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# ELECTRICITY ACT, 2015

## Arrangement of Sections

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No. 48 of 2015

## ELECTRICITY ACT, 2015

AN ACT TO OVERHAUL THE ENERGY SECTOR AND ESTABLISH A SECTOR POLICY GOVERNING THE SUPPLY OF ELECTRICITY CONSISTENT WITH THE GOALS OF THE NATIONAL ENERGY POLICY; TO CREATE AN ELECTRICITY SUPPLY REGIME THAT PROMOTES DIVERSIFICATION AND COMPETITION IN THE GENERATION, SUPPLY AND DISTRIBUTION OF ELECTRICITY; TO PROVIDE FOR THE INCORPORATION BY THE BAHAMAS ELECTRICITY CORPORATION OF A SUBSIDIARY AND THE TRANSFER TO THE SUBSIDIARY OF THE FUNCTIONS OF GENERATION; TRANSMISSION, DISTRIBUTION AND SUPPLY OF ELECTRICITY; TO ESTABLISH THE UTILITIES REGULATION AND COMPETITION AUTHORITY AS THE INDEPENDENT REGULATOR OF THE ELECTRICITY SECTOR; TO MODERNISE AND CONSOLIDATE THE LAW RELATING TO THE SUPPLY OF ELECTRICITY AND ELECTRICAL INSTALLATIONS; TO REPEAL THE ELECTRICITY ACT, CHAPTER 194 AND THE OUT ISLANDS ELECTRICITY ACT, CHAPTER 195 AND FOR CONNECTED MATTERS.

[Date of Assent - 30<sup>th</sup> December, 2015]

Enacted by the Parliament of The Bahamas

### PART I- PRELIMINARY

1. Short title and commencement.
  - (1) This Act may be cited as the Electricity Act, 2015.

- (2) Subject to subsection (3), this Act shall come into operation on such date as the Minister may appoint by notice published in the *Gazette*.
- (3) The Minister may, by notice published in the *Gazette*, appoint different dates for the coming into operation of the varied sections or Parts of this Act.

## 2. Interpretation.

- (1) In this Act, unless the context otherwise requires -
  - "affiliate" or "affiliated company"** includes, in relation to another company, a company that directly or indirectly controls, is controlled by, or is under common control with, such other company and is considered to be a member of the same group of companies;
  - "apparatus"** means electrical apparatus including machines, consuming devices and fittings in which conductors are used or of which they form a part;
  - "approving authority"** means BPL or the Grand Bahama Port Authority, limited as the context requires;
  - "area of supply"** means the area delineated or otherwise defined and specified in a licence issued by URCA to which the operations of the licensee are restricted;
  - "authorised by URCA"** means, in relation to a person or activity, the subject of a licence or permit issued by CRCA;
  - "authorised person"** means a person who -
    - (a) *is* authorised in writing by BPL and or the System Operator, to perform functions incidental to the generation, transmission, distribution and or use of energy;
    - (b) has the requisite qualifications and competence to perform the functions referred to in paragraph (a);
  - "Bahamas Electricity Corporation" or "Corporation"** means the body corporate continued under section 8 of this Act;
  - "Bahamas Power and Light Company Ltd." or "BPL"** means the subsidiary company of the Corporation incorporated under the Companies Act pursuant to sections 11 and 12, and includes any successor company;
  - "BPL installation"** means an installation vested in BPL and managed and operated by a System Operator or BPL;
  - "BPL public installation"** means a BPL installation for the supply of energy to a consumer other than BPL;

- "board"** means the governing body of the Corporation appointed pursuant to section 8;
- "bulk supply"** means a supply of electricity to be used for the purpose of distribution;
- "Companies Act"** means the Companies Act<sup>1</sup>;
- "conductor"** means an electrical conductor or cable arranged to be electrically connected to a system;
- "consumer"** means any person who uses or may use, or requests or may request, a supply of energy for business or residential purposes;
- "customer"** means, in relation to a licensee, the person -
- (a) to whom energy is supplied in the course of any business carried on as such by the licensee;
  - (b) to whom the licensee is seeking to secure that energy is provided;
  - (c) who wishes to be supplied with energy, or who is likely to seek to become a person to whom energy is supplied,
- and includes any or them whose use or potential use of energy is for the purposes of, or in connection with, a business;
- "court"** means a court of competent jurisdiction within The Bahamas;
- "demand response"** means changes in electric energy usage by electricity consumers from their normal consumption patterns in response to
- (a) changes in the price of electricity during a twenty-four hour period or in the short term;
  - (b) incentive payments designed to induce lower electricity use at times of high electricity prices or when system reliability is jeopardised;
- "designated Family Island"** means the whole or a part of a Family Island: designated in an order made by the Minister, to which the GTDS functions and powers of IIPL apply and -
- (a) includes a Family Island in which, under the repealed Act, GTDS services are performed by a licensed undertaker;
  - (h) excludes the Port Area in the island of Grand Bahama;
- "document"** has the meaning specified in section 2 of the Evidence Act<sup>2</sup> and includes material in hard or electronic format;
- "Electricity Rate Reduction Bond Act"** means the Electricity Rate Reduction Bond Act, 2015.;

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<sup>1</sup>Vol. VI, (Ch 308)

<sup>2</sup>Vol. XI, (Ch 65)



**"electricity sector policy "** or **"sector policy"** means the policy referred to in section 6;

**"electricity sector policy objectives"** means the policy objectives referred to in section 6;

**"electricity supply system"** means the network of electrical components used to generate, transmit, distribute and supply electric power;

**"energy "** means electrical energy when it is generated, transmitted, distributed, supplied or used for a purpose other than the transmission of a communication or signal;

**"energy efficiency"** means the reduction of energy used to provide the same level of service;

**"energy efficiency program"** means scheduled activities designed to study, promote, and improve energy efficiency;

**"facilities"** means the buildings; and equipment necessary to provide electric service including but not limited to electric lines, poles, main service links and mechanical appliances that relate to the generation, transmission and distribution of electric energy;

**"Family Island "** means all the islands of The Bahamas with the exception of the Island of New Providence, inclusive of Paradise Island and all other adjacent islands and cays within ten miles of the Island of New Providence;

**"functions"** includes powers and duties

**"generating resource"** means an installation or apparatus using solar or other prescribed renewable energy sources;

**"generating station" -**

(a) means a station for generating electricity including the buildings, plant, site or intended site to be used for the station;

(b) does not include a station for transforming, converting, or distributing energy;

**"generator"** means a rotating machine of any type, whether mechanical or otherwise, for converting an energy source into electrical energy;

**"Grand Bahama Power Company"** means the Grand Bahama Power Company Ltd., a company approved and licensed by the Grand Bahama Port Authority, limited to carry out GTDS functions in the Port Area;

**"Government"** means the Government of the Commonwealth of The Bahamas;

**"grid"** means -

- (a) any BPL power system, inclusive of transmission and distribution, wherever located within The Bahamas;
- (b) the power system, inclusive of transmission and distribution, of any public electricity supplier within The Bahamas other than BPL;

**"GTDS"** means generation, transmission, distribution and supply;

**"Hawksbill"** means the Hawksbill Creek Agreement, the subject of the Hawksbill Creek, Grand Bahama (Deep Water Harbour and Industrial Area) Act<sup>3</sup> and the Hawksbill Creek, Grand Bahama (Deep Water Harbour and Industrial Area (Amendment of Agreement) Act;

