

DATED

2017



**TRANSMISSION, DISTRIBUTION AND RETAIL
LICENCE**

granted to

**BERMUDA ELECTRIC LIGHT COMPANY LIMITED
("BELCO")**

Licensee:

Address:

License Number:

Issue Date:

CONTENTS

	<u>PART I DEFINITIONS, INTERPRETATION, SCOPE AND TERMS OF THE LICENCE</u> ..	6
<u>1</u>	<u>DEFINITIONS</u>	6
<u>2</u>	<u>INTERPRETATION</u>	12
<u>3</u>	<u>SCOPE OF THE LICENCE</u>	12
<u>4</u>	<u>TERM OF THE LICENCE</u>	13
	<u>PART II - CONDITIONS</u>	16
<u>5</u>	<u>FEES AND PENALTIES</u>	16
<u>6</u>	<u>COMPLIANCE</u>	16
<u>7</u>	<u>INFORMATION, AUDITS AND INSPECTION</u>	17
<u>8</u>	<u>MODIFICATION OF THE LICENCE</u>	18
<u>9</u>	<u>ENFORCEMENT, SUSPENSION AND REVOCATION</u>	18
<u>10</u>	<u>DISCONTINUANCE OF SERVICE, SURRENDER OF LICENCE</u>	19
<u>11</u>	<u>ACCOUNTING REQUIREMENTS</u>	19
<u>12</u>	<u>AVAILABILITY OF RESOURCES</u>	24
<u>13</u>	<u>PROHIBITION OF CROSS-SUBSIDIES</u>	26
<u>14</u>	<u>SERVICE STANDARDS & PERFORMANCE STANDARDS</u>	27
<u>15</u>	<u>DISPOSAL OF RELEVANT ASSETS</u>	29
<u>16</u>	<u>RESTRICTION ON USE OF CERTAIN INFORMATION</u>	31
<u>17</u>	<u>NATIONAL DISASTER CONTINGENCY FUND</u>	32
<u>18</u>	<u>BASIS OF CHARGES FOR CONNECTION TO GRID SYSTEM</u>	32
<u>19</u>	<u>NON-DISCRIMINATION REGARDING CONNECTION TO THE GRID SYSTEM</u>	34
<u>20</u>	<u>REQUIREMENT TO OFFER TERMS</u>	34
<u>21</u>	<u>FUNCTIONS OF THE AUTHORITY</u>	36
<u>22</u>	<u>GRID CODE</u>	36
<u>23</u>	<u>OBLIGATIONS REGARDING INTEGRATED RESOURCE PLAN AND PROCUREMENT OF NEW GENERATION</u>	39

<u>24</u>	<u>OBLIGATION TO ENTER INTO POWER PURCHASE AGREEMENTS</u>	41
<u>25</u>	<u>OBLIGATION TO ENTER INTO STANDARD CONTRACTS WITH DISTRIBUTED GENERATORS</u>	42
<u>26</u>	<u>RETAIL TARIFF & RESTRICTION ON LICENSEE'S REVENUE</u>	42
<u>27</u>	<u>FEED-IN TARIFF</u>	43
<u>28</u>	<u>CENTRAL DISPATCH AND MERIT ORDER</u>	43
<u>29</u>	<u>DUTY TO OFFER AND SUPPLY UNDER SERVICE AGREEMENTS</u>	44
<u>30</u>	<u>END-USER BILLS</u>	44
<u>31</u>	<u>CODES OF PRACTICE</u>	45
<u>32</u>	<u>ASSIGNMENT, OUTSOURCING AND MORTGAGES</u>	45
<u>33</u>	<u>CHANGE OF CONTROL</u>	46
<u>34</u>	<u>INDEMNIFICATION</u>	46
<u>35</u>	<u>FORCE MAJEURE; OTHER EVENTS</u>	46
<u>36</u>	<u>NO ABUSE OF DOMINANT POSITION</u>	47
<u>37</u>	<u>NOTICES</u>	48
<u>38</u>	<u>INSURANCE REQUIREMENTS</u>	48

BELCO: In its letter of 29th May 2017 BELCO say that the TD&R licence could be more simply drafted. BELCO say a shorter licence will be clearer than a longer licence – and, also a shorter licence is better suited to Bermuda’s small, isolated system applying the single buyer approach.

BELCO say the inclusion of more specificity in a licence:

- (i) leads to reduced clarity and increased likelihood for deviation from legislative aims through paraphrased legal requirements;
- (ii) will help alleviate instances of the disproportionality, discrimination and subjectivity prohibited under the EA and the RAA;
- (iii) help avoid unnecessary costs which are ultimately imposed on BELCO’s retail customers (as more burdensome obligations increase costs of regulatory process and this will result in significant upward per capita impact on each customer’s bill);
- (iv) will avoid repeated modification. BELCO does not think the licence is “an ever-changing document” and instead should change as little as possible as investors rely on this document (and especially given the need for investment to maintain TD&R system and bulk generation to ensure security of electricity supply in Bermuda). If the licence were to change, this will lead to uncertainty, costs of capital will increase and thus customer bills will increase;
- (v) Section 26 of EA sets out only seven conditions that may be included in licences generally – and additional conditions can only be included with the consent of the Minister. Furthermore, under section 50 of the RAA, licence conditions must be “objective, proportionate, not unreasonably discriminatory and specified expressly in the authorization”. BELCO say the Authority has included a number of conditions which need not appear;
- (vi) will not provide the Authority with room to exercise its powers effectively and efficiently (as the Authority will be constrained by specific mandates enshrined in licences).

Authority’s Response: It is usual for energy industries in multiple jurisdictions to be regulated by Government policy and legislation. An act of Parliament/statute enacted by a national parliament covers major legislative items, e.g. establishing independent regulators, the granting of licences by such regulators in accordance with the provisions of the relevant legislation and providing regulators with powers and the ability to take enforcement actions. The electricity licences will contain those conditions that they are required to contain under legislation and will provide the detail and granularity by which the regulator will regulate industry players consistent with the general principles etc. set out in the legislation. Orders and regulations (e.g. general determinations and administrative determinations in the case of Bermuda) set out the means for meeting the requirements set out in legislation. It is important that there is a seamless “connection” between the enabling legislation, the electricity licences and any regulations, orders, and determinations in order to facilitate and ensure clarity and certainty as this will lead to the correct conditions for investment and, ultimately, lower the cost of regulation which then gets passed through to electricity consumers.

Most importantly where a regulator is acting independent of political or other third party interference, the regulator often has powers to make subordinate regulations that are required to clarify conditions and allow regulation to transform alongside the market. The idea that all conditions should be specified in such circumstances is incorrect. The market will obtain necessary protection and predictability through the modification process and the fact all such supplemental sub- conditions or rules must align with the legislative principles / legislation.

Furthermore, a shorter licence with less conditions and obligations will not be clearer and more certain than a licence with the full and necessary range of licence conditions, which specifically sets out exactly how the relevant sectoral participant in Bermuda will be regulated with references back to the enabling legislation and relevant regulations/administrative and general determinations. This will lead to more certainty and, ultimately, lower cost of capital. This is the approach the Authority has taken. Indeed, Section 26 of the EA sets out specific conditions that the electricity licences must include. Section 26(3) of the EA provides for additional conditions to be included if the Minister consents to their inclusion – the Authority will be seeking the Minister’s approval of all conditions not specified in Section 26 of the EA. Section 26(4) provides that any condition imposed by the Authority must be objective, proportionate and not unreasonably discriminatory – the provisions of this Licence are objective, proportionate and not unreasonably discriminatory given BELCO’s monopoly position as the only electricity supplier in Bermuda.

With regards to modifications to the licences, Section 29 of the EA entitles the Authority to modify licences of its own motion. The Authority has a duty under Section 14 of the EA to monitor and regulate the electricity sector and in so doing, has the ability under Section 29 to modify electricity licences. The Authority is constrained by the requirements of the EA and principles of administrative law. As such, the Authority will only be able to modify licences consistent with the EA and RAA.

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

The Regulatory Authority of Bermuda ("**Authority**"), in exercise of the authority conferred by the Electricity Act 2016 ("**EA**"), and Bermuda Electric Light Company Limited ("**BELCO**") having fulfilled the criteria set out in Section 23 of the EA, hereby grants to BELCO ("**Licensee**"), a licence ("**this Licence**") to transmit, distribute and retail electricity within the territorial limits of Bermuda subject to the terms of this Licence, the EA, the Regulatory Authority Act 2011 ("**RAA**") and any Regulations, General Determinations, Adjudicative Decisions, Orders and Directions made or issued in accordance with these Acts.

1 DEFINITIONS

In this Licence, unless the context otherwise requires:

"Affiliate" means in relation to the Licensee means any entity that the Licensee directly or indirectly Controls, is Controlled by, or is under common Control with another legal person.

"Auditors" means the Licensee's auditors for the time being holding office in accordance with the requirements of the Companies Act 1981.

"Authority" means the Regulatory Authority of Bermuda.

"Bulk Generation" means as defined in the EA.

"Bulk Generation Licence" means a licence granted by the Authority under the EA in respect of Bulk Generation.

"Bulk Generation Licensee" means any person who is granted a Bulk Generation Licence by the Authority.

"Central Dispatch" means the process of scheduling and issuing direct instructions for the dispatch of available Generation Units by the Licensee for the Grid System and which shall comply with the requirements of Section 20(3)(c) of the EA.

"Commencement Date" means the date on which this Licence is issued by the Authority.

"Condition" a condition of this Licence [including any Transitional Conditions set forth in the Annex [] to this Licence].

"Control" means:

- (a) the power, whether held directly 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 per cent or more of the shares, stock or other securities or voting rights, including through an agreement or arrangement of any type,

and **"Controlled"** shall be construed accordingly.

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

"Dispatch Instructions" means the operating instructions of the Licensee to Bulk Generation Licensees in respect of their Generation Units and which shall comply with the requirements of Section 20(3)(c) of the EA.

"Disposal" includes any sale, gift, lease, licence, mortgage, charge or the grant of any encumbrance or any other disposition to a third party and **"Dispose"** shall be construed accordingly.

"Distributed Generator" means as defined in the EA.

"Distribution Business" means the business of the Licensee in or ancillary to the transport of electricity through the Licensee's Distribution System and shall include (i) any business in providing connections to the Licensee's Distribution System; (ii) operations; (iii) management; and (iv) investment, but shall not include any other business of the Licensee.

"Distribution System" means the system of medium and low voltage electric lines and electrical plant and meters owned by the Licensee and used for conveying electricity without the use of the Transmission System.

"End-User(s)" means as defined in the EA.

"Feed-in Tariff" means as defined in the EA.

"Financial year" means the period from 1 January to 31 December in any calendar year during the term of this Licence and the first financial year shall be the period from the Commencement Date until the succeeding 31 December and the last financial year shall be the period from 1 January until the date on which this Licence is revoked or terminated in accordance with its terms.

BELCO: BELCO has suggested the above change.

Authority's response: This is fine. The Authority has replicated this amendment across all three licences.

"Generation Business" means the authorised business of the Bulk Generation Licensee relating to the Bulk Generation of electricity in Bermuda pursuant to its Bulk Generation Licence.

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

"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.

"Grid Code" means a code developed by the Licensee with the approval of the Authority as more particularly described in the EA and pursuant to the terms of this Licence.

"Grid Connection Policy" means the policy referred to in Condition 20.

"Grid System" means (i) the Transmission System; and (ii) the Distribution System of the Licensee.

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

"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 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.

"Integrated Resource Plan" or "IRP" means the document to be developed and provided by the Licensee and approved by the Authority in accordance with Sections 40 to 45 of the EA.

"Interim Grid Code" means the grid code referred to in Condition 22.2 of this Licence which contains existing codes, standards and practices governing the Grid System.

"Law" means the laws of Bermuda.

BELCO: BELCO stated that "provision of law", "Law" and "law" are used interchangeably and suggested all be replaced with "provision of law".

Authority's Response: The Authority has changed all references to "provision of law" and "law" to "Law".

"Large Scale Self Supply Licence" means a licence granted under Sections 20 and 25 of the EA.

"Large Scale Self Supply Licensee" means any person that is granted a Large Scale Self Supply Licence by the Authority.

"Licence" means this Transmission, Distribution and Retail Licence granted to the Licensee by the Authority pursuant to the provisions of the EA and any Schedules and Annexes thereto.

