.

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

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

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

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

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



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

### **4.A Respondents**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **APPENDIX A: Preliminary Order**



**Preliminary Order:  
Large Scale Self Supply Licence**



## ORDER

1. THIS ORDER is issued by the Regulatory Authority of Bermuda in accordance with section 62 of the Regulatory Authority Act 2011 and sections 6, 14, 17, 20, 23 and 24 of the Electricity Act 2016 ("EA").
2. Any Large Scale Self Supply License granted pursuant to Part 5 of the EA shall be substantially in the form as set out in the Annex.

So Ordered this [X] day of [X] 2021

**ANNEX: Large Scale Self Supply Licence Template**

DATED

xxx



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**LARGE SCALE SELF-SUPPLY LICENCE**

granted to

**[Insert name of Licence holder]**

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**Licensee:**

**Address:**

**Licence Number:**

**Issue Date:**

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## PART I DEFINITIONS, INTERPRETATION, SCOPE AND TERMS OF THE LICENCE

The Regulatory Authority of Bermuda (the "**RA**"), in exercise of the powers conferred to it by the Electricity Act 2016 (the "**EA**") hereby grants to [*insert name of person to whom licence is granted*] having its registered office at [*insert address of registered office*] (the "**Licensee**"), a licence (the "**Licence**"), to engage in the Large Scale Self-Supply of electricity at the generation station(s) identified in Schedule 1 and hereinafter referred to as the "**Generation Facilities**" up to a maximum installed capacity of [*insert maximum installed capacity* \*\*] subject to the terms of this Licence, the EA, the Regulatory Authority Act 2011 ("**RAA**") and any Regulations, General Determinations, Administrative Determinations, Adjudicative Decisions, Orders and Directions made or issued in accordance with the EA and the RAA.

### 1 DEFINITIONS AND INTERPRETATION

1.1 In this Licence, unless the context otherwise requires:

**"Administrative Determination"** has the meaning defined in the RAA;

**"Affiliate"** in relation to the Licensee means any entity that, directly or indirectly, controls, is controlled by, or is under common control with another legal person;

**"Auditors"** means the Licensee's auditors holding office in accordance with the requirements of the Companies Act 1981;

**"Commencement Date"** means the date on which this Licence is issued by the RA;

**"Condition"** means a condition of this Licence;

**"Control"** means:

- (a) the power, whether held direct or indirectly, to exercise decisive influence over the Licensee, including by directing its management and policies, whether through ownership of shares, stocks or other securities or voting rights, or through an agreement or arrangement of any type, or otherwise; and
- (b) shall, in any event, be deemed to exist in any case involving the ownership of 25 percent or more of the shares, stock, or other securities or voting rights, including through an agreement or arrangement of any type,

and **"Control"** and **"Controlled"** shall be construed accordingly;

**"Controlling Interest Holder"** means a company or individual that is in Control of the Licensee;

**"Environmental Laws"** means those provisions of laws, in force from time to time, whose purpose is the protection of the environment, including the protection of human health, flora, fauna and the eco-systems on which they depend and, for the avoidance of doubt, shall include all relevant law relating to the assessment of environmental impact and the protection of air, land and water including the Clean Air Act 1991 and any amendments;

**"Financial year"** means the 12 month annual period used by the Large Scale Self-Supply Business to report its financial information during the term of this Licence and the first financial year shall be the period from the Commencement Date until the end of its current financial year and the last financial year shall be the period from the start of its financial year until the date on which this Licence is revoked or terminated in accordance with its terms;

**"General Determination"** has the meaning defined in the RAA;

**"Generation Facilities"** means the Generating Units more particularly described in Schedule 1 to this Licence;

**"Generation Unit"** means any plant or apparatus for the generation of electricity including a facility comprising one or more generation units;

**"Government"** means the Government of Bermuda;

**"Government Authorisation Fees"** means the fees established pursuant to section 52 of the RAA and required to be paid by the Licensee under sections 25 and 26 of the EA;

**"Information"** means any documents, records, accounts, estimates, returns or reports (whether or not prepared specifically at the request of the RA) of any description and in any format specified by the RA;

**"Insolvency Event"** means the occurrence of any of the following events, unless such event is capable of being set aside and proper proceedings to have such event set aside are filed with the appropriate court within thirty (30) days of such event:

- a) there is entered against the Licensee a decree or order by a court adjudging the Licensee bankrupt or insolvent or approving as properly filed by or on behalf of the Licensee a petition seeking reorganization, arrangement or reconstruction or appointing a receiver, liquidator, trustee, sequestrator (or other similar official) of the Licensee over a substantial part of its property or assets or ordering the winding up or liquidation of its affairs; or
- b) the institution by the Licensee of proceedings to be adjudicated bankrupt or insolvent; or
- c) the consent by the Licensee to the institution of bankruptcy or insolvency proceedings against it; or
- d) the filing by the Licensee of a petition or consent seeking relief from its creditors generally under any applicable Law;

- e) the consent by the Licensee of the filing of any petition or for the appointment of a receiver, liquidator, trustee, sequestrator (or other similar official) of the Licensee or any substantial part of its property; or
- f) any other event shall have occurred with respect to the Licensee which under applicable Law would have an effect analogous to any of the events referred to in this definition;

**"Large Scale Self-Supply"** means the generation and own consumption of electricity using a system with an installed capacity at or above the Licence Threshold;

**"Large Scale Self-Supply Business"** means the authorised business of the Licensee relating to the Large Scale Self-Supply pursuant to this Licence;

**"Large Scale Self-Supply Standards"** means service standards set out by the RA from time to time relating to the Large Scale Self-Supply generation and own consumption of electricity pursuant to this Licence;

**"Law"** means the laws of Bermuda;

**"Licence"** means this Large Scale Self-Supply Licence granted to the Licensee by the RA pursuant to the provisions of the EA and the Schedules and Annexes hereto;

**"Licensee"** means *[insert name of Licence holder]*;

**"Licence Threshold"** has the meaning given to it in the EA;

**"Minister"** means the Minister responsible for energy in Bermuda;

**"Modification"** includes any addition, omission, amendment and substitution of this Licence;

**"Operator"** means, in relation to the Generation Facilities, the person who operates and maintains the same;

**"Premises"** means the property on which the Generation Facilities are situated, and any adjacent property owned by the Licensee or its Affiliate on which the generated electricity will be consumed;

**"RA"** means the Regulatory Authority of Bermuda;

**"Reasonable and Prudent Operator"** means a person who exercises that degree of skill, diligence, prudence and foresight which could reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances;

**"Regulatory Authority Fees"** means the fees established to fund the operation of the RA under section 44 of the RAA and payable by the Licensee under Condition 4;

**"Renewable Energy"** has the meaning given to it in the EA;

**"Self-Supply"** means generation using a system that is not interconnected to any part of the transmission and distribution network, consistent with the definition in the EA; and

**"System"** means the network and equipment necessary to provide electricity for consumption.

1.2 For the purposes of interpreting this Licence:

- (a) unless a different definition is provided in this Licence, words or expressions shall have the meaning assigned to them in the EA, the RAA and Interpretation Act 1951, irrespective as to whether the term is capitalised in such legislation;
- (b) where there is any conflict between the provisions of this Licence and the EA or RAA, the provisions of the EA or RAA (as the case may be) shall prevail. For the avoidance of doubt the provisions of the EA shall take precedence over the provisions of the RAA pursuant to section 3(3) of the EA;
- (c) references to Conditions, Schedules, and Annexes are to Conditions, Schedules and Annexes of this Licence, as modified from time to time in accordance with the Licence and the EA;
- (d) headings and titles used in this Licence are for reference only and shall not affect its interpretation or construction;
- (e) references to any Law or statutory instrument include any Modification, re-enactment or legislative provisions substituted for the same;
- (f) expressions cognate with those used in this Licence shall be construed accordingly;
- (g) words importing the singular shall include the plural and vice versa, and words importing the whole shall be treated as including a reference to any part unless explicitly limited;
- (h) reference to a person includes an individual, firm, partnership, joint venture, company, corporation, body corporate, unincorporated body of persons or any state or any agency of a state or any other legal entity; and
- (i) unless the contrary intention appears, words importing the masculine gender include the feminine.

## 2. SCOPE OF THE LICENCE

2.1 This Licence grants the Licensee the right to engage in Large Scale Self-Supply of electricity from the Generation Facilities.