**"independent power producer"** means a person who -

- (a) is approved by an approving authority or a public electricity supplier, and licensed by URCA, to generate additional electrical energy to a grid;
- (b) generates additional energy to the grid pursuant to a negotiated power purchase and grid interconnection agreement entered into with the public electricity supplier or with both the public electricity supplier and the approving authority;

**"inspector"** means an inspector appointed by TJRC in accordance with this Act;

**"installation"** means the whole of a plant or apparatus designed for the supply and or use of energy including, where applicable -

- (a) prime movers together with all necessary and related plant, buildings and land;
- (b) pipelines, supply lines and consuming apparatus;
- (c) transformers, poles, switchgear and related components;

**"licence"** means a licence issued by URCA under Part IX;

**"licence fee"** includes the fees billed and collected by URCA under section 54;

**"licensee"** means any holder of a licence issued by URCA under this Act and includes any subsidiary undertakings of the named licensee notified to URCA in accordance with section 47;

**"licensed undertaker"** means a person who, under the repealed Act, provided GTDS services on a Family Island or part thereof in accordance with the terms of an agreement entered into with the Minister;

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<sup>1</sup>J.,r;l. V (Ch. 261j  
 Vol. V (Ch 262)

**"main"** means a supply line through which energy is or can be supplied, whether such line is in use or not;

**"Minister"** means the Minister charged with responsibility for the administration of this Act and the Electricity Rate Reduction Bond Act;

**"modern grid technologies"** means the class of technologies used to improve utility electricity delivery systems using, *inter alia*, computer-based remote control and automation;

**"named licensee"** means the person whose name appears in the grant and issuance of a licence by URCA;

**"national energy policy"** means The Bahamas National Energy Policy 2013-2033, or any successor policy, published by the Government and referred to in section 5 and includes every revision to such policy;

**"person"** includes -

- (a) the Government or any public body;
- (b) a natural person, corporation, company, trust, partnership;
- (c) an unincorporated association or body;

**"Port Area"** means the Port Area as defined in the Harbour Bill;

**"prescribed"** means prescribed in regulations made by the Minister under section 77 or in regulatory or other measures issued by URCA;

**" prudent utility practice"** means any of the practices, methods and acts which-

- (a) are engaged in or approved by a significant portion of leading comparably-sized electric utilities during the relevant time period;
- (b) in the exercise of reasonable judgement in light of the facts known at the time a decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practice, reliability, safety and expedition;

**"public electricity supplier"** means a person that generates or acquires electrical energy for supply to the public in an area of supply using the supplier's own transmission, distribution and supply lines -

- (a) in the case of BPL, pursuant to this Act and a public electricity supplier licence granted by the JRC;
- (b) in case of the Port Area, in accordance with the Harbour Bill and a public electricity supplier licence granted by URCA;
- (c) in any other case, in accordance with section 29, pursuant to

- (i) an approval granted by BPL;
- (ii) a public electricity supplier licence issued by URCA;

**"public safety"** means the obviation of danger to the general public and public property and to -

- (a) roads, streets, canals, docks, wharves; piers, bridges, water-works and their appurtenances;
- (b) telegraphic, telephonic and other signalling lines owned or operated by the Government or the holder of a licence issued by URCA under this Act or any other Act;

**"rate assistance"** means the provision of electricity to vulnerable customers at specially subsidised rates;

**"rate reduction bonds"** means the bonds referred to in section 19;

**"rate reduction bond fee"** means the fee imposed by BPL in accordance with section 18 by which the rate reduction bonds are secured and which is calculated per estimated kWh usage by the customer and subject to periodic adjustment in accordance with section 13 of the Electricity Rate Reduction Bond Act;

**"rate reduction bond financing liabilities"** means the debts of the Corporation and BPL referred to in section 18(2);

**"regulations"** means regulations made by the Minister under section 77 or by URCA pursuant to its powers under section 38(3);

**"regulatory measures"** means regulatory and other measures issued by URCA under section 38(3);

**"relevant turnover"** means the gross receipts in money or money's worth of the licensee, or any person in respect of whom an exemption determination has been made under section 50-

- (a) attributable to the provision of a generation, transmission, distribution or supply service, or use of any generation, transmission, distribution or supply system, under the licence or exemption determination;
- (b) including, in relation to the electricity supply system in The Bahamas during the relevant financial year, associated and other ancillary revenue, whether or not derived from activities authorised by the licence, after the deduction of sales rebates, trade discounts, value added tax and other taxes directly related to turnover;

**"renewable electricity resources"** means generation resources that derive electricity from sources that are naturally replenished and includes, but are not limited to, solar energy, wind, hydro-power, geothermal, biomass, wave power, ocean thermal power and waste-to-energy technologies;

**"repealed Act"** means the Electricity Act or the Out Islands Electricity Act<sup>6</sup>, as the context requires;

**"securities"** includes stocks, debentures and other securities;

**"street"** includes a way, road, lane, path, square, court, alley, passage, wharf, dock or open space, whether a thoroughfare or not, over which the public have a right of way, including the roadway and foot-way over a public bridge;

**"subsidiary undertaking"** means any subsidiary company, and -

- (a) where a subsidiary company is a parent company, any subsidiary undertakings of that parent company;
- (b) "parent company" and "subsidiary company" have the meanings respectively attributed to them in section 2 of the Companies Act;

**"supply line"** means a conductor or other means of conveying, transmitting or distributing energy together with-

- (a) any casing, coating, covering, tube, pipe, insulator or part enclosing, surrounding or supporting the whole or part of the conductor;
- (b) any building or apparatus connected with the conductor for the purpose of transforming, conveying, transmitting or distributing energy;

**"system"** means an electrical system in which all the conductors and apparatus are electrically or magnetically connected;

**"System Operator"** means an entity under a management contract with BPL to operate and manage the generation, transmission, distribution and supply functions and facilities of the electricity system;

**"tariff rate"** means the rates and scales referred to in section 20 at which charges approved by URCA may be fixed by BPL;

**"The Bahamas"** means the entire territory of the Commonwealth of The Bahamas including its territorial waters, airspace and exclusive economic zone;

**"transfer date"** means the effective date, to be appointed by the Minister by notice published in the *Gazette*, for the transfer to BPL of the section 9 functions of the Corporation;

**"Tribunal"** means the Utilities Appeal Tribunal established under section 3 of the Utilities Appeal Tribunal Act\

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<sup>6</sup>Vol. W (Ch 194)

<sup>7</sup>Vol. JV, (Ch. 195)

<sup>8</sup>Vol. VJ, (Ch 308)

<sup>9</sup>Vol. VI, (Ch 307)

**"undertaking"** means the carrying on of a trade or business, with or without a view to profit, by -

- (a) a body corporate or partnership;
- (b) an unincorporated association;
- (c) any other natural or legal person;

**"Utilities Regulation and Competition Authority" or "URCA"** means the Utilities Regulation and Competition Authority established by section 3 of the URCA Act;

**"URCA Act"** means the Utilities Regulation and Competition Authority Act<sup>9</sup>;

**"VAT"** means value added tax imposed and payable in accordance with the Value Added Tax Act (*No. 32 of 2014*); and

**"vulnerable customers"** means electricity customers who require protection against disruption or termination of electricity supply due to low income, being of pensionable age, disability, chronic illness or other vulnerabilities.

Without prejudice to subsection (1), this Act shall be read and construed together with the URCA Act and the Electricity Rate Reduction and Control Act.