"Licensee" means BELCO, a company established in 1904, the governing acts of which were most recently consolidated in the Bermuda Electric Light Company Act 1951 and whose registered office is at 27 Serpentine Road, Pembroke HM 07, Bermuda.

"Merit Order" means an order for ranking available Generation Units as shall be prescribed in the Grid Code and which order shall have as its aim the promotion of Renewable Energy and the optimising of the economy, security, stability and reliability of the Grid System of Bermuda and shall take fully into account cost considerations, and such order shall comply with the requirements of section 20(3) of the EA.

BELCO: BELCO assert this definition is not correct as the primary factor in determining merit order is least cost. Any other order will, among other outcomes, raise rates. If the Minister wishes to subsidize renewable resources as a matter of policy, he or she has the power to do so, but such a "trade-off" decision cannot be made by the Authority through a licensing condition but by Ministerial directions (see Sections 9 of EA and 40(2)(b) of the EA). Given the impact on costs and reliability, BELCO disagrees with this definition, as it requires across the board prioritization of renewable resources in the absence of a Ministerial direction pursuant to Section 9 of the EA. In any event, the substance of what should be the merit order for dispatch is beyond the licensing function, and should properly be determined by BELCO in the Grid Code required under the EA.

Authority's Response: The Minister needs to provide consent to the Conditions set out in this Licence. If the Minister grants his consent, Ministerial directions will be issued to this effect.

"Minister" means the Minister responsible for energy in Bermuda (currently the Minister of Economic Development for Bermuda).

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

"Natural Disaster Contingency Fund" means a sinking fund collected from End-Users, of an amount to be determined by the Authority to be used by the Licensee to effect repairs to the Grid System following the occurrence of any natural disaster in Bermuda.

"Net Benefit Test" means a test to uniformly evaluate (i) proposed third party investments; and (ii) investments by the Licensee's Generation Business in new generation in Bermuda as more particularly described in [Annex [] to this Licence].

"Notice" means (unless otherwise specified) notice given in accordance with Condition 37 of this Licence.

"Output" means the electricity generated at the generation facilities of any Bulk Generation Licensee and delivered to the Grid System.

"Power Purchase Agreement" means an agreement between the Licensee and a Bulk Generation Licensee in accordance with Section 48 of the EA for the sale and purchase of the whole or any part of the available capacity of the generation facilities of such Bulk Generation Licensee and/or the sale and purchase of the whole or any part of the Output by the Licensee from such Bulk Generation Licensee.

BELCO: BELCO say this condition is unclear and confusing.

Authority's Response: The Authority believes that this definition, when read in conjunction with Section 48 of the EA, is sufficiently clear. Section 48 of the EA provides that a Power Purchase Agreement is an agreement between the TD&R Licensee and a third party for bulk generation or aggregation of demand side resources that (a) establishes the terms and conditions on which the TD&R Licensee must purchase power from the third party (b) requires compliance with the grid code and (c) is conditional upon the approval of the Authority and the grant of a Bulk Generation Licence. Section 48(3) sets out those circumstances when the Authority will approve a Power Purchase Agreement.

"Protected Information" means any personal data identified in accordance with Section 39 of the EA, any other applicable Law and any General Determinations made pursuant to Section 39 of the EA.

"Regulatory Authority Fees" means the fees established to fund the operation of the Authority under Section 44 of the RAA and payable by the Licensee to the Authority under Condition 5 of this Licence.

"Relevant Asset" means any asset which is necessary to enable the Licensee to comply with its obligations under the EA, RAA and this Licence and including those assets which form part of the Licensee's Grid System including any interest in land upon which such asset is situated and which has a value in excess of 1 % of the accounting value of any property, plant and equipment (as applicable).

BELCO: BELCO say this is so broadly defined that it does not make sense.

Authority's Response: See the Authority's response at Condition 15.4 where there would be a threshold for pre-notification of intent to dispose of assets.

"Renewable Energy" means any naturally occurring source of energy that is not derived from fossil or nuclear fuel and is not depleted when used and shall include energy from wind, solar, geothermal, hydrothermal and ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas and biogases .

"Representation" includes any objection or other proposal made in writing.

"Retail Business" means the business of the Licensee as electricity supplier in Bermuda but excluding any activities forming part of (i) the Transmission and Distribution Business and (ii) the Bulk Generation Business and, for the avoidance of doubt, shall include, amongst other things, the following activities (i) invoicing End-Users; (ii) protecting the rights of End-Users; and (iii) safeguarding Protected Information.

"Retail Tariff" means the tariff at which the Licensee sells electricity to its End-Users, as determined by the Authority in accordance with the methodology set by General Determination made by the Authority under Section 35 of EA and in accordance with the principles set out in Section 35 of the EA.

"Scheduling System" means a system prepared by the Licensee for, amongst other things, identifying the economic cost of electricity from Generation Units which are connected to the Grid System and which are available for the purposes of establishing a Merit Order and which shall comply with the requirements of Section 20(3)(c) of the EA.

"Sectoral Participants" has the meaning set out in the RAA.

"Sectoral Providers" has the meaning set out in the RAA.

"Service Agreement" means an agreement as more particularly described in Condition 29.3.

"Separate Business" means each of the Generation Business, and the TD&R Business of the Licensee taken separately from one another and from any other business of the Licensee or any Affiliate or related undertaking of the Licensee (including the Controlling Interest Holder of the Licensee) and **"Separate Businesses"** shall be construed accordingly.

"Standard Contract" means as defined in the EA.

"Transmission and Distribution Business" means the Transmission Business and the Distribution Business of the Licensee taken together.

"TD&R Business" means the Transmission and Distribution Business of the Licensee and the Retail Business of the Licensee all taken together.

"Transmission Business" means the business of the Licensee in or ancillary to the planning and development, and the construction and maintenance, of the Licensee's Transmission System, including providing connections to the Licensee's Transmission System but shall not include any other business of the Licensee.

"Transmission System" means the system of high voltage electric lines and electrical plant and meters owned by the Licensee and used for conveying electricity from a generating station to a sub-station, from one sub-station to another and from one generating station to another.

"Year" means a period of 12 months commencing on 1 January.

2 INTERPRETATION

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 the Interpretation Act 1951;
- (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 take precedence over the provisions of the RAA pursuant to Section 3(3) of the EA;
- (c) references to Conditions and Annexes are to Conditions and Annexes of this Licence, as modified from time to time in accordance with this 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.

3 SCOPE OF THE LICENCE

- 3.1 This Licence grants the Licensee the right to transmit, distribute and retail electricity within Bermuda and to purchase or acquire electricity from Bulk Generation Licensees and Distributed Generators, including the right to engage in any other activities which directly support, and which are necessary as regards, its right to transmit, distribute and retail electricity within Bermuda.

BELCO: BELCO say this should include the word “exclusive” as Section 20(2) of the EA states that the Authority shall grant only one TD&R Licence.

Authority’s Response: The granting of one TD&R licence in Bermuda (pursuant to Section 20(2) of the EA) does not mean the same thing as the Authority granting an exclusive TD&R licence to BELCO. If BELCO had exclusivity in its TD&R Licence, BELCO could argue that only it, and not the Minister would be

able to operate a TD&R business in Bermuda e.g. in a situation where BELCO became insolvent and the Minister may be required to step-in.

- 3.2 This Licence does not grant the Licensee the right to engage in any other activities in the electricity sector in Bermuda without first obtaining the approval of the Authority in writing in respect of any such additional activities.

BELCO: BELCO say this imposes a positive obligation on BELCO to obtain the approval of the Authority for any additional activities in which it may wish to engage irrespective of whether the Authority regulates such activities. BELCO say this provision should state that the licence “does not authorise the Licensee to engage in any other activity that requires Authority approval pursuant to a provision of law.”

Authority’s Response: . This conditions ensures that BELCO does not engage in any other activities in the electricity sector without first obtaining the Authority’s approval.

- 3.3 Nothing in this Licence shall relieve the Licensee of the obligations to comply with any other requirement imposed by Law or practice to obtain any additional consents, permissions, authorisations, licences or permits as may be necessary to exercise the Licensee's right to discharge its obligations under the Licence.

BELCO: BELCO say the meaning of the word “practice” is unclear.

Authority’s Response: In English law, terms can be implied into a contract according to the custom/practice of the market in which the contracting parties are operating. If a custom/practice is generally accepted by those who habitually do business in the trade or market concerned, the courts can hold that this was an implied term of the contract.

- 3.4 Following a written request by the Licensee, the Authority shall be entitled to issue instructions relieving the Licensee of its obligations to comply with any provisions of this Licence to such extent as may be specified in the Authority’s instructions.

4 TERM OF THE LICENCE

- 4.1 This Licence shall be valid from the Commencement Date and shall continue in full force and effect until [insert date falling 30 years from Commencement Date] unless revoked in accordance with Condition 9 of this Licence or surrendered in accordance with Condition 10 of this Licence. In the event of revocation by the Authority, this may apply with immediate effect (subject to rights of appeal), or, on any notice period the Authority may specify. In the event of surrender, the Authority may require a period of up to 5 years’ notice of the surrender taking effect.

BELCO: BELCO say Section 28 (1) of the EA states the licence should be for the term stated in the licence which term shall not exceed 30 years.

Authority’s Response: Given that this is a statutory requirement, the Authority has inserted a 30 year expiry date into Clause 4.1.

- 4.2 A decision by the Authority to revoke this Licence shall be appealable pursuant to Section 33 of the EA.

BELCO: BELCO say this provision appears to deviate from what is contemplated in the EA and should be rewritten. BELCO say it appears that the Authority could terminate the Licence for no reason at any time, which is unacceptable. BELCO say it is not aware of any licence in the international arena with such a provision – and given the long-term investments involved, there should be an automatic or streamlined renewal process. The provision should also provide for BELCO’s compensation for its assets.

Authority’s Response:

- (a) This provision does not deviate from what is contemplated in the EA. Under this provision, the Licence continues for the term unless revoked in accordance with Sections 31 and 53 of the EA (Suspension or revocation of licences) and Section 51 of the RAA; suspended in accordance with Sections 31 and 53 of EA and Section 51 of the RAA; and revoked if BELCO goes insolvent – these are specific events. See below for details on these provisions. If BELCO wants to voluntarily surrender the TD&R Licence the Authority will want to have 5 years notice of such surrender by BELCO in order to be able to put alternative arrangements in place to ensure the continued provision of electricity to customers in Bermuda.**
- (b) Under Sections 31 and 53 of the EA:**
 - (1) Authority can revoke licence – (i) if licence expires and no renewal; (ii) following adjudicative decision and order by Authority and after revocation is either confirmed on appeal in Supreme Court or time for filing notice of appeal has expired. Under Section 51 of the RAA, the Authority can issue a decision to revoke a licence where licenceholder makes false statements; commits fraud; makes misrepresentation in the application for licence; failed to comply with requirements in RAA and EA, Ministers regulations, administrative determinations made by Authority; fails to comply with terms of licence; fails to pay authorization fees, regulatory fees or other required payment; any other circumstances provided for under EA; and any case in which licenceholder has breached licence condition. Before Authority issues decision to revoke licence it must (1) provide notice to BELCO setting out the action it proposes to take, the basis on which it proposes to take action, the timeframe within which BELCO can submit written comments regarding Authority’s proposed action and the actions that BELCO must take to avoid revocation and the timeframe in which it must take such actions. The Authority must specify the date on which revocation shall occur which must be at least 10 days after effective date of adjudicative decision and order; (2) have conducted an investigation under section 89 of the RAA (see Section 84(2) of RAA); (3) determined that it is appropriate to initiate enforcement action under section 93 of RAA instead of referring the matter to the Director of Public Prosecutions; and (4) conducted enforcement proceedings under section 93 of RAA.**

- (2) Authority can suspend licence (in whole or part) upon an adjudicative decision and order suspending a licence on the basis that the licensee is in breach of its obligations under the licence and the breach is such that suspension is justified and the suspension is confirmed on appeal in Supreme Court or time for filing notice of appeal has expired. Under Section 51 of the RAA, the Authority can issue a decision to suspend a licence where licence holder makes false statements; commits fraud; makes misrepresentation in the application for licence; failed to comply with requirements in RAA and EA, Ministers regulations, administrative determinations made by Authority; fails to comply with terms of licence; fails to pay authorization fees, regulatory fees or other required payment; any other circumstances provided for under EA; and any case in which licence holder has breached licence condition. Before Authority issues decision to suspend licence it must (1) provide notice to BELCO setting out the action it proposes to take, the basis on which it proposes to take action, the timeframe within which BELCO can submit written comments regarding Authority's proposed action and the actions that BELCO must take to avoid suspension and the timeframe in which it must take such actions; (2) have conducted an investigation under section 89 of the RAA (see Section 84(2) of RAA); (3) determined that it is appropriate to initiate enforcement action under section 93 of RAA instead of referring the matter to the Director of Public Prosecutions; and (4) conducted enforcement proceedings under section 93 of RAA.
- (3) In any enforcement proceedings, the Authority may take enforcement action that it is entitled to under Section 93(5) of RAA (i.e. issue warning, direct licenceholder to take such actions as may be necessary to remedy the violation, impose financial penalties in accordance with Section 94 of RAA, require licenceholder to make restitution to person directly injured as a result of contravention or issue a decision and order modifying, suspending or revoking licence); OR accept an undertaking in lieu of taking enforcement action (see Section 53(3) of EA).
- (4) Therefore, those circumstances in which the Authority can suspend and revoke a licence are specifically set out (see Section 51 of the RAA). It is also important to note that the Authority will also be constrained by the principles of administrative law and grounds for judicial review when making any decisions.