- 2.2 The Licensee shall not and shall ensure that any Affiliate shall not, on its own account (or that of the Licensee or of any Affiliate, as the case may be):
- (a) sell electricity in Bermuda to any person or provide electricity in Bermuda to any person;
  - (b) engage in wheeling;
  - (c) purchase or otherwise acquire electricity in Bermuda for the purpose of sale or other disposition to third parties;
  - (d) transmit electricity or otherwise convey electricity by any other means, except to the extent necessary to deliver electricity to its own System; and
  - (e) engage in the distribution or supply of electricity to any premises except its own Premises.
- 2.3 Nothing in this Licence shall relieve the Licensee of its obligations to comply with any other requirement imposed by provision of Law or practice to obtain any additional consents, permissions, authorisations, licenses or permits as may be necessary to exercise the Licensee's right to discharge its rights and obligations under this Licence.
- 2.4 Following any written request by the Licensee, the RA shall be entitled to issue instructions relieving the Licensee of its obligation to comply with any provisions of this Licence, to such extent as may be specified in the RA's instructions.

### **3. TERM OF THE LICENCE**

- 3.1 This Licence is valid and effective from the Commencement Date and shall remain in effect until the earlier of:
- (a) [*enter number of years*] years or such period as shall otherwise be agreed with the RA from the Commencement Date; or
  - (b) the date on which the Licence is surrendered in accordance with Condition 8 of this Licence; or
  - (c) the date on which the Licence is revoked pursuant to section 31 of the EA; or
  - (d) the date on which the Licence is revoked due to an Insolvency Event affecting the Licensee.
- 3.2 Provided that the Licensee is not otherwise in material breach of this Licence, the Licensee may request an extension of this Licence by providing the RA with a written request by no later than 12 months prior to the end date of the Licence pursuant to Condition 3. Such extension request may be granted or denied by the RA acting in its sole discretion.

## **PART II - CONDITIONS**

### **4 FEES, AND PENALTIES**

- 4.1 The Licensee shall pay to the RA such Government Authorisation Fees as may be

prescribed pursuant to sections 25, 26 and 66(3) of the EA; section 52 of the RAA; and the Government Fees Act 1965.

4.2 The Licensee shall pay to the RA such Regulatory Authority Fees as may be prescribed pursuant to section 44 of the RAA.

4.3 The Licensee shall pay to the RA any penalties that may be imposed on the Licensee by the RA in accordance with section 26(1)(a) of EA and section 94 of the RAA.

4.4 The Licensee shall be liable in accordance with section 57 of the RAA for failure to pay the fees set out in Conditions 4.1 and 4.2 above of this Condition 4.

4.5 The Licensee shall be liable in accordance with section 60 of the EA for failure to comply with this Licence.

## **5 COMPLIANCE**

5.1 The Licensee shall comply with:

- (a) the Conditions of this Licence, including any Schedules or Annexes to this Licence;
- (b) the terms of any associated licenses, authorisations and permits issued to the Licensee;
- (c) any Regulations issued by the Minister in accordance with section 54 of EA;
- (d) any Ministerial directions issued by the Minister pursuant to the EA;
- (e) any General Determinations made by the RA pursuant to the RAA and the EA;
- (f) any Administrative Determinations made by the RA pursuant to the RAA and the EA;
- (g) the EA;
- (h) the RAA; and
- (i) any other applicable Law, enactment, Administrative Determination, regulation or order in effect in Bermuda to which the Licensee is subject.

5.2 Where there is an irreconcilable conflict between any applicable provision of Law, regulation, Administrative Determination or order, the following order of precedence shall apply: Acts of Parliament, Regulations and Orders made by the Minister, international agreements that apply to Bermuda, Administrative Determinations made by the RA, and this Licence.

## **6. MODIFICATION OF THE LICENCE**

6.1 The Licence may be modified:

- (a) by the RA of its own motion pursuant to Section 29 of the EA and Section 51 of the RAA;

- (b) with the mutual consent of the Licensee and the RA pursuant to section 29 of the EA and Section 51 of the RAA;
- (c) by the RA following an enforcement proceeding, pursuant to the provisions of section 93 of the RAA; or
- (d) by the RA following any change of Control of the Licensee's Large Scale Self-Supply Business pursuant to the operation of sections 21, 22 and 30 of the EA.

## **7 ENFORCEMENT, SUSPENSION AND REVOCATION**

- 7.1 The RA may initiate enforcement proceedings pursuant to section 53 of the EA and section 93 of the RAA.
- 7.2 The RA may revoke this Licence:
- (a) in accordance with the provisions of section 31 of the EA and section 51 of the RAA; and
  - (b) in the event of an Insolvency Event affecting the Licensee.
- 7.3 The RA shall be entitled to suspend this Licence in accordance with sections 31 and 53 of the EA and section 51 of the RAA. The RA may, in its sole discretion, lift an on-going suspension and re-instate the Licence.