### 3. Purposes.

The purposes of this Act are to -

- (a) create an electricity supply regime which recognises that safe, least cost, reliable and environmentally sustainable electricity is vital to the economic and social welfare of The Bahamas and encourages and promotes -
  - (i) diversification in the generation, transmission, distribution and supply of electricity;
  - (ii) energy efficiency, energy conservation, and the development and use of renewable energy resources and technologies;
- (b) secure the long-term energy security of The Bahamas through the establishment of a legal and regulatory framework that ensures the provision of a safe, least cost, reliable and environmentally sustainable supply of electricity; and
- (c) establish an electricity sector policy for the supply of electricity throughout The Bahamas consistent and in accordance with the goals of the national energy policy.

### 4. Application.

- (1) This Act binds the Crown.

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<sup>9</sup>*Vol. VI, (Ch. 306)*

- (2) This Act applies to the entirety of The Bahamas, inclusive of the Port Area in the island of Grand Bahama.

## **PART II - NATIONAL ENERGY POLICY AND ELECTRICITY SECTOR POLICY OBJECTIVES**

### **5. National energy policy.**

- (1) The Minister shall cause the national energy policy to be revised every five years, setting out the strategic aims of the Government for meeting the electricity sector policy objectives including, but not limited to -
- (a) the priorities for diversification, competition and sector regulation;
  - (b) the Government's formulation of its role in the electricity sector;
  - (c) plans for the efficient use and supply of safe, least cost, reliable and environmentally sustainable electricity; and
  - (d) aspects of social policy, including the scope of universal service and the protection of vulnerable customers.
- (2) The Minister shall, before the expiration of five years from the date of publication of the national energy policy, formulate and publish a draft of the revised national energy policy for public consultation in accordance with the regulations.
- (3) The national energy policy, and every revision thereof, shall be published in the Gazette and have effect from the date of such publication.

### **6. Electricity sector policy and objectives.**

- (1) The main goal and objective of the electricity sector policy shall be the creation of a regime for the supply of safe, least cost, reliable and environmentally sustainable electricity throughout The Bahamas.
- (2) The principles and objectives governing the sector policy and electricity supply regime, in accordance with the aims and goals of the national energy policy, shall be the -
- (a) provision of safe, least cost electricity supplies to all consumers;
  - (b) advancement of The Bahamas' economic growth and development and international competitiveness;
  - (c) enhancement of the energy security of The Bahamas;
  - (d) encouragement of competition in the generation of renewable electricity;
  - (e) introduction of a structure for the sector that is overseen by an independent regulator;

- (f) employment of practices and technology that are designed to protect the natural environment of The Bahamas;
- (g) promotion of energy efficiency in the generation, distribution and consumption of electricity throughout the economy;
- (h) promotion of the use of renewable energy;
- (i) promotion of private investment and innovation in the electricity sector;
- (j) creation of incentives for private sector participants in the electricity sector to continuously improve performance in operations and customer service;
- (k) provision of investment opportunities for citizens of The Bahamas; and
- (l) provision of a regulatory structure that balances the interests of and affords opportunities for input from all stakeholders, honours contractual commitments and encourages investment.

## **7. Guidelines for regulation and Government measures.**

- (1) All policy documents, regulatory and other measures, decisions and laws to take effect in the electricity sector in The Bahamas shall be taken or made with a view to implementing the main goal and governing principles and objectives of the sector policy and electricity supply regime.
- (2) The policy documents, regulatory and other measures, decisions and laws referred to in subsection (1) shall comply with the following guidelines -
  - (a) market forces shall be relied on as much as possible as the means of achieving the main goal and objectives of the sector policy and electricity supply regime;
  - (b) regulatory and other measures shall be introduced-
    - (i) where, in the view of URCA, market forces are unlikely to achieve the main goal and objectives of the sector policy and electricity supply regime within a reasonable time-frame;
    - (ii) by URCA carrying out a regulatory impact assessment having regard to the costs and implications of such regulatory and other measures on affected parties;
  - (c) regulatory and other measures shall be efficient and proportionate to their purpose and introduced in a manner that is transparent, fair and non-discriminatory;
  - (d) regulatory and other measures that introduce or amend a significant government policy or regulatory measure, including but not limited to the national energy policy, shall -



- (i) specify the electricity sector policy objective that is advanced by the policy or measure; and
- (ii) demonstrate compliance with the guidelines set out in paragraphs (a), (b) and (c).

## **PART III - ORGANISATION OF ELECTRICITY SECTOR**

### **8. Continuation of the Corporation.**

- (1) The Bahamas Electricity Corporation, established under section 3 of the repealed Act, continues to exist as a body corporate for the purposes of, and shall be governed in accordance with, this Act.
- (2) The Corporation has the functions and powers conferred or assigned by this Act until such functions and powers are transferred to BPL in accordance with this Part.
- (3) The Corporation shall be governed by a Board consisting of a maximum of seven persons appointed by the Minister to be members of the Board.
- (4) The Minister shall appoint one member of the Board to be the chairperson of the Board and one other member to be the deputy-chairperson of the Board.
- (5) A member of the Board shall be appointed for a maximum term of five years and is eligible for re-appointment for a further term not exceeding five years.
- (6) The provisions of the *First Schedule* apply and have effect with respect to the functioning of the Corporation and the Board.

### **9. Functions and powers of the Corporation.**

- (1) Subject to this Act, the functions and powers of the Corporation are to -
  - (a) secure a safe, least cost, reliable and environmentally sustainable supply of electricity within The Bahamas;
  - (b) oversee and monitor the electricity supply system within The Bahamas;
  - (c) establish plans for the modernisation and development of the electricity supply system in The Bahamas;
  - (d) develop and maintain an efficient, coordinated and economical system of supply of electricity to consumers in the Island of New Providence and such Family Islands as the Minister may by order designate;

- (e) secure an efficient, coordinated and economical system of supply of electricity by public electricity suppliers to consumers in designated Family Islands
  - (f) purchase, generate, transmit, transform, distribute, sell or provide for the sale of energy in bulk or to individual consumers in the Island of Ne\ Providence and designated Family Islands;
  - (g) enter into contracts with consumers in the Island of Nev, Providence and designated Family Islands for the supply and purchase, or continued supply and purchase, of electricity on such terms and conditions as may be determined by the Corporation and approved by URCA;
  - (h) support the Government's national energy policy, including promoting and facilitating the development and use of renewable electricity generation resources and technologies;
  - (i) without prejudice to the provisions of this Part, when directed by order of the Minister signified by resolution of both Houses of Parliament -
    - (i) incorporate one or more wholly owned subsidiary companies limited by shares to assist in the performance of the Corporation's functions under this section;
    - (ii) incorporate one or more joint venture companies limited by shares which, on incorporation, are wholly owned by or on behalf of the Government;
    - (iii) transfer to one or more of the subsidiary or joint venture companies referred to in sub-paragraphs (i) and (ii) such functions and assets of the Corporation, on such terms and conditions, as the Minister may specify in the order; and
    - (iv) cause any such subsidiary or joint venture company to enter into a management contract with a system operator to perform any or all of the functions of the Corporation under this section.
- (2) Subject to this Act and any other law, the Corporation may in the performance and exercise of its functions pursuant to subsection (1) do all things as may be incidental to or necessary or expedient for the fulfilment of such functions.
- (3) Without prejudice to the generality of subsection (2), the Corporation may
- (a) carry on any business wholly associated with an electricity undertaking, including the wholesale purchase for resale to any person of electrical generating and transmission equipment;

- (b) promote and encourage the use of electricity and its by-products and, in particular, their use for domestic, commercial, agricultural, industrial, manufacturing and other ancillary or complementary purposes;
- (c) promote and encourage the use of renewable electricity resources and technologies and, in particular, undertake the wholesale purchase for resale to any person of parts and equipment used in renewable electricity resources;
- (d) promote and encourage energy efficiency by consumers and businesses in accordance with the national energy policy;
- (e) acquire any movable or immovable property necessary or expedient for constructing, extending or maintaining an installation or otherwise performing the Corporation's functions under this Act;
- (c) subscribe for, take, or otherwise acquire and hold shares in any company or undertaking having functions or objects wholly or in part similar to those of the Corporation; and
- (t) carry on all activities as may appear to the Corporation requisite, advantageous or convenient for or in connection with the discharge of its functions under this Act.