BELCO: BELCO says that there ought to be an automatic or streamlined renewal process and that provision should also provide for BELCO to be compensated for its assets.

Authority's Response: Section 28(2) of the EA provides that, unless provision to the contrary is made in the licence, a licence may be renewed. Therefore, the EA does not contemplate any automatic right of renewal.

PART II - CONDITIONS

5 FEES AND PENALTIES

- 5.1 The Licensee shall pay to the Authority 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.
- 5.2 The Licensee shall pay to the Authority such Regulatory Authority Fees as may be prescribed pursuant to Section 44 of the RAA.
- 5.3 The Licensee shall pay to the Authority any penalties that may be imposed on the Licensee by the Authority in accordance with Section 26(1)(a) of EA and Section 94 of the RAA.
- 5.4 The Licensee shall be liable in accordance with Section 57 of the EA for failure to pay the fees set out in paragraphs 5.1 and 5.2 of this Condition 5.
- 5.5 The Licensee shall be liable in accordance with Section 60 of the EA for failure to comply with this Licence.

6 COMPLIANCE

- 6.1 The Licensee shall comply with:
 - (a) the terms of this Licence, including any Annexes to this Licence;
 - (b) the terms of any associated licences, authorisations and permits issued to the Licensee;
 - (c) any regulations issued by the Minister in accordance with Section 54 of the EA;
 - (d) any Ministerial directions issued by the Minister pursuant to the EA;
 - (e) any General Determinations made by the Authority pursuant to the EA and the RAA;
 - (f) any Administrative Determinations made by the Authority pursuant to the EA and the RAA;
 - (g) the EA;
 - (h) the RAA; and
 - (i) any other applicable Law, enactment, determination, regulation or order in effect in Bermuda to which the Licensee is subject.
- 6.2 Where there is an irreconcilable conflict between any applicable Law, regulation, 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, General or other Administrative Determinations made by the Authority, and this Licence.

BELCO: BELCO says that there is no basis in law upon which the Licence can impose a requirement that the Licensee comply with a policy. Licensees become bound by policy when such policies are made the subject of binding provisions of law.

Authority's Response: The Authority has removed this requirement.

7 INFORMATION, AUDITS AND INSPECTION

- 7.1 The Licensee shall, in accordance with Section 26(1)(f), the provisions of Part 8 of the RAA and any General Determination by the Authority, furnish to the Authority, in such manner and at such reasonable times as the Authority may reasonably require, such Information relating to the electricity sector including any Information reasonably required by the Authority in order for it to comply with its obligations under Section 52 of the EA.

BELCO: BELCO wants the Authority to require only material Information and to set out a materiality threshold.

Authority's Response: The materiality threshold is set out in Section 91 of the RAA (the Authority can issue order requiring person to furnish such information that Authority can "reasonably require").

- 7.2 Subject to the provisions of Part 8 of the RAA and any applicable General Determination by the Authority, the Licensee shall permit the Authority or persons designated by the Authority, to examine, investigate or audit, or procure such assistance as the Authority may reasonably require to conduct an examination, investigation or audit of, any aspect of the Licensee's TD&R Business.
- 7.3 Subject to the provisions of Section 92 of the RAA and any applicable General Determination by the Authority, the Licensee shall permit the Authority or persons designated by the Authority to enter the Licensee's premises, and shall facilitate reasonable access by the Authority or such persons to the premises used by the Licensee, to conduct an inspection, examination, investigation or audit of the Licensee.
- 7.4 The Licensee shall notify the Authority 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.

BELCO: BELCO argues that the Authority does not need this provision given Condition 35.2 of the Licence (which provides for BELCO to notify the Authority of (i) any fact or event likely to affect *materially* the Licensee's ability to comply with any licence condition, or (ii) an insolvency related fact or (iii) Insolvency Event of BELCO/Affiliate, or (iv) any preparatory steps taken that might lead to an Insolvency Event). BELCO believes that it is unnecessary that the Licence include multiple provisions that the Licensee should notify the Authority of a material breach or any event affecting its ability to perform its licensed operations. Beyond a reasonable reporting requirement of major activities with material impacts, this and similar reporting obligations are disproportionate and have an adverse upward impact on BELCO's cost of serving its customers and thus shall increase such customers' retail rates.

Authority's Response: It is imperative that the Authority has a specific requirement that BELCO informs the Authority as soon as possible upon becoming aware that it is in a position in which it may potentially breach any Condition, especially if an insolvency event becomes possible, in order for the Authority to fulfil its duties properly and in a timely manner.

- 7.5 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.

8 MODIFICATION OF THE LICENCE

- 8.1 This Licence may be modified:
- (a) by the Authority 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 Authority pursuant to Section 29 of the EA and Section 51 of the RAA;
 - (c) by the Authority following an enforcement proceeding, pursuant to the provisions of Section 93 of the RAA; or
 - (d) by the Authority following any change of Control of the Licensee's Generation Business and/or its TD&R Business pursuant to the operation of Sections 30(3), 21 and 22 of the EA.

9 ENFORCEMENT, SUSPENSION AND REVOCATION

- 9.1 The Authority may initiate enforcement proceedings pursuant to Section 53 of the EA and Section 93 of the RAA.
- 9.2 The Authority 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 any Insolvency Event affecting the Licensee.
- 9.3 The Authority shall be entitled to suspend this Licence in accordance with Sections 31 and 53 of the EA and Section 51 of the RAA. The Authority may, in its sole discretion, lift an on-going suspension and re-instate the Licence.
- 9.4 In the event of any revocation of this Licence in accordance with Condition 9 of this Licence and/or any surrender of this Licence by the Licensee pursuant to Condition 10 of this Licence, the Licensee shall without delay provide all reasonable assistance and take all reasonable steps and co-operate fully with any new provider of transmission, distribution and retail electricity services in Bermuda to transfer its assets to such new provider as notified to the Licensee by the Authority so that there is the minimum of disruption and so as to prevent or mitigate any inconvenience or risk to the health or safety of End-Users, Sectoral Providers, Sectoral Participants and all members of the public.

BELCO: See our note at Condition 4 above. BELCO say Condition 9.4 appears to contemplate a transfer of assets without compensation which is unacceptable – as this would place severe strains on BELCO in any attempts to obtain financing on reasonable terms and conditions, and represents a disincentive to investors. BELCO say, at a minimum, any forced seizure of assets requires just compensation.

Authority's Response: This condition and obligation is consistent with the Authority's responsibilities under the EA, particularly Section 6.

10 DISCONTINUANCE OF SERVICE, SURRENDER OF LICENCE

Unless the Authority agrees otherwise, the Licensee shall not be entitled to surrender this Licence.

11 ACCOUNTING REQUIREMENTS

- 11.1 The purpose of this Condition is to ensure that the Licensee (and any Affiliate or related undertaking of the Licensee including the Controlling Interest Holder) maintains accounting and reporting arrangements which enable separate accounts to be prepared for each Separate Business and which show the financial affairs of each such Separate Business.

BELCO:

- (1)** agrees that accounting separation is appropriate, (subject to BELCO's comments as explained below), but say this will take time to achieve. BELCO argues that prior to the imposition of this licence condition, a process needs to be established to obtain agreement on cost allocations and transfer pricing. BELCO cannot comply with any accounting requirements without first obtaining agreement with the Authority on a separation methodology. BELCO therefore proposes that transitional provisions should be added indicating that accounting separation will be required after the Authority approves such an accounting separation methodology;
- (2)** further responds that the Authority intends to, "develop cost accounting guidelines for BELCO's licensed entities" but this is impossible as BELCO does not and will not have multiple licensed entities. BELCO is but a single legal entity. BELCO's Bulk Generation Business and TD&R Business will not be operated by separate subsidiaries of BELCO or otherwise (as this will lead to increased costs). Whilst BELCO agrees that it will need to alter the way it prepares financial statements (as it understands the need for increased transparency and delineation between its TD&R Business and its Bulk Generation Business) BELCO says it is impractical to expect it to produce separate audited financial statements for its Bulk Generation Business and its TD&R Business because these businesses will not be operated by separate subsidiaries. BELCO says functional disaggregation and accounting and reporting obligations should not be so burdensome as to unnecessarily increase BELCO's operating costs which will ultimately be borne by BELCO's customers. BELCO believes that separate financial statements for Separate Businesses (as defined

in the Licence) will substantially increase costs to BELCO's customers (and therefore disagrees with Condition 11.3 below). BELCO says it currently prepares audited annual financial statements in accordance with International Financial Reporting Standards ("IFRS"). Expenses are tracked by separate cost elements which are aggregated into four separate cost centers – (i) grid operations, (ii) power generation, (iii) occupational health and safety, and (iv) corporate. Financial statements are only prepared on a consolidated basis, and there are no internal transfer revenue mechanisms between power generation and TD&R. In addition, BELCO's corporate and financial structure (i.e. capital structure, borrowings, credit rating plans, dividends) are based on the entire entity,

- (3) says it is prepared to develop segment reporting of its accounts consistent with the requirements under IFRS (as this will be more efficient and cost effective to provide enhanced segment disclosures as opposed to multiple, separate, time consuming and costly financial statements).

Authority's Response:

In relation to:

(1) above, the Authority has added an Annex entitled "Transitional Conditions" (see below at Annex 1). BELCO may suggest what other provisions they think ought to be Transitional Conditions and details regarding these.

(2) above, Separate Business is defined as each of the Generation Business and TD&R Business of the Licensee taken separately from one and other and from any other business of the Licensee/its Affiliates/its Controlling Interest Holder. Generation Business is the Bulk Generation business of BELCO/i.e. anything that relates to BELCO's bulk generation of electricity in Bermuda. TD&R Business means BELCO's business in relation to the planning, development, construction and maintenance of its transmission system; the transport of electricity through its distribution system including providing connections, operations, management and investment in relation to its distribution business; and the business of BELCO as electricity supplier in Bermuda. These definitions do not envisage separate corporate entities. BELCO as a single corporate entity will have two licences – a Bulk Generation Licence (in respect of its generation activities) and a TD&R Licence (in respect of its transportation, distribution and supply of electricity) (see Section 20 of the EA). There will need to be a way of BELCO delineating costs, revenues, expenses etc. between these separate functions (of Bulk Generation and TD&R).

(3) above, the Authority does not agree that segment reporting of BELCO's accounts consistent with the requirements under IFRS alone will suffice. It appears that BELCO is also proposing to provide disclosure of its management accounts which are unaudited. If BELCO was to provide both of the above (IFRS segment reporting and management accounts) this may be sufficient but this will depend on

the granularity with which management accounts are reported and this leaves a lot of discretion with BELCO. The Authority is of the view that some kind of external scrutiny over BELCO's accounts by requiring auditors to give an opinion on the accuracy of the accounts of BELCO Generation Business and BELCO TD&R Business will be more appropriate.

- 11.2 The Licensee shall in respect of each of its Generation Business and TD&R Business maintain appropriate management accounts and/or operating accounts that will enable the Authority to assess the Licensee's financial standing, performance and transparency across its business units.

BELCO: BELCO proposes that in addition to segment reporting, BELCO's annual financial statements could also include an appendix which would provide additional management account details. While these additional reporting requirements would be on an unaudited basis, BELCO's auditors could review the appendix for consistency with the audited financial statements.

Authority's Response: See the Authority's response above at Condition 11.1.