## **8 SURRENDER OF LICENCE**

- 8.1 Unless the RA agrees otherwise, the Licensee shall be entitled to surrender this Licence upon giving the RA reasonable notice of its intention to do so. Should the Transmission, Distribution and Retail (TD&R) licensee be requested to accept the load onto its grid, the Licensee is expected to agree with the TD&R licensee and the RA what the applicable notice period will be.
- 8.2 Unless the RA agrees otherwise, the Licensee shall not, during the term of its Licence, be entitled to cease fulfilling its duties in terms of its Licence.

## **9 PROVISION OF INFORMATION TO THE AUTHORITY**

- 9.1 The Licensee shall, in accordance with section 26(1)(f) of the EA, the provisions of Part 8 of the EA and any Administrative Determination by the RA, furnish to the RA in such manner and at such reasonable times as the RA may reasonably require, such Information relating to the electricity sector including any Information reasonably required by the RA in order for it to comply with its obligations under section 52 of the EA.
- 9.2 Subject to the provisions of Part 8 of the RAA and any applicable General Determination by the RA, the Licensee shall permit the RA or persons designated by the RA to examine, investigate or audit, or procure such assistance as the RA may reasonably require to conduct an examination, investigation or audit of, any aspect of the Large Scale Self-Supply Business.
- 9.3 Subject to the provisions of section 92 of the RAA and any applicable General Determination by the RA, the Licensee shall permit the RA or persons designated by

the RA to enter the Premises, and shall facilitate reasonable access by them to the Premises, to conduct an inspection, examination, investigation or audit of the Licensee.

- 9.4 The Licensee shall notify the RA as soon as possible upon becoming aware that it is in a position in which it may potentially breach any Condition set out in this Licence.

## **10 SERVICE STANDARDS AND PERFORMANCE STANDARDS**

- 10.1 The Licensee shall comply with any applicable service standards including any Large Scale Self-Supply Standards issued by the RA pursuant to a General Determination.
- 10.2 The Licensee shall report to the RA in accordance with provisions of any General Determination regarding the same Standards.
- 10.3 The Licensee shall operate and maintain the Generation Facilities in a safe, efficient and economic manner.
- 10.4 If the Licensee fails to meet its required service standards as set forth in this Licence, codes of practice or Administrative or General Determinations, the Licensee shall forthwith discuss with the RA the reasons for any non-compliance and the steps that the Licensee intends to take in order to remedy such non-compliance.
- 10.5 The RA shall give the Licensee reasonable time to implement the remedial measures notified by the Licensee to the RA pursuant to paragraph 10.4 of this Condition 10.
- 10.6 If after the Licensee has been given a reasonable opportunity by the RA to implement the steps it has outlined to the RA under paragraphs 10.4 and 10.5, the Licensee still fails to meet its required service standards, the RA shall be entitled, following enforcement action pursuant to the RAA, to:
- (a) impose a financial penalty as determined by the RA on the Licensee in respect of its failure to comply with its required service standards; and/or
  - (b) require that the Licensee pay compensation as determined by the RA in respect of its failure to comply with its required service standards pursuant to the terms of this Licence.
- 10.7 The RA shall periodically review the service standards referred to in this Condition 10 which the Licensee is required to comply with.
- 10.8 The Licensee shall be liable in accordance with the provisions of Section 58 of the EA if it fails to comply with those safety standards set out in section 58 of the EA.

## **11. APPOINTMENT OF OPERATOR**

- 11.1 In the event that the Operator is someone other than the Licensee, the prior written approval of the RA for the appointment of such person as Operator shall be obtained and such approval shall not be unreasonably withheld or delayed.
- 11.2 Subject to Condition 11.1, the RA shall not be entitled to refuse to give its approval of a person pursuant to Condition 11.1 if that person is competent to operate the Generation Facilities to the standard of a Reasonable and Prudent Operator, but where an approved person is no longer competent to exercise that function, the RA may, by

notice in writing given to the Licensee, revoke an approval of that person under this Condition.

- 11.3 The RA shall be entitled to refuse to give its approval of a person pursuant to Condition 11.1 if that person is the operator of any other generation facilities within Bermuda.

## **12. CHANGE IN CONTROL OF LICENSEE**

- 12.1 The Licensee shall not complete any proposed change in Control of the Licensee without first obtaining the prior written authorisation of the RA in accordance with section 30 of the EA and section 87 of the RAA, which shall not be unreasonably withheld.