**10. Minister may acquire land for the purposes of the Corporation.**

- (1) The Minister may, where requisite or expedient for the fulfilment of the Corporation's functions under this Act, at the request of the Corporation acquire land in accordance with the Acquisition of Land Act<sup>10</sup> or any successor Act.
- (2) A declaration under the Acquisition of Land Act or any successor Act that the land to be acquired by the Minister pursuant to subsection (1) is needed for a public purpose shall have effect as if it were a declaration that such land is needed for a public purpose made in accordance with such Act, notwithstanding that compensation in respect of such land is to be paid out of the funds of the Corporation.
- (3) The Corporation shall pay expenses and compensation in respect of any land acquired by the Minister under this section.
- (4) Land acquired under this section shall be conveyed in the name of the Corporation and the Corporation may transfer such land by way of lease to BPL.

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<sup>10</sup>Pr-ol. V, (Ch252)

**11. Corporation to transfer functions and powers to a subsidiary company.**

- (1) Subject to this Act, the Corporation shall take such steps and enter into such transactions as are necessary or expedient to restructure the electricity sector in accordance with the national energy and sector policies, principles and objectives outlined in sections 5 and 6.
- (2) Without prejudice to the generality of subsection (1), on or after the enactment but prior to the coming into operation of this Act the Corporation shall, with the prior approval of the Minister, cause to be incorporated under the Companies Act a company limited by shares called Bahamas Power and Light Company Ltd. ("BPL") to assist the Corporation in the performance of the functions referred to in section 9.
- (3) On a transfer date to be appointed by the Minister by notice published in the *Gazette*, the Corporation shall transfer to BPL the section 9 functions and powers of the Corporation.

**12. Constitution, functions and powers of BPL.**

- (1) BPL shall be a wholly-owned subsidiary of the Corporation.
- (2) There shall be appointed to govern the affairs of BPL a Board of Directors.
- (3) BPL shall -
  - (a) take responsibility on the transfer date for the performance of the section 9 functions; and
  - (b) subject to subsection (4), on or after the transfer date enter into a management contract with the System Operator for the management and operation on behalf of BPL of the GTDS functions and related facilities of the electricity supply system transferred to and vested in BPL.
- (4) BPL shall perform the section 9 functions, for a minimum period of five years from the transfer date, through the maintenance of a management contract with a System Operator.

**13. Vesting in and transfer of assets to BPL.**

- (1) On the coming into operation of this Part, there shall vest in BPL -
  - (a) all movable property owned by the Corporation which forms a part of the generation, transmission, distribution and supply facilities of the electricity supply system; and
  - (b) all intellectual property, trademarks and other intangible assets and interests of the Corporation.

- (2) The Corporation shall transfer to BPL by lease the land on which the GTDS facilities referred to in subsection (1) are located.
- (3) Subject to this Act, all material interests, rights and easements, and all liabilities in or appertaining to, the assets vested in BPL by subsection (1), or transferred to BPL under subsection (2), become, on such vesting and transfer the interests, rights, easements and liabilities of BPL.
- (4) The benefit and burden of any lease or tenant agreement-
  - (a) in which immediately before the date this Part comes into operation the Corporation was tenant; and
  - (b) which relates to any GTDS facilities vested in BPL by subsection (1),
 are transferred from the Corporation to BPL.
- (5) The vesting of all property, rights, easements and liabilities under this section shall be binding on all persons notwithstanding that, apart from this section, such vesting would have required the consent or concurrence of another person.
- (6) References in this Act to property, rights, easements and liabilities of the Corporation are references to all such property, rights, easements and liabilities-
  - (a) whether or not capable of being transferred;
  - (b) assigned by the Corporation, whether located in The Bahamas or elsewhere;
  - (c) whether under the laws of The Bahamas or the laws of any other country or territory; and
  - (d) in the case of liabilities, whether they are actual or contingent
- (7) Notwithstanding any other law to the contrary, no stamp duty shall be payable under the Stamp Act<sup>1</sup> on or in relation to the transfer or vesting of property, rights, easements; and liabilities of the Corporation under this section.

**14. Transfer of employees to BPL and abolition of offices and posts in the Corporation.**

- (1) Every employee of the Corporation shall, on the transfer date, be transferred from employment with the Corporation to employment with BPL.
- (2) An employee shall be employed with BPL under terms and conditions of employment, including remuneration, that are no less favourable than those which applied to the employee's employment with the Corporation.

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- (3) The employment with BPL of an employee of the Corporation transferred under subsection (1) shall, for the purposes of pension and gratuity benefits, be treated as continuous employment.
- (4) There is abolished within the Corporation on the transfer date -
  - (a) all departments, sections or units responsible for the generation, transmission, distribution or supply of electricity in The Bahamas; and
  - (b) all offices and posts within a department or section or unit referred to in paragraph (a).
- (5) BPL shall, on or before the transfer date, establish such offices, posts, departments, sections or units as may be required by BPL for the performance of the section 9 functions.

**15. Ancillary functions of BPL and System Operator.**

BPL shall-

- (a) where applicable, monitor and oversee the management and operation by the System Operator on its behalf of all GTDS installations and facilities owned by or vested in BPL;
- (b) maintain in its possession and control, and hold title in its name, to all land however acquired, before and after the date this Act comes into operation, for GTDS installations and facilities;
- (c) forecast and plan for sufficient power generation in the Island of New Providence and designated Family Islands, taking into account supply-side and demand-side options, including renewable energy self-generation approved by RPI and URCA;
- (d) approve, in consultation with URCA, new GTDS facilities by suppliers other than BPL which BPL determines are needed to ensure reliable and efficient electricity supply in The Bahamas;
- (e) ensure that new GTDS facilities referred to in paragraph (d) do not conflict with any existing contractual obligations BPL or the Minister may owe to a public electricity supplier or an independent power producer;
- (f) report annually to the public and to URCA on all measures necessary to -
  - (i) upgrade BPL's GTDS installations and facilities to enable The Bahamas to achieve its goals for renewable electricity as set out in the national energy policy; and
  - (ii) facilitate the introduction of modern grid technologies that encourage or enable greater energy efficiency and reliability of the electricity supply system.