- 11.3 Annually, the Licensee shall in respect of each of its Generation Business and TD&R Business, prepare from such accounting records:
- (a) accounting statements comprising a profit and loss and other comprehensive income statement, a statement of financial position, a statement of changes in equity and a cash flow statement, together with notes thereto, and showing separately in respect of each of the Generation Business and the TD&R Business details of the amounts of any revenue, cost, asset, liability, reserve or provision, which has been either:
 - (i) received by each of the Generation Business and TD&R Business from any other business (whether or not a Separate Business and including from the Controlling Interest Holder) together with a description of the basis of such revenue, cost or liability received;
 - (ii) charged from each of the Generation Business and TD&R Business to any other business (whether or not a Separate Business and including to the Controlling Interest Holder) together with a description of the basis of that charge; or
 - (iii) determined by apportionment or allocation between each of the Generation Business and the TD&R Business and any other business (whether or not a Separate Business and including the Controlling Interest Holder) together with a description of the basis of the apportionment or allocation; and
 - (b) each financial year, sufficient accounting information in respect of each of the Licensee's Generation Business and TD&R Business to allow for reconciliation against the licensee's consolidated financial statements.

BELCO: BELCO says it currently procures corporate services through a shared service model with its parent company. Specifically, BELCO's IT, HR,

Finance and Legal functions are provided by the staff of its parent company based on annual estimated time allocations determined during the budgeting process. The estimated time allocation will change annually depending upon the anticipated workload, which has increased significantly as a result of the increased regulatory requirements, and will also increase in the event of any significant investment. BELCO say it is willing to work with the Authority to establish a set of cost allocation and internal transfer pricing criteria (within BELCO and with respect to shared services provided by affiliates) which would allow it to provide appropriate reporting in sufficient detail to allow the Authority to discharge its responsibilities.

Authority's Response: The Authority must have rights to approve this shared services agreement and require BELCO to terminate it if it or any related party is failing to perform in accordance with the Licence and any Law. The Authority will want to ensure that the drivers of costs are clearly identified and allocation methodologies are consistently applied. The Authority welcomes BELCO's willingness to work with the Authority to establish a set of cost allocation and internal transfer pricing criteria - though, it must be clear that the Authority will need to approve the basis on which costs are allocated.

- 11.4 The Licensee shall procure, in respect of the accounting statements prepared in accordance with this Condition, a report by the Auditors addressed to the Authority stating whether in their opinion those statements have been properly prepared in accordance with this Condition and give a true and fair view of the revenues, costs, assets, liabilities, reserves and provisions of, or reasonably attributable to, the Separate Business to which the statements relate.

BELCO: BELCO proposes that the Auditor's report be limited to its IFRS audit of BELCO's financial statements inclusive of segment reporting and disclosures.

Authority's Response: See the Authority's response at Condition 11.1.

- 11.5 The Licensee shall deliver to the Authority a copy of the Auditors' report referred to in paragraph 11.4 and the accounting statements referred to in paragraph 11.3(a) as soon as reasonably practicable.
- 11.6 The Licensee shall not in relation to the accounting statements in respect of a financial year change the bases of charge, apportionment or allocation referred to in paragraph 11.3(a) from those applied in respect of the previous financial year, unless the Authority has previously issued instructions for the purposes of this Condition instructing the Licensee to change such bases in a manner set out in the instructions or the Authority gives its prior written approval to the change in such bases. The Licensee shall comply with any instructions issued for the purposes of this Condition. If the Licensee changes the bases of charge, apportionment or allocation from those adopted for the immediately preceding financial year, it shall show a reconciliation of the revised and prior-year methodologies.

BELCO: BELCO argues that this Condition is impractical as allocations to and from BELCO are a function of the business circumstances which may change each year. For instance, a new or amplified regulatory obligation or a major capital expansion program will require additional time and resources from corporate functions (currently embedded in the shared services arrangement

within the group of which BELCO is a part) and engineering services (from BELCO's affiliates). BELCO says whilst it supports the need for increased transparency, it remains concerned about the timeliness and basis of any review by the Authority and the potential impact on BELCO's ability to implement its obligations under the Licence. Furthermore, BELCO notes that International Accounting Standard 8 contemplates that changes in accounting estimates resulting from new information or new developments are ongoing and acceptable.

Authority's Response: These Conditions require cost allocation policies including cost drivers for attribution of common costs to be fully explained to the Authority. These cost drivers should be consistently applied over time to prevent 'gaming' or artificial transfer of profits between segments in regulatory reporting. The Authority agrees that changes in company expansion could affect the distribution of reported costs between divisions if e.g. a cost driver like 'employee time spent by activity' is used to allocate costs. This Condition requires that if employee time / any other cost is adopted for attribution purposes, this should be applied consistently. In addition, this Condition does not preclude the possibility of cost drivers being adapted and changed over time in line with new developments. The Condition requires that changes in cost allocation methodologies are reported in advance to the Authority so that there are no arbitrary or hidden changes in cost allocation methodologies over time.

- 11.7 Accounting statements in respect of a financial year prepared under paragraph 11.3(a) shall, so far as reasonably practicable, and unless otherwise approved by the Authority having regard to the purposes of this Condition:
- (a) have the same content and format (in relation to each of the Generation Business and the TD&R Business of the Licensee) as the annual accounts of the Licensee (and the Controlling Interest Holder) prepared under the Law and conform to the best commercial accounting practices and to the accounting standards or such other standards as may be notified to the Licensee by the Authority from time to time; and
 - (b) be published with the Licensee's consolidated financial statements.

BELCO: BELCO states that annual accounts are able to be waived pursuant to Section 88(1) of the Companies Act 1981.

Authority's Response: The Authority requires, at a minimum, audited group accounts and management accounts with a right to require that these be verified if they are not fully transparent.

- 11.8 References in this Condition to costs or liabilities of, or reasonably attributable to, any Separate Business shall be construed as excluding taxation, capital liabilities which do not relate principally to a particular Separate Business and interest thereon; and references to any accounting statement shall be construed accordingly.
- 11.9 Without prejudice to any other paragraph of this Condition, and subject to the Authority giving reasonable notice to the Licensee, the Licensee shall, on request by the Authority, give to the Authority with a reasonable time of such request by the Authority

access to the Licensee's accounting records, policies and statements referred to in this Condition.

BELCO: BELCO wants this Condition to be amended to reflect that BELCO will be provided with reasonable notice periods and response times.

Authority's Response: The Authority has included this wording.

12 AVAILABILITY OF RESOURCES

12.1 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 TD&R Business; and
- (b) comply with its obligations under this Licence and the EA.

12.2 The Licensee shall submit a certificate addressed to the Authority, 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 on [•] 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 Separate Businesses 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 TD&R 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 TD&R 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 TD&R Business for a period of 12 months from the date of this certificate."

BELCO: BELCO says that this condition is not listed in Section 26 –and so it is an additional condition which will require the Minister's consent. In any event, any condition imposed by the Authority must be objective, proportionate (defined in RAA as no more than reasonably necessary to achieve a given regulatory objective, taking into account the relative cost of compliance and the ultimate benefit to consumers) and not unreasonably discriminatory. BELCO argues that in any event, under Section 54 of the Companies Act 1981,

Directors shall not declare or pay a dividend or make a distribution out of contributed surplus if there are reasonable grounds for believing that the company would not meet the solvency test set out therein. In addition, because the Licensee's rates are regulated by the Authority, the Authority will always have the power through that mechanism to ensure that ratepayers are not paying more for services than appropriate.

Authority's Response: this Condition is proportionate and not unreasonably discriminatory given BELCO's position of monopoly electricity supplier in Bermuda. Accordingly, the Authority will want to ensure BELCO has the technical and financial resources to undertake its licensed activities. This requirement by the Authority goes beyond simply meeting a mere solvency test. Furthermore, these obligations enable the Authority to comply with its duties under Section 14 of the EA to monitor and regulate the electricity sector; and Section 15 of the EA, which provides that in performing its functions the Authority must have due regard to the purposes set out in Section 6 of the EA (which includes the Authority ensuring there is reliability of electricity supply).

- 12.3 The Licensee shall submit to the Authority together with the certificate referred to in paragraph 12.2 of this Condition a statement of the main factors which the directors of the Licensee have taken into account in giving that certificate.
- 12.4 The Licensee shall inform the Authority in writing immediately if the directors of the Licensee become aware of any circumstances which cause them no longer to have the reasonable expectation expressed in the most recent certificate given under paragraph 12.2.
- 12.5 The Licensee shall use its best endeavours to obtain and submit to the Authority with each certificate provided for in paragraph 12.2 a report prepared by its Auditors and addressed to the Authority 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.

BELCO: BELCO argues that the requirement for an auditor to submit a report with each certificate will require due diligence and analysis separate from the annual audit process. This will entail additional cost and time and is an unnecessary regulatory cost burden (especially given that the annual audit already includes information from the auditor with respect to BELCO as a going concern) – and this regulatory cost burden will ultimately be borne by BELCO's customers (increasing rates).

Authority's Response: The Authority may accept a single group certificate, given BELCO has to disclose material points. It should be noted that this is consistent with the Authority's position on Condition 7.4.

- 12.6 The Licensee shall procure from the Controlling Interest Holder a legally enforceable undertaking in favour of the Licensee (in a form specified by the Authority) 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.

12.7 The Licensee shall:

- (a) deliver to the Authority evidence (including a copy of such undertaking) that the Licensee has complied with the obligation to procure an undertaking pursuant to paragraph 12.6; and
- (b) inform the Authority 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.

BELCO: BELCO says it cannot comply with this Condition and contends that it is not proportionate and is discriminatory – on the basis that BELCO a legal person in its own right, cannot control the whims of any other legal person which determines its own actions. BELCO say the request for a Controlling Interest Holder legal guarantee with respect to the Licensee’s obligations under the Licence is disproportionate when there are simpler more objective measures available to mitigate financial risk to the Licensee.

Authority’s Response: This cannot be discriminatory – there is no comparable entity as BELCO is a monopoly. Further BELCO is managed and operated by the Controlling Interest Holder and, accordingly, the Authority needs such provision..

13 PROHIBITION OF CROSS-SUBSIDIES

13.1 The Licensee shall procure that no Separate Businesses of the Licensee:

- (a) gives any direct or indirect cross-subsidy to the Licensee; and
- (b) receives any direct or indirect cross-subsidy from the Licensee.

13.2 The Licensee shall procure that it shall not give any cross-subsidy to or receive any cross subsidy from the Controlling Interest Holder.

BELCO: BELCO says that until cost allocation methodologies are agreed upon, certain costs may be deemed cross-subsidies under the shared service arrangement of which BELCO is a part. Furthermore, BELCO believes that the shared services arrangement provides a cost-saving benefit for its customers as its functional staff would likely be unchanged in size if they were dedicated BELCO employees yet a portion of their time is allocated to BELCO’s parent and affiliates. Furthermore, as workloads significantly increased with respect to regulatory requirements and capital planning in 2016, BELCO’s parent essentially provided cross subsidies to BELCO as it maintained its fixed charge methodology based on its annual budget. Given these realities, BELCO looks forward to working with the Authority to minimize such subsidies.

Authority’s Response: There is no evidence to support the cost saving position proposed by Belco and, also, a lack of past transparency, which needs to be addressed. However, the Authority has inserted a reference back to this Condition in the Transitional Provisions (see Annex below) which facilitates transitional arrangements until the Authority approves an accounting separation methodology in relation to BELCO’s business.

14 SERVICE STANDARDS & PERFORMANCE STANDARDS

BELCO: BELCO says this Condition seeks to circumvent the general determination process by including non-licence issues in the Licence. BELCO says the issue of service standards and performance standards is an important one which needs to be addressed. It should, however, be addressed through a separate general determination accompanied by proper and thorough public consultation. The text of a licence should contain as a condition the duty of the licensee to comply with all such general determinations, as provided in Section 26(1)(c) of the EA – but the details and content of these separate general determinations are not themselves licensing conditions, and that this public consultation cannot substitute for the thorough, public and expert vetting that each of these general determinations needs going forward.

Authority's Response: The Authority agrees that the details and content of the applicable service standards should be set out following public consultation on the relevant General Determinations. Condition 14.2 is necessary to ensure the reporting of those service standards (which are set by General Determination).