- 12.2 The Licensee shall be liable in accordance with section 56 of the EA if it contravenes this Condition.

## **13 ASSIGNMENT**

- 13.1 This Licence shall not be transferred or assigned without the prior consent of the RA and section 30 of the EA shall apply accordingly.

- 13.2 The Licensee shall not sub-license, assign or grant any right, interest or entitlement in the Licence nor transfer the Licence to any other Person, including an Affiliate of the Licensee, without the prior written authorization of the RA.

- 13.3 The Licensee shall be liable in accordance with section 56 of the EA if it contravenes this Condition.

## **14 ENVIRONMENTAL MATTERS**

- 14.1 The Licensee shall comply with applicable Environmental Laws.

## **15 REPLACEMENT OF GENERATION FACILITIES**

- 15.1 The Licensee shall not replace any Generation Facilities without the prior consent of the RA.

- 15.2 If the Licensee is required to replace its Generation Facilities, it must first provide to the RA a detailed report setting out the proposal (the "**Proposal**").

- 15.3 The Licensee's Proposal shall be granted or denied, subject to Modification by the RA acting in its sole discretion.

## **16 ACCOUNTING REQUIREMENTS**

- 16.1 The Licensee shall:

(a) keep such accounting records in respect of its Large Scale Self-Supply Business as are required to be kept in respect of such business by any provision of Law;

(b) keep such accounting records as are instructed to be kept in respect of any instructions issued by the RA.

## **17 OPERATIONAL REPORTING REQUIREMENTS**

- 17.1 The Licensee shall submit to the RA any report containing operational information as may be required by the RA including that set out in any Large Scale Self-Supply Standards or any Administrative Determination.
- 17.2 The Licensee shall place a complete copy of this Licence on the Licensee's website or, if no such website exists, in a conspicuous place in the Licensee's principal place of business such that it is readily available for inspection free of charge by members of the general public during normal office hours.

## **18 FORCE MAJEURE; OTHER EVENTS**

- 18.1 If the Licensee is prevented from complying with this Licence by acts of God, war, warlike operations, civil commotion, major strikes or any other significant or protracted industrial action, fire, tempest or any other causes beyond the Licensee's reasonable control;
- (a) the Licensee shall notify the RA, as promptly as reasonably practicable, of the obligations of the Licence with which the Licensee cannot comply, the expected duration of the event of force majeure, and the measures the Licensee is taking to overcome the consequences of the event of force majeure; and
  - (b) the RA shall suspend such obligations of the Licence as the RA concludes the Licensee cannot comply with for as long as the event of force majeure continues.
- 18.2 In addition to events of force majeure, the Licensee shall notify the RA of any fact or event likely to affect materially the Licensee's ability to comply with any Condition of this Licence, or an insolvency-related fact or Insolvency Event in respect of the Licensee or any Affiliate, or any preparatory steps being taken that might lead to an Insolvency Event, immediately upon becoming aware of such fact or event.

## **19 INDEMNIFICATION**

- 19.1 The Licensee shall indemnify the RA against all actions, claims and demands which may be brought or made by any person in respect of any injury or death of any Person or damage to any property arising from any act of the Licensee permitted or authorized by the Licence. The RA shall provide the Licensee with notice of any such actions, claims and demands, but the RA's failure to do so shall not relieve the Licensee of any obligations imposed on the Licensee by this Condition.

## **20 INSURANCE**

- 20.1 Subject to Condition 20.2 below, the Licensee shall obtain and maintain insurance coverage for sudden and unexpected:
- (a) physical damage to the Generation Facilities and ancillary equipment and structures; and
  - (b) business interruption.

20.2 The Licensee shall not be required to obtain and maintain insurance if it is not on economic terms. The Licensee shall as soon as reasonably possible inform the RA if it is of the opinion that such insurance is not on economic terms. The RA will consider the Licensee's opinion and if it agrees that the Licensee's opinion is reasonable, confirm to the Licensee that the insurance may be foregone until such time as it may again become available on economic terms.

## **21 OUTSOURCING**

The Licensee may utilise the services of third parties on an ongoing basis in the provision of its Large Scale Self-Supply Business services. The procurement of such outsourced services shall be subject to RA approval if they represent core and ongoing Large Scale Self-Supply Business functions, but not for temporary specialty support.