**16. Supplementary orders of the Minister.**

- (1) Subject to subsection (2), the Minister may by order make such incidental, consequential and supplemental provisions as may be necessary or expedient to give full effect to the -
  - (a) transfer under section 12(3) by the Corporation to HPL of the section 9 functions ;
  - (b) vesting in and transfer of assets to BPL under section 13; and
  - (c) transfer of the powers, duties, rights and liabilities enjoyed or incurred by the Corporation in connection with the functions and assets transferred and vested under sections 12(3) and 13 respectively.
- (2) An order made under subsection (1) has no effect until approved by resolution of both Houses of Parliament.
- (3) The Minister shall, by order published in the Gazette, notify the public of
  - (a) the date of redemption of all rate reduction bonds issued under the Electricity Rate Reduction Bond Act and payment of all costs of the Issuer in relation to such bonds; and
  - (b) the cessation of the collection of the rate reduction bond fee upon the date referred to in paragraph (a).

**17. Transfer date.**

- (1) The Minister shall appoint by notice published in the *Gazette* an effective date for the transfer of the section 9 functions from the Corporation to BPL.
- (2) On the transfer date, BPL shall in performing the section 9 functions -
  - (a) become the primary public electricity supplier in The Bahamas; and
  - (b) have regard in all its actions and decisions to the goals and objectives of the national energy policy and electricity sector policy.

**18. Debts of the Corporation and BPL.**

- (1) There shall be issued, in accordance with the Electricity Rate Reduction Bond Act, rate reduction bonds for the purpose of financing liabilities related to the debts of the Corporation and HPL.
- (2) The rate reduction bond financing liabilities referred to in subsection (1) consist of or relate to -
  - (a) payment of financial liabilities of the Corporation, including bank debts, bonds and other non-current financial liabilities, outstanding on the date this Act comes into operation;

- (b) payment of pension and other benefits and rights vested in employees or former employees of the Corporation on the date this Act comes into operation;
  - (c) costs of environmental re-mediation, not exceeding the sum of twenty million dollars, inclusive of ancillary and associated costs, as determined by the Government;
  - (d) costs of reform of the electricity sector and of restructuring the Corporation as provided for in this Act, inclusive of ancillary and associated costs;
  - (c) financing costs to issue and administer rate reduction bonds and to incorporate and administer the rate reduction bond Issuer as set out in the Electricity Rate Reduction Bond Act; and
  - (f) provision to BPL of initial working capital, and interim financing, to facilitate the operations of DPL.
- (3) The rate reduction bond financing liabilities shall be paid and satisfied through the issuance of rate reduction bonds in accordance with the Electricity Rate Reduction Bond Act.
- (4) Any charge imposed by BPL on grid customers for the purpose of defraying costs related to the issuance, administration and redemption of rate reduction bonds issued pursuant to subsection (1) shall constitute and be known as the rate reduction bond fee.
- (5) The rate reduction bond fee referred to in subsection (4) -
- (a) provides security for the rate reduction bonds and is a fee to which the Servicer has first right;
  - (b) is calculated per estimated kWh usage by the customer and subject to periodic adjustment in accordance with section 13 of the Electricity Rate Reduction Bond Act;
  - (c) subject to the requirements or restrictions in section 40, applies to all consumers and customers of BPL in The Bahamas at the rate calculated pursuant to paragraph (b); and
  - (d) is the amount required for payment of the debt service and is the first allocation to be made in the distribution of aggregate BPL revenues from customer billings.

## **19. Issuance of rate reduction bonds.**

Pursuant to this Act and the Electricity Rate Reduction Bond Act -

- (a) there shall be formed under the Companies Act, after the enactments of this Act and the Electricity Rate Reduction Bond Act, a non-profit company for the sole purpose of issuing rate reduction bonds to pay and satisfy the rate reduction bond financing liabilities;



- (b) the rate reduction bonds shall be secured by the revenue streams of BPL comprised in the rate reduction bond fee;
- (c) BPL shall, to constitute and secure payment of the rate reduction bonds-
  - (i) impose on each grid customer a rate reduction bond fee to be included in the tariff rate billed to the customer;
  - (ii) periodically adjust the rate reduction bond fee to include such top portion of the other charges in the tariff rate as may be required to service upfront and ongoing financing costs of the rate reduction bonds;
- (d) BPL may enter into a contract with the rate reduction bond Issuer to act as Servicer of the rate reduction bonds and in such capacity to *inter alia*-
  - (i) impose, bill, and collect the rate reduction bond fee;
  - (ii) maintain separate records of the rate reduction bond fee and prepare periodic reports on billings and collections;
  - (iii) receive and remit the rate reduction bond fee to the rate reduction bond Issuer;
- (e) the service contract with the Issuer shall provide that BPL may authorise an agent, subcontractor or, where a management contract exists between BPL and a System Operator, the System Operator to act as Servicer on its behalf;
- (f) there shall, before the coming into operation of the Electricity Rate Reduction Bond Act, be opened with a bank in The Bahamas approved by the Minister of Finance a single trust account (the "waterfall account") into which all tariff-related revenues of BPL and collected by BPL or a System Operator shall be initially deposited;
- (g) the trust instrument governing the waterfall account shall require the trustees to pay on a monthly basis from the account -
  - (i) to the Servicer, the rate reduction bond fee for remittance to the Issuer for scheduled debt service and meeting upfront and ongoing financing costs of the Issuer in relation to the bonds;
  - (ii) to BPL, after payment to the Servicer, all residual revenues for the purpose of performing its functions under this Act;
- (h) the proceeds of rate reduction bonds shall be applied solely in payment and satisfaction of the rate reduction bond financing liabilities;
- (i) property rights in the rate reduction bond fee shall vest in the owners of outstanding rate reduction bonds until all such bonds are paid in full; and

- G) during the subsistence of the rate reduction bonds, neither the Government, the Corporation, BPL nor URCA shall take or permit to be taken any action that would be adverse to the owners of the rate reduction bonds.

**20. Rates and scales of charges for electricity by BPL.**

- (1) Subject to subsections (6), (7) and (8), BPL shall in accordance with an approval granted by URCA impose fixed charges for electricity sold in bulk or direct to customers, and for additional services rendered by BPL, having regard to reasonably incurred operating and fuel costs.
- (2) URCA shall, in determining the tariff rate, have regard to -
  - (a) the requirement of a rate reduction bond fee; and
  - (b) the need for revenue derived by BPL from sales, services and other sources to be sufficient to pay -
    - (i) the compensation payable to any System Operator under the terms of the management contract;
    - (ii) all other expenses and obligations of BPL properly chargeable to income;
    - (iii) payments due to be made in respect of interest or principal of money borrowed by BPL, whether or not there is a continuing economic return on the money borrowed;
    - (iv) sums required for redemption of securities issued by BPL under section 21;
    - (v) such sums as may be required for a reserve fund, extensions, renewals, depreciation, loans and other like purposes.
- (3) Subject to the approval of URCA, BPL may, where no undue preference is given to any class of customer or locality, fix the charges under this section at different rates and scales for different classes of customers, including residential, commercial, general service and other service categories.
- (4) BPL may submit to URCA, where necessary, a detailed plan and justification for investments in necessary system upgrades that -
  - (a) were not foreseen and could not reasonably have been foreseen at the time of entering into a management contract with a System Operator; and
  - (b) include, for URCA's consideration, proposals for cost recovery through the tariff rate.
- (5) URCA may modify the tariff rate for electricity supply services by BPL (to take account of significant and unforeseen increases or decreases in costs occurring during any twenty-four month period.