- 14.1 The Licensee shall comply with any applicable service standards including standards relating to power reliability, power quality and customer service standards set out in any General Determinations made pursuant to Section 34 of the EA.
- 14.2 The Licensee shall report to the Authority in accordance with the provisions of any General Determination regarding the same but in any event provide:
- (a) details on an annual basis as to which service standards and performance standards it has complied with and which standards it has failed to meet; and
 - (b) where service and performance standards have not been met, details regarding any interventions made to rectify such service and performance deficiencies during the last year.

BELCO: BELCO says that the language in Condition 14.2 is unclear as it requires BELCO to report “details regarding any intervention made to rectify any service deficiencies.” This language could mean any voltage fluctuation or a regulator occurrence which has no material impact on customers. As such, the Condition as written is unachievable, discriminatory, disproportionate, and the burden of attempting to comply would require the expenditure of resources resulting in unnecessary costs to customers (increasing rates). It also represents micromanagement of the business of the Licensee not within the scope of the Authority. There should instead be a simple, global requirement for the Licensee to report all events – whether a violation of a standard, code or Licence provision – that have a material impact on the Licensee's ability to perform the licensed activity. In the absence of such requirement, the Authority should seek to obtain information about any macro performance indicators which would indicate systemic issues to avoid becoming inundated with excessive amounts of useless information.

Authority's Response: Please see the Authority's changes to Condition 14.2. Service standards and objectives will be agreed over time and there are also existing legal expectations that BELCO will perform at a fair level. Accordingly,

the Authority has inserted a provision dealing with service standards in the Transitional Conditions at Annex 1 (see below).

- 14.3 In addition, within 60 days of the end of each financial year, the Licensee shall submit to the Authority a report setting out those matters referred to in paragraph 14.2 above in respect of the previous financial year. The Licensee shall, if required by the Authority, publish a summary of the report in a manner approved by the Authority.
- 14.4 The Licensee shall operate the Grid System in accordance with the provisions of Section 20(3) of the EA and applicable standards as set forth in the Grid Code, relevant codes of practice and General Determinations.
- 14.5 If the Licensee fails to meet its required service standards as set forth in this Licence, the Grid Code, codes of practice or General Determinations, the Licensee shall forthwith discuss with the Authority the reasons for any non-compliance and the steps that the Licensee intends to take in order to remedy such non-compliance.
- 14.6 The Authority shall give the Licensee reasonable time to implement the remedial measures notified by the Licensee to the Authority pursuant to paragraph 14.5 of this Condition 14.
- 14.7 If after the Licensee has been given a reasonable opportunity by the Authority to implement the steps it has outlined to the Authority under paragraphs 14.5 and 14.6, the Licensee still fails to meet its required service standards, the Authority shall be entitled to:
- (a) impose a financial penalty as determined by the Authority 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 Authority to its End-Users in respect of its failure to comply with its required service standards pursuant to the terms of this Licence.

BELCO: BELCO says penalties of any type are set out in provisions of law and/or administrative determinations. BELCO is unaware of legal authority for Condition 14.7(b), in particular, and disagrees with any penal obligation outside the law.

Authority's Response: Section 26(1)(a) of the EA entitles the Authority to include, as a condition of any licence, a requirement that the licences pay any penalties that may be imposed by the Authority. See also Section 95 of the RAA which provides that upon finding that a sectoral provider has contravened the RAA, the EA, any regulations, any administrative determinations (which definition includes general determinations) or any condition contained in any licence, the Authority may impose a penalty of up to 10% of total annual turnover.

- 14.8 The Authority shall review the service standards referred to in this Condition 14 which the Licensee is required to comply with when conducting any tariff review pursuant to Section 37 of the EA.

BELCO: BELCO says this is not a licensing condition - but rather, a statement as to tariff methodology and should not be included in this Licence but in a general determination under Section 35 of the EA.

Authority's Response: This should appear in both the Licence and the General Determination. The Licence must contain such provision to allow the Authority to perform its duties in accordance with the Law.

- 14.9 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.

BELCO: In the consultation, consultees were asked their views on what system reliability standards ought to be imposed on BELCO, and why? Furthermore, (i) are current levels of system reliability acceptable for Bermuda's electricity users and (ii) apart from system reliability standards, what other service performance standards ought to be imposed on BELCO and why? BELCO responded that this ought to be addressed as a part of the public consultation for the General Determination regarding service standards pursuant to Condition 34 of the EA – as currently, the public has no information on which to offer educated comments. BELCO recommends as an efficient process for such a separate consultation that BELCO identify to the Authority by a reasonable time what its current standards are and what it recommends as modifications or additions to the same.

Authority's Response: The purpose of this question was to field initial views from the industry.

15 DISPOSAL OF RELEVANT ASSETS

- 15.1 Subject to Condition 15.4, the Licensee shall obtain the prior written consent of the Authority in order to Dispose of any Relevant Asset and/or to create security over any Relevant Asset and/or to relinquish control over any Relevant Asset, such consent shall not be unreasonably withheld.
- 15.2 Subject to the provisions of any applicable General Determination, the Licensee shall give to the Authority not less than 2 months' prior written notice of its intention to create any security or effect a Disposal of or relinquish control over any Relevant Asset, together with such reasonable further information as the Authority may request relating to such asset or the circumstances of such intended Disposal or relinquishment of control or to the intentions.
- 15.3 Notwithstanding paragraphs 15.1 and 15.2, the Licensee may effect a Disposal of or relinquish operational control over any Relevant Asset where:
- (a) the Authority has issued instructions for the purposes of this Condition containing a general consent (whether or not subject to conditions) to:
 - (i) transactions of a specified description; and/or
 - (ii) the Disposal of or relinquishment of operational control over Relevant Asset(s) of a specified description; and

- (b) the Disposal or relinquishment of operational control in question is effected pursuant to a transaction of a description specified in the instructions or the Relevant Asset in question is of a description so specified and the Disposal or relinquishment of operational control is in accordance with any conditions to which the consent is subject.

15.4 Notwithstanding paragraph 15.1, the Licensee may Dispose of or relinquish operational control over any Relevant Asset specified in any notice given under paragraph 15.2 in circumstances where:

- (a) the Authority confirms in writing that it consents to such Disposal or relinquishment (which consent may be made subject to the acceptance by the Licensee or any third party in favour of whom the Relevant Asset is proposed to be Disposed or operational control is proposed to be relinquished of such conditions as the Authority may specify); or
- (b) the Authority does not inform the Licensee in writing of any objection to such Disposal or relinquishment of control within the notice period referred to in paragraph 15.1 (subject to the provisions of any General Determination).

BELCO: (i) BELCO does not disagree with the concept of regulatory review of the disposal of the Licensee's assets critical to performing licensed operations. It makes sense to provide notice to the Authority where it is intended to dispose of assets critical to the Licensee's operations (for example, in the case of planned decommissioning). As written, however, this Condition contemplates that BELCO will notify the Authority when it intends to dispose of any assets and given that "Relevant Asset" is defined so broadly (i.e. any asset necessary to enable BELCO to comply with its licence obligations) that it is almost nonsensical. Surely, the Authority did not intend that BELCO is to report when it intends to dispose of a ballpoint pen; (ii) BELCO argue that aside from simply being an unachievable and disproportionate obligation, this Condition constitutes discriminatory micromanagement of the business of the Licensee which is inappropriate and not within the scope of the Authority's mandate. Further, the Licensee's attempt to comply with this burden would result in delay and would require additional reporting and administrative processing resources (all of which would result in the imposition of unnecessary costs on BELCO's customers by increasing their rates); and (iii) if a condition regarding disposal of assets is retained, BELCO recommends that the Condition adopt language used in other jurisdictions to establish a materiality threshold and require reporting of disposal above a certain dollar value (for example \$2 million) or a certain percentage of the then current net value of the property, plant and equipment of the Licensee and employed by the Licensee in the operation of the TD&R system. Alternatively, the term "necessary" could be changed to "critical", to clarify that regulatory reporting and/or approval is only required for disposal of major assets that materially affect the Licensee's ability to perform.

Authority's Response:

In relation to:

(i) – this point lacks rationale and relevance – a ballpoint pen is not a necessary asset so as to enable BELCO to comply with its licensed conditions; and

(ii) and (iii) above, the Authority agree it would be acceptable to determine a threshold for pre-notification of intent to dispose of assets – e.g. a threshold could be expressed as 1 % of the accounting value of property, plant and equipment. Accordingly, the Authority has amended the definition of Relevant Asset to reflect this.

BELCO: BELCO also notes that it is necessary to provide a different definition of the word “Control” in the context of this Condition, as the definition provided in Part I, Section 1 makes the intention of this Condition unclear.

Authority’s Response: See amendment of “Control” to “control”.

16 RESTRICTION ON USE OF CERTAIN INFORMATION

16.1 The Licensee shall procure that the Licensee shall not obtain any unfair competitive advantage from the Licensee's possession of Protected Information.

16.2 The Licensee shall implement such measures and procedures and take all such other steps as required by Law and any General Determination in accordance with Section 39 of the EA.

BELCO: BELCO say this is an attempt to circumvent the process which would best enable the public to comment upon the best means by which information should be protected – i.e. by way of a public consultation in connection with a general determination.

Authority’s Response: The Authority disagrees that this is a circumvention of a related General Determination. This Condition obliges the Licensee to comply with the requirements of; (i) any related General Determination, and (ii) applicable law, and is necessary.

16.3 The Licensee shall:

- (a) procure and furnish to the Authority, in such manner and at such times as the Authority may require, such Information as the Authority may consider necessary concerning the performance by the Licensee of its obligations under paragraphs 16.1 and 16.2; and
- (b) procure that access to any premises of the Licensee shall be given at any time and from time to time to any nominated person(s) for the purpose of investigating whether the Licensee has performed its obligations under paragraphs 16.1 and 16.2.

16.4 This Condition is without prejudice to the duties at Law of the Licensee towards outside persons.

16.5 Where the Licensee receives Protected Information in its capacity as the Licensee it shall take all reasonable precautions against the risk of failure to restrict the use of that information to the sole purpose it was originally provided. For the avoidance of

doubt the Licensee shall procure that any person, who works for both the Licensee's TD&R Business and the Licensee's Generation Business, shall not disclose any Protected Information it receives in its capacity as employee, agent, and consultant of the Licensee's TD&R Business to the Licensee's Generation Business.

BELCO: BELCO says this condition is particularly unworkable, as it creates a nonsense. BELCO is one legal entity, and many of the individuals who are involved in its TD&R Business will also be involved in its Bulk Generation Business. BELCO uses shared services, and given these realities, it will, therefore, be impossible to restrict the sharing of information among the various personnel involved in BELCO's business generally and any efforts to do otherwise will lead to unnecessary cost and expense for customers (increasing rates). The Authority has informed BELCO that it is interested in accounting separation, rather than physical separation, and if the Authority's aim is improved transparency, this provision is not proportionate to that aim.

Authority's Response: The provision should recognise that some individuals will act for more than one internal BELCO business but in all circumstances Protected Information can only be used for the purpose it has been provided – and, if used beyond this, BELCO can be fined as specified by the Authority.

17 NATIONAL DISASTER CONTINGENCY FUND

The Licensee shall, from the revenues paid to it pursuant to Condition 26 of this Licence set up a Natural Disaster Contingency Fund in an amount to be determined by the Authority and which must be available at any time during the term of this Licence such fund to be provided for as part of the design of the tariff methodology set by General Determination pursuant to Section 35(1) of the EA.

BELCO: BELCO says this Condition is not a licensing function and ought properly to be included in the general determination contemplated by Section 35 of the EA.

Authority's Response: The Authority has duties under Section 14 of the EA, to monitor and regulate the electricity sector, and Section 15 of the EA, which provides that in performing its functions the Authority must have due regard to the purposes set out in Section 6 of the EA (which includes Authority ensuring there is reliability of electricity supply and so this sort of fund is necessary).

BELCO: BELCO is assuming that the cost of the National Disaster Contingency Fund contemplated under Condition 17 of the Draft Licence (the "Fund") will be flowed through to customers as a component of rates.

Authority's Response: The Authority may assess a range of cost recovery options, prior to any decision on the same..

18 BASIS OF CHARGES FOR CONNECTION TO GRID SYSTEM

Preparation of statements on basis of charging for connection to Licensee's Grid System

- 18.1 The Licensee shall within six months from the Commencement Date prepare a statement, approved by the Authority, setting out the basis upon which charges will

be made for connection to the Licensee's Grid System. Such statement shall be in such form and will contain such detail as shall be necessary to enable any person to make a reasonable estimate of the charges, to which it would become liable, for connection to the Licensee's Grid System and shall include the information set out in Condition 18.2 below.