## **22 SITE DECOMMISSIONING**

22.1 As part of the application process in respect of this Licence, the Licensee will have submitted to the RA an independent site decommissioning plan which detailed how the Licensee, upon termination of its Large-Scale Self-Supply Business, planned to restore the project location to a clean and safe condition, suitable for future use of the land on which it is located. This included, amongst other things, retiring the Generation Facilities, restoring the site to a safe and useful condition within six months of retiring the Generation Facilities and managing the excess materials and waste in an environmentally responsible manner and in compliance with industry and/or local regulations (whichever is more stringent). At least eighteen months prior to the anticipated retirement date (the "Review Date"), both the Licensee and RA will revisit the plan to ensure all elements comply with industry and/or local regulations.

22.2 At the Review Date, the RA may require the Licensee to provide a financial surety to cover the site decommissioning should the Licensee fail to properly perform this function.

## **23 NOTICES**

23.1 Unless the RA determines otherwise, notices to the Licensee under the Licence shall be in writing and sent by electronic mails to the Chief Executive Officer/President of the Licensee at an address communicated to the RA from time to time.

23.2 Unless the RA determines otherwise, notices from the Licensee to the RA under the Licence shall be in writing and sent by electronic mail to the Chief Executive of the RA to electricity@ra.bm.

## **24 AVAILABILITY OF RESOURCES**

24.1 The Licensee shall at all times act in a manner calculated to secure that it has sufficient management resources and financial resources and financial facilities to enable it to:

- (a) carry on its Large Scale Self-Supply Business; and
- (b) comply with its obligations under this Licence and the EA.

24.2 The Licensee shall submit a certificate addressed to the RA, approved by a resolution of the Board of Directors of the Licensee and signed by a director of the Licensee

pursuant to that resolution. Such certificate shall be submitted by 30th April each year and shall be in one of the following forms:

- (a) "After making enquiries, the directors of the Licensee have a reasonable expectation that the Licensee will have available to it, after taking into account in particular (but without limitation) any dividend or other distribution which might reasonably be expected to be declared or paid, sufficient financial resources and financial facilities to enable the Licensee to carry on the Large Scale Self-Supply Business for a period of 12 months from the date of this certificate.";
- (b) "After making enquiries, the directors of the Licensee have a reasonable expectation, subject to the terms of this certificate, that the Licensee will have available to it, after taking into account in particular (but without limitation) any dividend or other distribution which might reasonably be expected to be declared or paid, sufficient financial resources and financial facilities to enable the Licensee to carry on the Large Scale Self-Supply Business for a period of 12 months from the date of this certificate. However, the directors would like to draw attention to the following factors which may cast doubt on the ability of the Licensee to carry on the Large Scale Self-Supply Business."; or
- (c) "In the opinion of the directors of the Licensee, the Licensee will not have available to it sufficient financial resources and financial facilities to enable the Licensee to carry on the Large Scale Self-Supply Business for a period of 12 months from the date of this certificate."

- 24.3 The Licensee shall submit to the RA, together with the certificate referred to in paragraph 24.2 of this Condition, a statement of the main factors which the directors of the Licensee have taken into account in giving that certificate.
- 24.4 The Licensee shall inform the RA in writing immediately if the directors of the Licensee have become aware of any circumstances which cause them no longer to have the reasonable expectation expressed in the most recent certificate given under paragraph 24.2.
- 24.5 The Licensee shall use its best endeavours to obtain and submit to the RA, with each certificate provided for in paragraph 24.2, a report prepared by its Auditors and addressed to the RA stating whether or not the Auditors are aware of any inconsistencies between, on the one hand, that certificate and the statement submitted with it and, on the other hand, any information which they obtained during their audit work.
- 24.6 The Licensee shall use its best endeavours to procure from the Controlling Interest Holder a legally enforceable undertaking in favour of the Licensee (in a form specified by the RA) that the Controlling Interest Holder will refrain from any action, and will procure that every subsidiary of the Controlling Interest Holder (other than the Licensee) will refrain from any action, which would then be likely to cause the Licensee to breach any of its obligations under this Licence or the EA.
- 24.7 The Licensee shall:
- (a) deliver to the RA evidence (including a copy of such undertaking) that the Licensee has complied with the obligation to procure an undertaking pursuant to paragraph 24.6; and



(b) inform the RA immediately in writing if the directors of the Licensee become aware that the undertaking has ceased to be legally enforceable or that its terms have been breached.

**SCHEDULE 1**  
**Generation Facilities**

[details to be inserted]