- (6) Without prejudice to subsection (5), URCA shall for a period of five years adjust and apply the tariff rate for electricity supply services by BPL contained in the initial management contract with the System Operator, inclusive of the principles and methodologies for calculation, determination and variations of the rate.
- (7) BPL shall, within three months of the date this Act comes into operation file with URCA the tariff rate contained in the initial management contract with the System Operator.
- (8) URCA shall, in respect of BPL, during the five year period referred to in subsection (6), perform and exercise its functions in a manner consistent with the initial management contract between BPL and the System Operator.

## **21. Borrowing by BPL.**

- (1) BPL may, for the purpose of raising money to carry out its functions under this Act, borrow money through the issue of securities.
- (2) All securities and interest thereon shall be charged on the revenues of BPL, or on such part of the undertaking of BPL, as may be specified in the security.
- (3) URCA shall, in determining the non-fuel base rate of the tariff, make adequate provision for BPL to meet its outstanding debt obligations.

## **22. Designation of URCA as sector regulator.**

Subject to this Act and the URCA Act, the Utilities Regulation and Competition Authority is the independent regulator of the electricity sector and shall exercise and perform its functions and powers in accordance with the provisions of this Act and the URCA Act.

## **23. Requirement of licence for entry into electricity sector.**

- (1) Subject to subsection (3), no person shall, except in accordance with a licence granted by URCA under section 44(1), generate, transmit, distribute or supply electricity within, into, from or through the Bahamas.
- (2) URCA may in granting a licence impose such terms and conditions, consistent with this Act and the national energy and electricity sector policies, respectively, as URCA considers appropriate.
- (3) A licence under subsection (1) is not required where -
  - (a) a standby generating plant approved by the Ministry of Works, with a generating capacity not exceeding one thousand kilowatts, is used solely for the supply of electricity in case of the failure of supply by

- BPL or another public electricity supplier or in case of other emergency;
- (b) a property owner utilizes, for the purpose of supplying energy for residential use, renewable energy sources in accordance with the requirements of section 27; or
  - (c) IJRC approves in writing renewable energy self-generation projects advanced by the Government or a small-scale business or commercial enterprise in accordance with section 28.
- (4) Notwithstanding any other provision of this Act but subject to paragraph 4 of the *Second Schedule*, URCA shall within ninety days from the date this Act comes into operation -
- (a) grant to BPL a public electricity supplier licence regulating the electricity generation, transmission, distribution and supply functions and activities of BPL; and
  - (b) grant to the Grand Bahama Power Company a public electricity supplier licence regulating the electricity generation, transmission, distribution and supply functions and activities of the company in the Port Area.
- (5) A person who contravenes or fails to comply with subsection (1) commits an offence.

## **PART IV - MANAGEMENT AND OPERATION OF ELECTRICITY SECTOR**

### **24. System Operator management contract.**

- (1) For the purposes of this Act-
- (a) BPL shall enter into a management contract with the System Operator, for the period specified in section 12(4), on such terms and conditions as may be approved by BPL and the Minister; and
  - (b) upon expiry of the management contract referred to in paragraph (a), RPL may elect to enter into a new contract with a System Operator or to itself perform the GTDS functions.
- (2) BPL may provide in the management contract for the performance by the System Operator of all or any of the following electricity generation, transmission, distribution and supply services -
- (a) operation, maintenance and upgrade of GTDS facilities as necessary to meet the standards and capabilities of a modern electricity supply system;

- (b) undertaking the improvements necessary to achieve the development of new transmission and distribution facilities proposed by BPL;
  - (c) management of billing, collection and customer relations for all retail sales of electricity and, in carrying out such responsibilities, making recommendations for the approval by URCA of tariff terms intended to advance energy efficiency, conservation, demand response, and protection of vulnerable customers; and
  - (d) subject to tariff terms approved by URCA, provision of street lighting on the basis of one of the following terms-
    - (i) a special tariff for street lighting;
    - (ii) a preferred rate for high efficiency lighting technology determined by URCA;
    - (iii) other alternative tariff terms for street lighting.
- (3) This section is without prejudice to section 20(6).

## **PART V - RENEWABLE ENERGY AND LIBERALISATION OF ELECTRICITY SECTOR**

### **25. Formulation of renewable electricity plan.**

- (1) A public electricity supplier shall, in the exercise and performance of its functions and powers and subject to its licence, have regard to the goal of the national energy policy and the electricity sector policy objectives, referred to in sections 5 and 6, to increase the proportion of renewable energy capacity in the generation mix over the specified period.
- (2) A public electricity supplier shall develop and submit in writing for CRCA's approval -
  - (a) subject to subsection (4), within six months of the coming into operation of this Act a time-bound plan for the introduction of sustainable renewable energy technologies into the electricity supply system; and
  - (b) an annual report on the accomplishments made against the approved plan.
- (3) The plan referred to in subsection (2) shall be revised, updated and submitted to URCA for approval every three years after the date of its initial submission and shall include, as determined by URCA-
  - (a) provision for facilitating persons, including other public electricity suppliers, to apply to URCA to be licensed as independent power

- producers to participate in utility electricity generation to the relevant grid using renewable resources and technologies;
- (b) a policy statement giving preference to renewable electricity resources in all procurement actions in the absence of compelling reliability or cost considerations;
  - (c) a plan to procure increasing specified minimum percentages of electricity products from eligible renewable electricity resources by a specified date, thereby allowing the phased increase in renewable generations;
  - (d) provisions to ensure the reliability of intermittent resources, taking into account the availability of cost effective storage technologies;
  - (e) provision for facilitating residential renewable energy generation to the grid and renewable energy self-generation projects;
  - (f) an annual requirement for reporting the progress by the public electricity supplier with respect to its renewable electricity plan; and
  - (g) a mechanism for formal review by URCA of the renewable electricity plan once every three years, which review will result in the public electricity supplier updating the plan to reflect developments in renewable electricity resources.
- (4) URCA may impose different time periods for submission or revision of a renewable energy plan by a public electricity supplier other than BPL.
  - (5) URCA shall-
    - (a) publish for public information purposes only a summary of the proposed renewable energy plan proposed by BPL or any other public electricity supplier; and
    - (b) after publication of the plan, determine whether to approve the plan as consistent with the sector policy objectives and the national energy policy.

**26. Procurement procedures for utility scale renewable electricity generation.**

- (1) A public electricity supplier shall as a part of its internal planning processes determine -
  - (a) the need at any given time for the provision of additional energy to the relevant grid; and
  - (b) whether the need should be supplied using utility scale renewable energy resources and technologies.