18.2 Except to the extent that the Authority shall otherwise specify, the statement referred to in paragraph 18.1 shall include:

- (a) a schedule listing those items (including the carrying out of works and the provision and installation of electric lines or electrical plant or meters) of significant cost liable to be required for the purpose of connection (at entry or exit points) to the Licensee's Grid System for which connection charges may be made or levied and including (where practicable) indicative charges for each such item and (in other cases) an explanation of the methods by which and the principles on which such charges will be calculated;
- (b) the methods by which and the principles on which any charges will be made in respect of extension or reinforcement of the Licensee's Grid System rendered necessary or appropriate by virtue of providing connection to any person seeking connection;
- (c) the methods by which and the principles on which connection charges will be made in circumstances where the electric lines or electrical plant to be installed are of greater size or capacity than that required by the person seeking connection;
- (d) the methods by which and the principles on which any charges (including any capitalised charge) will be made for maintenance and repair required of electric lines, electrical plant or meters provided and installed for making a connection to the Licensee's Grid System;
- (e) the methods by which and the principles on which any charges will be made for the provision of special metering or telemetry or data processing equipment by the Licensee for the purposes of enabling any person which is bound to comply with the Grid Code to comply with its obligations in respect of metering thereunder, or for the performance by the Licensee of any service in relation thereto;
- (f) the methods by which and principles on which any charges will be made for disconnection from the Licensee's Grid System and the removal of electrical plant, electric lines and ancillary meters following disconnection.; and
- (g) such other matters as shall be specified in instructions issued by the Authority from time to time for the purposes of this Condition.

18.3 Connection charges for those items referred to in paragraph 18.2 shall be set at a level which will enable the Licensee to recover:

- (a) the appropriate proportion of the costs directly or indirectly incurred in carrying out any works, the extension or reinforcement of the Licensee's system and the provision and installation, maintenance and repair and,

following disconnection, removal of any electric lines, electrical plant, meters, special metering, telemetry, data processing equipment or other items; and

- (b) a reasonable rate of return on the capital represented by such costs.

BELCO: BELCO says the inclusion of this Condition is inappropriate and not proportionate. The EA contemplates that a Grid Code is to be developed by the TD&R Licensee and approved by the Authority. While BELCO looks forward to working with the Authority to devise a workable Grid Code, as the sole TD&R licensee in Bermuda, BELCO should be given the opportunity to opine on its contents. This Condition attempts to prevent BELCO's participation in and to circumvent the legislatively-determined process. It is therefore ultra vires to the EA and should not be included in the Licence.

Authority's Response: Indeed the EA contemplates that a Grid Code will be developed. However, it will be important that IPPs know the basis/principles upon which BELCO will calculate connection charges to connect their plant to the Transmission and Distribution System. Reference to those basic principles is included in the licence as a framework within which a Grid Code will be developed.

19 NON-DISCRIMINATION REGARDING CONNECTION TO THE GRID SYSTEM

In the carrying out of works for the purpose of connection to the Grid System, the Licensee shall not unduly discriminate, as between:

- (a) any persons or class or classes of persons; or
- (b) the Licensee (in the provision of connections by the Licensee as part of the TD&R Business) and any person or any class or classes of persons; or
- (c) the Licensee's TD&R Business and the Licensee's Generation Business,

except insofar as any difference in the amounts charged, or any other terms or conditions of such provision or carrying out of works, reflects to the satisfaction of the Authority, the difference between the costs of such provision to one person or class of persons or other circumstances of carrying out such connection to one person or class of persons.

20 REQUIREMENT TO OFFER TERMS

Offer of terms for Connection

- 20.1 The Licensee shall, within twelve months from the grant of this Licence, prepare and submit its Grid Connection Policy in accordance with the requirements of this Condition 20 to the Authority for approval by the Authority. Upon approval by the Authority of such Grid Connection Policy, the Licensee shall implement and comply with such policy.
- 20.2 From the Commencement Date until the Authority's approval pursuant to paragraph 20.1 of this Condition 20, the Grid Connection Policy shall be the Bermuda Electric Light Company Limited Service Rules which existed and which the Licensee maintained immediately prior to the Commencement Date. Within 30

days from the Commencement Date, the Licensee shall submit such existing Grid Connection policy to the Authority.

20.3 The Grid Connection policy to be submitted by the Licensee pursuant to paragraph 20.1 shall:

- (a) include conditions in accordance with Section 47(3)(a) of the EA;
- (b) take account of Section 47(3)(b) and (c) of the EA;
- (c) comply with the Grid Code;
- (d) comply with any code of practice issued by the Authority;
- (e) set out in detail the terms on which access to the Grid System will be provided to Distributed Generators;
- (f) set out in detail the basis on which the Licensee shall offer to enter into agreements for connection to its Grid System with any person requesting connection; and
- (g) set out (in detail) the information to be provided by the Licensee by those persons seeking connection.

20.4 For the purpose of determining an appropriate proportion of the costs directly or indirectly incurred in carrying out works under an agreement for making a connection or modification to an existing connection in accordance with Condition 18.3 of this Licence, the Licensee shall have regard to:

- (a) the benefit (if any) to be obtained or likely in the future to be obtained by the Licensee or any other person as a result of the carrying out of such works (or of such other matters) whether by reason of the reinforcement or extension of the Licensee's Grid System or the provision of additional entry or exit points on such system or otherwise; and
- (b) the ability or likely future ability of the Licensee to recoup a proportion of such costs from third parties.

20.5 The Licensee shall not be obliged pursuant to this Condition to offer to enter or to enter into any connection agreement if to do so would involve the Licensee breaching Condition 6.1 of this Licence.

BELCO: BELCO repeats the comments made in respect of Condition 18 and also notes that the requirement that BELCO submit a Grid Connection Policy as an interim measure is burdensome and unnecessary. BELCO says it is unclear why it is not required to comply with the measures currently in place until the Grid Code is drafted and approved (the Interim Grid Code).

Authority's Response: BELCO does not want to (1) prepare a statement on the basis of charging for connection to its Grid System and does not want the Licence to set out principles regarding the preparation of such statement (Condition 18); (2) prepare a Grid Connection Policy and principles regarding preparation of such Grid Connection Policy (Condition 20). It also asserts that

preparation of an interim Grid Connection Policy is burdensome, given that the final policy will take effect in 1 year in any case. The Authority's position is that the Licence must specify principles by which these documents will be drafted / developed by the Licensee. Any interim arrangements/ interim grid connection policy might simply be a reference to BELCO's current policy in the Transitional Conditions at Annex 1.

21 FUNCTIONS OF THE AUTHORITY

- 21.1 If, after a period which appears to the Authority to be reasonable for the purpose, the Licensee has failed to enter into an agreement with any person entitled or claiming to be entitled thereto pursuant to a request for connection to the Licensee's Grid System, the Authority may, on the application of that person or the Licensee, and in accordance with the provisions of Sections 57 and 58 of the RAA, settle any terms of the agreement in dispute between the Licensee and that person in such manner as appears to the Authority to be reasonable having (insofar as relevant) regard in particular that such person should pay to the Licensee, the whole or an appropriate proportion (as determined in accordance with Conditions 18.3 and 20.4).
- 21.2 If either party to an agreement for connection to the Licensee's Grid System proposes to vary the contractual terms of such agreement in any manner provided for under such agreement, the Authority may, at the request of the Licensee or other party to such agreement, settle any dispute relating to such variation in accordance with the provisions of Sections 57 and 58 of the RAA.

BELCO: BELCO states that this Condition currently provides for dispute resolution per Sections 57 and 58 of the RAA. Again, this is a provision that is not a licence condition but simply recites existing law and which can and should be omitted in favour of a global condition that the Licensee must comply with applicable provisions of law.

Authority's Response: Please see our comments at the end of the Table of Contents of the Licence - it is important that there is a seamless "connection" between the enabling legislation, the electricity licences and any regulations, orders, determinations in order to facilitate clarity and certainty of regulation as this will encourage investment and ultimately lower the cost of regulation which then gets passed through to electricity consumers.

22 GRID CODE

- 22.1 The Licensee shall within twelve months of the grant of this Licence, in consultation with Sectoral Participants and Sectoral Providers liable to be materially affected thereby, prepare and submit to the Authority for its approval a Grid Code.
- 22.2 From the Commencement Date the Authority's approval of the Grid Code, pursuant to Condition 22.1 the Licensee shall adhere to the standards which the Licensee applied immediately prior to the Commencement Date ("**the Interim Grid Code**"). Within [] days from the Commencement Date, the Licensee shall submit such Interim Grid Code to the Authority.
- 22.3 Upon approval by the Authority of the Grid Code, the Licensee shall implement and comply with such Grid Code.

22.4 The Grid Code shall:

- (a) cover all material technical aspects relating to connections to and the operation and use of the Grid System or (insofar as relevant to the operation and use of the Grid System) the operation of electric lines and electrical plant connected to the Grid System;
- (b) contain rules and procedures governing generation dispatch and maintenance scheduling, taking into consideration various operating considerations, including but not limited to least cost, planned generator maintenance, operating reserves (both on-peak and off-peak) and subject to the terms and conditions of executed Power Purchase Agreements; and
- (c) contain rules and procedures that provide for the safe and reliable operation of the Grid System including the conditions under which the Licensee shall operate the Grid System and under which Bulk Generation Licensees shall operate their licensed generating plant under both normal and abnormal operating conditions; and
- (d) be designed so as:
 - (i) in relation to the Licensee's Grid System:
 - (A) to ensure that all Bermuda residents are provided with access to a supply of electricity pursuant to Section 20(3) of the EA;
 - (B) to provide for optimal supply, transmission, distribution and storage of electricity that are planned, organised and implemented in accordance with the Integrated Resource Plan, a balanced consideration of security of supply, consumer protection and sustainable development pursuant to Section 20(3) of the EA;
 - (C) to give effect to the purposes of the EA as set out in Section 6 of the EA; and
 - (D) comply with any Administrative Determination by the Authority pursuant to Section 14 of the EA.

BELCO: BELCO does not want to draft the interim Grid Code – it says this is onerous if the final Grid Code will take effect in 1 year in any event. BELCO says the Licence should not set out principles by which the Grid Code should be developed.

Authority's Response: The Licence must contain the principles by which the Grid Code is developed by the Licensee. As regards any interim Grid Code, this could simply be reference to BELCO's current arrangements under the Transitional Conditions prior to agreement of the final Grid Code in 12 months' time.

22.5 Within two years from the grant of this Licence and thereafter, every five years or less as determined by the Authority, (including upon the request of the Authority), the Licensee shall (in consultation with Sectoral Participants and Sectoral Providers

liable to be materially affected thereby) periodically review the Grid Code and its implementation. Following any such review, the Licensee shall send to the Authority:

- (a) a report on the outcome of such review;
- (b) any proposed revisions to the Grid Code from time to time as the Licensee (having regard to the outcome of such review) reasonably thinks fit for the achievement of the objectives referred to in paragraph 22.4(d); and
- (c) any written representations or objections from any Sectoral Participants and Sectoral Providers (including any proposals by such persons for revisions to the Grid Code not accepted by the Licensee in the course of the review) arising during the consultation process and subsequently maintained.

BELCO: BELCO says this is overly complicated.

- 22.6 Revisions to the Grid Code proposed by the Licensee and sent to the Authority pursuant to paragraph 22.5 shall require to be approved by the Authority. Any revisions to the Grid Code proposed by the Licensee shall be filed by the Licensee with the Authority and the Authority shall respond within 90 days of the date of filing by the Licensee.
- 22.7 Having regard to any written representations or objections referred to in paragraph 22.5(c), and following such further consultation (if any) as the Authority may consider appropriate, the Authority may issue instructions requiring the Licensee to revise the Grid Code in such manner as may be specified in the instructions, and the Licensee shall forthwith comply with any such instructions.
- 22.8 The Authority shall be entitled, in order to implement the requisite arrangements referred to in Condition 22.4(d) to issue instructions to the Licensee requiring the Licensee to revise the Grid Code in such manner and with effect from such date as may be specified in the instructions, and the Licensee shall comply with any such instructions.
- 22.9 The Licensee shall give or send a copy of the Grid Code to the Authority and the Minister.
- 22.10 The Licensee shall give or send a copy of the Grid Code to any person requesting the same and shall be entitled to charge such persons a price not exceeding the reasonable cost of duplicating the Grid Code.
- 22.11 The Licensee shall publish a redacted version of the Grid Code on its website in order to provide sufficient information so as to allow Distributed Generators to connect to the Grid System.
- 22.12 In preparing, implementing and complying with the Grid Code (including in respect of the scheduling of maintenance of the Grid System and any generation set or associated power station equipment or combination of generation sets or associated power station equipment) the Licensee shall not :
 - (a) unduly discriminate against or in favour of any person or class or classes of persons;

- (b) unduly prefer the Licensee in the conduct of its Generation Business; or
- (c) restrict or prevent competition in generation.

22.13 The Licensee shall keep and maintain such records concerning its implementation of and compliance with the Grid Code as are in accordance with such guidelines as the Authority shall from time to time have given to the Licensee and are, in the opinion of the Authority, sufficient to enable the Authority to assess whether the Licensee is complying with its obligations under this Condition.

BELCO: BELCO say this amounts to micromanagement of their business.

Authority's Response: This Condition is necessary for the Authority to fulfil its responsibilities under the EA.

22.14 The Authority may from time to time (following consultation with the Licensee and Sectoral Participants and Sectoral Providers) issue instructions relieving the Licensee of its obligations to implement or comply with, or to enforce against any other person any provision of, the Grid Code in respect of such parts of the Licensee's Grid System to such extent as may be specified in the instructions.

BELCO: BELCO repeats its comments at Condition 18 above. BELCO says Condition 22 should consist of one provision as part of a global compliance obligation i.e. BELCO must comply with the Grid Code. The details and contents of the Grid Code are not licensing functions, but should be established by BELCO and approved by the Authority (as required by the EA).

Authority's Response: See the Authority's comments at Condition 18 above in relation to BELCO's comments i.e. the Licence should set out those basic principles / i.e. as a framework within which a Grid Code will be developed.

BELCO: BELCO further argues that the Authority should avoid including in the Licence so much specificity that compliance becomes impossible. They cite, as an example, the Condition provides that the Grid Code must provide for optimal supply, transmission, distribution and storage planned, organised and implemented in accordance with the Integrated Resource Plan (the "IRP"). The Grid Code is required within 12 months from grant of licence yet the EA does not require the Authority to request the IRP from BELCO for up to two years from commencement date of EA.

Authority's Response: While the drafting of exact specifications of the Grid Code would be facilitated by knowledge of IRP scenarios, the Grid Code can still be drafted at the level of access and charging principles / methodologies without specifying the exact nodes and types of energy mix. Therefore, whilst an IRP would be useful, the agreement of a Grid Code is not constrained by the lack of an agreed IRP.

23 OBLIGATIONS REGARDING INTEGRATED RESOURCE PLAN AND PROCUREMENT OF NEW GENERATION

23.1 The Licensee shall comply with Sections 40 to 45 of the EA as regards the Integrated Resource Plan proposal and the Integrated Resource Plan.

- 23.2 The Authority shall be entitled to require the Licensee to clarify any matters set out in the Integrated Resource Plan proposal submitted by the Licensee to the Authority pursuant to Section 41 of the EA and the Licensee shall provide any such Information to the Authority within a reasonable timescale having regard to the complexity of the request.
- 23.3 Following approval of the final draft Integrated Resource Plan by the Authority in accordance with Section 44(2) of the EA, where the Licensee requires to procure new generation capacity in accordance with such approved Integrated Resource Plan, the Licensee shall:
- (a) notify the Authority of the size and timing of such future additional generation requirements;
 - (b) solicit bids from its Generation Business and other prospective generators and demand side resource providers in respect of such required additional generation capacity;
 - (c) following receipt of bids under (b) above, conduct a detailed evaluation and assessment of all bids received under (b) above in accordance with the Net Benefit Test; and
 - (d) following its assessment and evaluation under (c) above, submit a report to the Authority which contains (i) detailed information on what bids were received and the proposed costs submitted by each bidder; (ii) a detailed assessment of each bid as against the Net Benefit Test including with reasoned analysis and conclusions and (iii) the Licensee's recommendation on which bidder should be chosen as the successful bidder.
- 23.4 If at any time from the Commencement Date, the Authority becomes aware of any circumstances such that it reasonably believes that the Licensee has not procured sufficient future generation or that the Licensee's approach is not in the public interest, then the Authority shall be entitled to issue instructions obliging the Licensee to procure additional generation at the Licensee's cost (as specified in such instructions) and, if applicable, any IRP approved by the Authority pursuant to Section 44 of the EA shall be amended under Section 46 of the EA.

BELCO: BELCO says that Condition 23 is inconsistent with the IRP process set forth in Part 8 of the EA and goes further than the EA provisions (e.g. introduction of Net Benefit Test etc.). BELCO say the Authority should refrain from attempting to augment the legislation by including in the Licence conditions which ought not to be so included – and therefore Conditions 23.2 and 23.3 should be removed.

Authority's Response: The Authority does not agree that Condition 23 is inconsistent with the IRP process as Condition 23.1 makes a direct reference back to the IRP process set out in Sections 40 to 45 of the EA. As regards "augmenting legislation" by the inclusion of Conditions 23.2 to 23.4, see the Authority's comments at the end of the Table of Contents of the Licence. The Authority has amended Condition 23.4 to provide clarity as to where the obligation lies for procuring additional generating capacity.

BELCO: The Authority asked consultees their views on how BELCO should tender for new generation capacity. BELCO responded that the EA sets out a process for obtaining new capacity to which BELCO and the Authority must adhere – again see the Authority’s comments at end of Table of Contents of this Licence. BELCO says that under the IRP process, BELCO would not always tender for new generation capacity, and BELCO must always maintain adequate resources to meet its obligations as the provider of last resort.

Authority’s Response: There must a uniform test to evaluate the costs of BELCO providing new generation capacity as against some other third party providing new generation capacity and this must be specified and clear within the Licence.

BELCO: BELCO further states that if the Authority is seeking input to comply with its duty under Section 40(4) or the EA (administrative determination establishing competitive bidding procedures where BELCO/TD&R Licensee indicates whether any resources will be procured through competitive bidding), then the Authority must comply with the EA and the RAA and hold a separate public consultation as to the content of that determination with adequate notice and information to allow for meaningful public input.

Authority’s Response: This is accepted. The purpose of the question regarding tendering for new generation capacity in the Consultation was to field initial views from consultees.

24 OBLIGATION TO ENTER INTO POWER PURCHASE AGREEMENTS

- 24.1 The Licensee shall enter into an Authority approved Power Purchase Agreement with a Bulk Generation Licensee for which the payments shall be passed through to End-Users pursuant to the Retail Tariff set in accordance with Section 35 of the EA.
- 24.2 The Licensee shall ensure that the terms of any power purchase arrangements that will apply between its Generation Business and its TD&R Business are substantially similar to the terms of its Power Purchase Agreements that will be applied with other Bulk Generation Licensees.

BELCO: BELCO says Condition 24.2 appears to contemplate the entry into a PPA by BELCO with BELCO – and as a matter of law, it is impossible to contract with one’s self. Furthermore, BELCO has no power to ensure anything with respect to the terms of PPAs with third parties because Condition 24.1 requires BELCO to enter into PPAs approved by the Authority. A condition cannot be included in a licence where compliance by the Licensee is a practical or legal impossibility.

Authority’s Response: The Authority has amended the wording in Condition 24.2 to address this. The Authority is ensuring that the power purchase arrangements in place between BELCO TD&R and BELCO Generation business mirror the Authority approved PPAs between BELCO TD&R and IPPs/third party bulk generators..

25 OBLIGATION TO ENTER INTO STANDARD CONTRACTS WITH DISTRIBUTED GENERATORS

- 25.1 The Licensee shall enter into a Standard Contract with a Distributed Generator in accordance with Sections 49 and 50 of the EA. Any Standard Contract shall comply with the Standard Contract template set by Administrative Determination by the Authority pursuant to Section 49 of the EA.

BELCO: The Authority asked what provisions should be set out in Standard Contracts between BELCO and distributed generators as part of the Consultation Document (Section 5)– to which BELCO responded that this should be a separate consultation after a proposal has been circulated upon which the public can comment, pursuant to the Section 49 of the EA.

Authority's Response: The Authority agrees – the purpose of including the question in the Consultation Document was to field any initial views.

26 RETAIL TARIFF & RESTRICTION ON LICENSEE'S REVENUE

- 26.1 The Licensee shall sell electricity to its End-Users at the Retail Tariff.

BELCO: BELCO says the definition for Retail Tariff is unclearly expanded upon and that a full stop be inserted and the sentence end after the words "Retail Tariff" (as the same is already clearly defined in Part I, Section 1).

Authority's Response: While the Authority believes the drafting is sufficiently clear, it has amended Condition 26.1 and the definition of Retail Tariff.

- 26.2 The Retail Tariff methodology shall include the establishment of a Natural Disaster Contingency Fund.

BELCO: The Authority asked consultees their views on what methodology the Authority use to calculate the retail tariff and the feed in tariff. BELCO responded that this is a matter for a separate General Determination under the EA (which requires a separate public consultation).

Authority's Response: The Authority agrees – the insertion of this question was intended to field initial views from consultees. BELCO explained that benchmarking will only be a useful tool *if* relevant comparative jurisdictions can be found – and this will be difficult given the size and isolation of the Bermuda system and the need to maintain a First World quality of supply given the nature of Bermuda's economy. In any event, the touchstone for ratemaking, as provided in the EA, remains actual cost of service, including legacy costs and required investment to maintain services. Benchmarking, incentives, and other alternate ratemaking approaches always require, at the core, recognition of the actual cost of serving customers.

- 26.3 The Licensee shall be entitled to pass through the charges set out in Section 35(3) of the EA ("the Pass-through Charges").
- 26.4 These Pass-through Charges will be shown as separate items on consumer bills (as permitted in accordance with the EA and the RAA).

- 26.5 If the Licensee persistently fails to comply with the service standards required pursuant to this Licence and/or fails to procure required additional generation capacity in accordance with the Integrated Resources Plan and Condition 23 of this Licence, the Authority shall be entitled to require that the revenues payable to the Licensee pursuant to this Condition 26 of this Licence shall be retained by [the Licensee].

BELCO: BELCO argues (1) Condition 26.5 is unclear, as it appears to be incomplete. For instance, it does not specify the party responsible for retaining revenues; (2) this provision violates Section 35(2) of the EA which sets out what revenue BELCO is entitled to recover; and (3) that a process should be developed for determining what constitutes “persistent [failure]”, and it is suggested that this properly belongs in a general determination under Section 35 of the EA.

Authority’s Response:

In relation to:

(1), see insertion of Licensee above in Condition 26.5 to make it clear that the Licensee must retain revenues paid to it pursuant to Condition 26;

(2), The Authority disagrees. Section 35(2) and 35(3) of the EA refers to achieving service standards set by the Authority under General Determination; and

(3), this is not necessary as “persistent failure/breach” is a recognised term in English law – and in any event it would be best for this to be ascertained in the circumstances of each individual case and especially given BELCO’s monopoly position in Bermuda.

- 26.6 The Authority shall conduct a review of the Retail Tariff in accordance with the provisions of Section 37 of the EA.

27 FEED-IN TARIFF

- 27.1 The Licensee shall pay Distributed Generators the Feed-In Tariff set by the Authority in accordance with a methodology determined by the Authority pursuant to a General Determination.

- 27.2 The methodology referred to in Condition 27.1 shall be determined in accordance with those principles set out in Section 36 of the EA.

- 27.3 The Authority shall conduct a review of the Feed-In Tariff in accordance with the provisions of Section 37 of the EA.

28 CENTRAL DISPATCH AND MERIT ORDER

28.1 Central Dispatch

The Licensee shall schedule and issue direct instructions for the dispatch of all available Generation Units of each Bulk Generation Licensee in accordance with the Grid Code.

28.2 Merit Order

The Licensee shall establish as part of the Grid Code, and shall operate, a merit order system for Generation Units in Bermuda subject to Central Dispatch. The Licensee's merit order system shall comply with the requirements of Section 20(3) of the EA.

28.3 The Licensee shall provide to the Authority such information as the Authority shall request concerning the Licensee's Dispatch Instructions, and/or Scheduling System and/or Merit Order system or any aspect of its operation.

28.4 For the purposes of this Condition, the reference to optimal in Section 20(3) of the EA, in the absence of any contrary provision set out in any Administrative Determination made by the Authority shall be construed as lowest cost.

BELCO: BELCO repeats its responses as explained in Grid Code above.