- (2) Where a public electricity supplier determines that a need exists for the provision of additional energy to the grid using utility scale renewable energy resources and technologies, the supplier shall -
- (a) notify URCA of the need as determined by the supplier;
  - (b) where the supplier determines to fulfil the need itself, notify and justify to URCA the rationale for such determination;
  - (c) where a public electricity supplier intends to procure the supply of energy through an independent power producer and URCA approves in writing the determination of need made by the supplier
    - (i) through competitive procurement processes approved by URCA, invite persons to apply to the supplier for approval as independent power producer; to provide on behalf of the supplier electrical energy to the relevant grid using renewable energy resources and technologies; and
    - (ii) in granting approval to successful applicants, consult with URCA and make the approval subject to the grant by URCA of an independent power producer licence and such other licences, permits or approvals as may be required under any other Act.
- (3) The competitive procurement processes approved by URCA shall be designed to attain and promote the electricity sector policy objectives and national energy policy goals including, but not limited to -
- (a) safe, least cost, reliable electricity supplies;
  - (b) protection of the natural environment of The Bahamas through the use of advanced electricity technologies and practices;
  - (c) securing the maximum use by an applicant of renewable electricity resources; and
  - (d) creation of investment opportunities for citizens of The Bahamas.
- (4) An applicant approved by a public electricity supplier pursuant to subsection (2) shall, on the issuance of a licence by URCA, enter into a negotiated power purchase and grid interconnection agreement with the supplier for the purchase by the supplier of the energy to be generated.
- (5) A public electricity supplier shall impose as a condition of any approval granted, and of any negotiated power purchase and grid interconnection agreement, the requirement of an absence of a conflict of interest, or satisfactory mitigation where a conflict exists, between the power purchase and grid interconnection agreement and-
- (a) any contract or arrangement between the supplier and another public electricity supplier or an independent power producer; or

- (b) additionally, in the case of BPL, a management contract between BPL and any System Operator.
- (6) URCA-
  - (a) may review, for capacity, energy and effectiveness, the pricing structure of any negotiated power purchase and grid tie-in agreement made with a public electricity supplier under this section; and
  - (b) shall not issue an independent power producer licence to an applicant approved by a public electricity supplier under this section that URCA determines is not qualified in accordance with the provisions of this Act to be granted such a licence.
- (7) The terms of a negotiated power purchase and grid interconnection agreement made with a public electricity supplier under this section shall, to the extent such terms are included or reflected in a licence granted by URCA in accordance with subsection (6)(a) and (b), be binding on URCA.
- (8) A person aggrieved by the conduct by a public electricity supplier of the competitive procurement processes may appeal such conduct to the Tribunal under Part XIV.
- (9) Nothing in this Part shall prevent the holder of an independent power producer licence from applying to BPL, subject to the grant of the requisite licence by URCA, for approval to operate in accordance with Part VI as a public electricity supplier in the whole or a part of a designated Family Island.

**27. Residential renewable energy generation for connection to the grid.**

- (1) An owner of property may apply to a public electricity supplier in writing for a permit to install or operate on the property and connect to the grid, for residential purposes only, a generating resource using renewable energy sources of such size and quality as may be prescribed in regulatory or other measures issued by URCA.
- (2) Subject to this Act, a public electricity supplier may on application made under subsection (1) grant a permit to a property owner.
- (3) Where a public electricity supplier grants a permit under this section, the renewable energy generating resource shall -
  - (a) be recorded in a register maintained by the public electricity supplier in accordance with regulatory or other measures issued by URCA;
  - (b) have interconnection to the grid in accordance with the terms and conditions of a grid interconnection agreement entered into between



- the public electricity supplier and the owner or operator of the generating resource; and
- (c) comply with all relevant standards and guidelines issued by URCA in relation to the -
    - (i) construction, installation, operation, and performance of renewable energy generating resources; and
    - (ii) training and experience required by persons in relation to system installation and operation.
  - (4) The public electricity supplier shall record in the register the names of all permit holders and the corresponding renewable energy generating resources and grid interconnection agreements, including specifications of the generating resources.
  - (5) The grid interconnection agreement shall provide for the purchase by the public electricity supplier, or credit to the property owner, of the value and amount, calculated in accordance with regulatory or other measures issued by URCA, of power generated to the grid that is not required for the property owner's use.
  - (6) An owner or operator of a renewable energy generating resource shall, prior to the installation or operation of the generating resource, apply for a permit in accordance with subsection (1) and, where a permit is granted, at all times ensure that the generating resource is operated in accordance with the terms and conditions of the grid interconnection agreement.
  - (7) The owner or operator of a renewable energy generating resource installed or in operation for residential purposes on the date this Act comes into operation, who is connected or requires connection to a grid, shall apply to the relevant public electricity supplier for a permit in accordance with this section and regulatory or other measures issued by URCA.
  - (8) A public electricity supplier may, where the owner or operator of a residential renewable energy generating resource contravenes or fails to comply with a provision of this section, the grid interconnection agreement or regulatory or other measures issued by URCA, disconnect the resource from the grid.
  - (9) A public electricity supplier shall submit biannual reports to URCA on the number of permits granted under this section and the sizes and aggregate kilowatts of the installed generating resources.
  - (10) A public electricity supplier -
    - (a) shall not refuse, unreasonably, the grant of a permit under this section;
    - (b) shall grant or refuse the grant of a permit having regard to -

- (i) the terms and conditions of the supplier's licence; and
  - (ii) the supplier's renewable electricity plan approved by URCA under section 25.
- (11) A person who contravenes or fails to comply with subsections (6) or (7) commits an offence.
- (12) A person aggrieved by the refusal of a public electricity supplier to grant a permit under this section may appeal to the Tribunal under Part XIV.

**28. Approval of renewable energy self-generation projects.**

- (1) URCA shall approve in writing the installation or operation of generating stations using prescribed renewable energy resources where -
- (a) renewable energy self-generation projects; are advanced by-
    - (i) the Government, in any place in The Bahamas, in relation to the supply of energy to premises occupied by a ministry, department, statutory body, agency, local government council, or other entity of Government;
    - (ii) a small -scale business or commercial enterprise within The Bahamas;
  - (b) such stations meet the requirements of, and are operated in accordance with regulatory or other measures issued by URCA; and
  - (c) such stations have no adverse impact on the reliability of the electricity supply system.
- (2) URCA shall maintain and publish, in accordance with section 43, a list of the names of the entities granted approval under this section together with the corresponding sizes and aggregate kilowatts of the installed generating stations.

**PART VI - ELECTRICITY SUPPLY SYSTEMS AND PUBLIC ELECTRICITY SUPPLIERS IN THE FAMILY ISLANDS**

**29. Public electricity suppliers in the Family Islands.**

- (1) This Part applies to the supply of electricity in the Family Islands by a public electricity supplier other than BPL.
- (2) A public electricity supplier under this Part is a person who, pursuant to a public electricity supplier licence issued by URCA under section 44(1), supplies or sells electrical energy to the general public in the whole or a part of a Family Island-
- (a) with the approval of the approving authority; and

- (b) subject to such other licences, permits or approvals as may be required under any other Act.
- (3) A public electricity supplier under this Part has only such functions, powers and duties as are contained in the public electricity supplier licence issued by URCA.

**30. Requirement of licence and approval to construct or operate electricity supply system in a Family Island.**

- (1) Except in accordance with the approval of an approving authority, and a public electricity supplier licence granted by URCA under section 44(1), no person shall -
  - (a) construct an electricity supply system, or a component of such a system, for the purpose of supplying electrical energy to the public in the whole or a part of a Family island;
  - (b) generate, transmit, distribute or supply electricity to the public in the whole or a part of a Family Island; or
  - (c) install or operate in a Family Island a standby generating plant with a generating capacity exceeding one thousand kilowatts.
- (2) The requirement in subsection (1) for a licence by URCA does not apply where-
  - (a) a person installs and operates a standby generating plant approved by the Ministry of Works, and notified to the relevant approving authority, with a generating capacity of one thousand kilowatts or less and such plant is used solely for the supply of electricity in case of the failure of supply by a public electricity supplier or in case of other emergency;
  - (b) a property owner utilises, for the purpose of supplying energy for residential use, renewable energy sources in accordance with the requirements of section 27; or
  - (c) URCA approves in writing renewable energy self-generation projects advanced by the Government or a small-scale business or commercial enterprise in accordance with section 28.
- (3) For the avoidance of doubt, a person requiring such approval to carry out in the Port Area an activity referred to in subsection (1) shall apply for such approval to the Grand Bahama Port Authority.
- (4) A person who contravenes or fails to comply with subsection (1) commits an offence.