Authority's Response: See the Authority's comments above at Grid Code in answer to BELCO's responses.

29 DUTY TO OFFER AND SUPPLY UNDER SERVICE AGREEMENTS

29.1 When the Licensee supplies electricity to its End-Users, it must do so under a Service Agreement.

29.2 A Service Agreement must include terms and conditions that are appropriate for a business that is providing transmission, distribution and retail services to an international standard with appropriate service levels and including metering obligations by the Licensee.

29.3 Within one month from the Commencement Date, the Licensee shall submit to the Authority for approval the form of Service Agreement used by the Licensee.

BELCO: BELCO says Condition 29.3 requires BELCO to have a service agreement approved within twelve months. However, BELCO has no control over how long the Authority will take to approve a submission. As such, the Condition should be redrafted to provide that BELCO will submit the requisite service agreement within a certain timeframe (as in Condition 30.1).

Authority's Response: The Authority has redrafted this provision.

30 END-USER BILLS

30.1 In accordance with Section 14(2) (c) (ii) and Section 26 (1) (d) of the EA within 6 months from the grant of this Licence, the Licensee shall submit to the Authority for approval the form of End-User bill that is proposing to send to End-Users.

30.2 The Licensee shall comply with any Administrative Determination made by the Authority pursuant to Section 14(2) (c) (ii) in relation to the form and content of End-User bills.

31 CODES OF PRACTICE

The Licensee shall comply with any codes of practice issued by the Authority pursuant to any General Determination made by the Authority under Section 38 of the EA in relation to the commercial and marketing practices of the Licensee to protect the rights of End-Users.

BELCO: In Section 5 of the Consultation Document, the Authority asked consultees their views on what obligations should be imposed on BELCO as regards its commercial and marketing practices so as to ensure consumers are protected. BELCO responded that this is not a subject matter relating to the licensing function – but should be addressed in a separate consultation and general determination.

Authority's Response: The Authority agrees and this will be addressed as part of a separate consultation. The question was asked to field any initial thoughts from consultees. BELCO says it does not know what exactly is meant by “commercial and marketing practices.” Again, this will be addressed in the separate consultation dealing specifically with this matter/General Determination; and

BELCO: In Section 5 of the Consultation Document, the Authority asked consultees their views on what restrictions should be placed on BELCO's disclosure and use of personal data? BELCO responded that this is not a subject matter relating to the licensing function – but should be addressed in a separate consultation and general determination.

Authority's Response: The Authority agrees and this will be addressed as part of a separate consultation. The question was asked to field any initial thoughts from consultees. Indeed, such separate consultation will consider the requirements of other legislative provisions in relation to protection of personal data such as those provided in the Personal Information Protection Act 2016 (“PIPA”) as well as the enforcement procedures for abuse of dominant position in the EA and RAA to protect against BELCO using data obtained in its role as TD&R Licensee to give any advantage to its Bulk Generation Business.

32 ASSIGNMENT, OUTSOURCING AND MORTGAGES

- 32.1 This Licence shall not be transferred or assigned without the prior consent of the Authority and Section 30 of the EA shall apply accordingly.
- 32.2 The Licensee may utilize the services of third parties on an ongoing basis in the provision of TD&R services (i.e., the Licensee may "outsource" certain of its TD&R functions), without relieving the Licensee of its obligations under the Licence. The procurement of such outsourced services shall be subject to the Authority's approval. Any such approval shall be based on the cost-effectiveness of the outsourced services, how it was procured and with whom, and the fitness and propriety of the relevant third parties and shall not be unreasonably withheld.
- 32.3 The Licensee shall not sub-licence, 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 written authorisation of the Authority.

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

33 CHANGE OF CONTROL

- 33.1 The Licensee shall not complete any proposed change in Control of the Licensee without first obtaining the prior written authorisation of the Authority in accordance with Section 30 of the EA and Section 87 of the RAA, which consent shall not be unreasonably withheld.
- 33.2 The Licensee shall be liable in accordance with Section 56 of the EA if it contravenes this Condition.

34 INDEMNIFICATION

The Licensee shall indemnify the Authority 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 Authority shall provide the Licensee with notice of any such actions, claims and demands, but the Authority's failure to do so shall not relieve the Licensee of any obligations imposed on the Licensee by this Condition.

BELCO: BELCO argues that this Condition 34 should be removed as BELCO is not aware of any analogous provisions in any other jurisdiction requiring licensees to indemnify the regulator and government and not customers. Failing removal, BELCO would not object to Condition 34.1 provided that the Authority shall only indemnify the Authority in respect of injury or death for which BELCO has been found liable in a court of law and all appeals have been exhausted.

Authority's Response: The Authority is not operating any asset. If any person/customer suffers property damage, injury, death as a result of some action of BELCO but brings an action against Authority, BELCO ought to indemnify Authority for all costs in relation to such claims.

BELCO: BELCO argue that Condition 34.2 should be removed as the Authority and the Government of Bermuda are customers like any other this is discriminating in favour of the Government.

Authority's Response: The Authority has deleted Condition 34.2.

35 FORCE MAJEURE; OTHER EVENTS

- 35.1 If the Licensee is prevented from complying with the 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 Authority, 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 Authority shall suspend such obligations of the Licensee as the Authority concludes the Licensee cannot comply with for as long as the event of force majeure continues.

35.2 In addition to events of force majeure, the Licensee shall notify the Authority 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.

BELCO: BELCO wants force majeure events to include Licence modifications without the Licensee's consent.

Authority's Response: Section 29 of the EA allows the Authority to modify the Licence of its own motion OR with the consent of the Licensee.

BELCO: BELCO also wants force majeure to include (i.e. Licensee's obligations will be suspended if):

- (a) any action or failure to act without justifiable cause by any competent authority, other than a court or tribunal (i.e. Authority);
- (b) expropriation or compulsory acquisition of the whole or any material part of the Licensee's assets (e.g. by Minister in event of step-in situation); and
- (c) any future governmental action that effectively prohibits the Licensee's ability to conduct its business, including enactment of a provision of law, regulation, general determination, administrative determination or order by a competent authority effectively prohibiting the Licensee from conducting its business, other than as a result of the Licensee's breach of the terms of this Licence as originally issued.

Alternatively, the following can be added to the list of events currently included:

“requirements, actions or failure to act on the part of governmental authorities; adoption or change in any law, regulation, statute, rule or regulation imposed by governmental bodies, including, without limitation, a change in the interpretation thereof; or any lawful order by any court or administrative agency (so long as the Licensee has not applied for or assisted in the application for such court or governmental action).”

Authority's Response: The Licensee may argue that it is a cause beyond its reasonable control in order to obtain force majeure relief (see Condition 35.1 above) and each case will turn on its own individual circumstances. In addition, if the Authority acts without justifiable cause, the Licensee has an action via judicial review as remedy.

36 NO ABUSE OF DOMINANT POSITION

36.1 The Licensee occupies a dominant position in accordance with the RAA and Section 51 of the EA.

- 36.2 If the Licensee abuses its dominant position the Authority shall, pursuant to Section 26(1) (f) of the EA be entitled to require the Licensee to comply with any remedy imposed by the Authority and the Authority shall also be entitled to take those actions set out in Section 85(7) of the RAA.

BELCO: BELCO states Condition 36.2 provides that, if the Licensee abuses its dominant position, the Authority shall be entitled to take those actions set out in section 26(1) of the EA. Section 26(1) of the EA is the provision under which the Authority can require the Licensee to comply with remedies, but it does not itself set out any actions. This provision therefore requires rewriting.

Authority's Response: The Authority has re-written this provision to clarify the position.

37 NOTICES

Unless the Authority determines otherwise, notices to the Licensee under the Licence shall be in writing and sent by electronic mail to the Chief Executive Officer of the Licensee at the address communicated to the Authority from time to time.

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

BELCO: BELCO wants a provision dealing with notices from BELCO to Authority.

Authority's Response: See wording inserted above.

38 INSURANCE REQUIREMENTS

- 38.1 The Licensee shall obtain and maintain insurance coverage for:

- (a) physical damage to the Grid System and ancillary equipment and structures; and
- (b) third party liabilities.

BELCO: BELCO argues most utilities worldwide do not procure natural disaster coverage for its transmission and distribution system given the prohibitive cost of this. BELCO says it is not clear whether this risk would need to be insured.

Authority's Response: Insurances have to be reasonable for the situation the utility finds itself in. .

- 38.2 Such insurance shall be on terms approved by the Authority (including but without limitation, with respect to type, cover, level, and identity of insurer) with any modification as may be required pursuant to paragraph 38.5

BELCO: BELCO says this Condition is disproportionate, discriminatory, micromanages its business and will result in unnecessary costs (increasing rates for BELCO's customers) and delay. BELCO should be obligated to

purchase insurance consistent with prudent utility practices and to report to the Authority as to the scope of the coverage obtained and the costs of such insurance. BELCO says it is willing to disclose the level and cost of its insurance programs, as well as the annual process to procure such insurance. However, the requirements included in the Licence require significant participation and approval with respect to insurance cover (including type, cover, levels and insurer identities) which are unnecessary given the full disclosure offered.

Authority's Response: See below for suggested alternative Insurance licence condition.

- 38.3 The Licensee shall, except as the Authority may otherwise consent, procure that every insurance policy maintained pursuant to this Condition 38 shall bear an endorsement to the effect that 30 days' notice shall be given to the Authority by the insurer or insurance broker of any lapse or cancellation of, or material change to, the policy.
- 38.4 Where the Authority notifies the Licensee that the Authority requires any modification of the insurance approved by the Authority pursuant to Condition 38.3, the Licensee shall, no later than 60 days (or such longer period as the Authority may approve) from the date of the notice, procure that such modification is made.
- 38.5 The Licensee is released from the obligation to maintain insurance under this Condition 38 if provision for the liability is made through any of the following alternatives, subject to the approval of the Authority:
- (a) self-insurance, which refers to the Licensee's financial capacity to meet any liability to a third party in respect of which the Licensee does not otherwise have insurance.
 - (b) special tariff factor, applied for a time approved by the Authority after a disaster until assets affected are re-built, provided that the financing and re-building are be done under the supervision of the Authority.

BELCO: BELCO says its insurance will be procured by BELCO for its entire business – i.e. insurance will not be procured separately by the TD&R Business and the Bulk Generation Business. BELCO says that, in addition to holding property cover for its buildings, it also procures insurance through its affiliate, the captive insurance company Ascendant Bermuda Insurance Limited, at market rates determined through a broker.

Authority's Response: See below for suggested alternative Insurance licence condition.

Alternative Insurance Clause

38. INSURANCE

- 38.1 The Licensee shall:
- (a) at its own cost and expense take out and maintain in full force and effect with reputable insurance companies such policies of insurance, as it, acting in

accordance with Prudent Operating Practice, considers appropriate so as to effect cover against the categories of risk set about below:

- (i) fixed assets (buildings and their contents, machinery, stock, fixtures, fittings and all other personal property forming part of the Transmission System and Distribution System against risks of physical loss or damage including [] but not including [] for their full replacement value;
 - (ii) machinery breakdown; and
 - (iii) public liability.
- (b) on request, provide the Authority with copies of all policies effected by it, the amount of any premiums payable under such policies and evidence that the premiums payable thereunder have been paid;
 - (c) provide access to the Authority or its representatives to the Licensee's offices to inspect the original policies; and
 - (d) apply the proceeds of claims against such policies relating to damage to the Transmission System and Distribution System.

“Prudent Operating Practice” means a standard of practice obtained by exercising 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.

ANNEX

TRANSITIONAL CONDITIONS

The Licensee shall comply with each of the Transitional Conditions set forth below until such time as the Authority makes an Administrative Determination in respect of the subject matter of each such Transitional Condition.

A1 ACCOUNTING SEPARATION REQUIREMENTS AND PROHIBITION OF CROSS-SUBSIDIES

A1.1 Notwithstanding the provisions of Condition 11 and Condition 13, the Licensee shall not be obliged to comply with the provisions of Condition 11 until such time as:

- (i) the Authority and the Licensee agree an accounting separation methodology which sets out how costs should be allocated between the Licensee's TD&R Business and Bulk Generation Business and details in relation to transfer pricing as between the Licensee's TD&R Business and Bulk Generation Business; and
- (ii) any such accounting separation methodology is approved by the Authority by Administrative Determination by the Authority.

A2. SERVICE STANDARDS

A3 CONSUMER PROTECTION

A4 CONNECTIONS POLICY

A5 TARIFFS