**31. Grant of approval by BPL of public electricity suppliers in the Family Islands.**

- (1) BPL shall as a part of its internal planning processes determine -
  - (a) the need at any given time for the provision of new or additional energy to the whole or a part of a designated Family Island; and
  - (b) whether BPL is best able or desirous to supply such need and, where BPL determines to self supply, notify and justify to URCA the rationale for such determination.
- (2) Where BPL determines pursuant to subsection (1) that a need exists in relation to a designated Family Island which BPL determines not to self-supply, BPL shall -
  - (a) notify URCA of such determination;
  - (b) where URCA approves in writing the determination of need made by BPL -
    - (i) through competitive procurement processes approved by URCA, invite persons to apply to BPL under section 30(1)(a) or (b), as the case may be, for approval to operate as a public electricity supplier in the designated Family Island; and
    - (ii) in granting approval to a successful applicant, consult with URCA and make the approval subject to the grant, or extension of a grant, by URCA of a public electricity supplier licence and such other licences, permits or approvals as may be required under any other Act.
- (3) An application to BPL for the grant of an approval made under section 30(1)(a) or (b) shall -
  - (a) be made in writing, in duplicate, and one copy each submitted to BPL and URCA, respectively;
  - (b) contain full particulars of the proposed construction, including an estimate of the cost;
  - (c) be accompanied by a site survey plan, proof of ownership or a lease of the site, and plans and drawings of the system;
  - (d) delineate, define and specify clearly the proposed area(s) of supply; and
  - (e) provide such other information as BPL or URCA may require.
- (4) BPL shall review an application for approval pursuant to subsection (3) with respect to the -
  - (a) proposed area(s) of supply and the degree to which the applicant proposes to meet the need for electricity resources in the designated Family Island, or part thereof;

- (b) suitability of the electricity supply system proposed by the applicant, having regard to reliability, efficiency, affordability and environmental sustainability;
  - (c) degree to which the applicant proposes using renewable electricity resources and technologies; and
  - (d) compliance of the proposed system with the objectives and goals of the electricity sector policy and the national energy policy.
- (5) A grant of approval by BPL in respect of an application made pursuant to subsection (3) is subject to -
- (a) the grant by URCA under section 44(1) of a public electricity supplier licence to the successful applicant; and
  - (b) such conditions and restrictions that BPL may request URCA to incorporate or reflect, and which URCA subsequently incorporates or reflects, in a public electricity supplier licence granted under section 44(1).
- (6) URCA-
- (a) shall not issue a public electricity supplier licence to an applicant approved by BPL under this section that URCA determines is not qualified in accordance with the provisions of this Act to be granted such a licence; and
  - (b) where a licence is granted under Part IX, shall incorporate and reflect in the licence such conditions and restrictions that BPL may reasonably request URCA to so incorporate or reflect.
- (7) A person aggrieved by the conduct by BPL of the approved competitive procurement processes may appeal such conduct to the Tribunal under Part XIV.
- (8) BPL shall, on an application for approval made under section 30(1)(c), grant approval where BPL is satisfied that the electrical energy proposed to be obtained using the generator cannot be supplied, or supplied within a reasonable time, to the applicant by -
- (a) BPL or another public electricity supplier; or
  - (b) a combination of BPL and another public electricity supplier.

### **32. Inspection of public electricity suppliers in the Family Islands.**

- (1) URCA shall, at the cost of the licensee, appoint on an annual basis qualified independent third parties to conduct inspections of public electricity suppliers operating in designated Family Islands and in the Port Moresby Area.

- (2) An inspector appointed pursuant to subsection (1) has, for the purpose of conducting an inspection, a right of entry at all reasonable hours, and at any other time „,]en a system apparatus is at work, to -
  - (a) the site of an electricity supply system, or proposed system, and to the buildings and installations on such site; and
  - (b) storerooms, warehouses, storage tanks or any other place under the control of the public electricity supplier where materials intended for use in connection with the electricity supply system is stored.
- (3) An inspector shall conduct the inspection so as to ensure that-
  - (a) in the case of a designated family Island and in accordance with written instructions given by BPL to the inspector, materials in respect of which customs duties have been exempted or refunded have been used, or may reasonably be presumed to have been used, in respect of the construction of the electricity supply system concerned;
  - (b) safety measures and safeguards required under the licence have been instituted and utilised by the public electricity supplier; and
  - (c) the public electricity supplier -
    - (i) has kept proper accounts and reliable records in accordance with the requirements of the licence; and
    - (ii) is otherwise complying with the terms, conditions and restrictions of the public electricity supplier licence.
- (4) An inspector appointed under subsection (1) -
  - (a) may seize any article or thing which is reasonably suspected to be an article or thing concerning an offence under this Act or the regulations or by which such an offence has been committed.; and
  - (b) when seeking entry to premises, shall carry and produce on demand an official identification card or badge in such form as may be prescribed.
- (5) The owner or occupier of premises shall, upon production of an official card or badge by an inspector, admit the inspector to the premises.

### **33. Costs to Government and concessions to public electricity suppliers.**

- (1) Subject to subsection (7) and section 36, a public electricity supplier in the family Islands is entitled to -
  - (a) a refund of or exemption from payment of all customs duties in respect of all materials imported for use by the supplier and necessary for the construction, maintenance and operation of the proposed electricity supply system; and

- (b) concessions and such other matters as BPL, with the approval of the Minister and the Minister of Finance, considers fit and proper having regard to the nature and location of the proposed electricity supply system.
- (2) Where a public electricity supplier licence requires the licensee to operate and maintain street lighting over or under any public street or public lands in an area of supply, the costs for such street lighting shall accrue and be billed by the licensee to the Government.
- (3) A person shall not knowingly make a false declaration for the purpose of obtaining a refund of or exemption from the payment of customs duties, or any other concession, under this section.
- (4) A public electricity supplier, and a director, employee, or agent of the supplier, shall-
  - (a) use materials in respect of which customs duties have been refunded or exempted, or other concessions granted, only for the purposes for which they were granted;
  - (b) where materials referred to in paragraph (a) are being replaced, use or dispose of such materials for other purposes only with the written consent of BPL and on payment of customs duties based on the value of the materials at the time of such use or disposal; and
  - (c) where materials referred to in paragraph (a) are used for purposes other than those in respect of which the refund, exemption or other concession was granted, pay refund or repay to the Government the duties refunded or exempted or other concessions granted.
- (5) A person who contravenes or fails to comply with a provision of subsections (3) or (4) commits an offence.
- (6) BPL may, where a licensee is convicted of an offence under this section
  - (a) withdraw the approval granted under section 31, and request J.RCA to cancel the licence of the public electricity supplier;
  - (b) on behalf of the Minister, claim as liquidated damages from the public electricity supplier -
    - (i) all customs duties refunded or from which payment was exempted; and
    - (ii) payment of all other fees or charges waived or concessions granted under this section.
- (7) This section does not apply to a public electricity supplier in the Port Area.

### 34. BPL has step-in obligation.

- (1) Subject to subsection (2) and pursuant to directions issued by URCA, BPL shall act to prevent the discontinuation of or to restore, the licensed services of a public electricity supplier under this Part.
- (2) BPL shall, pursuant to subsection (1) and until such directions are revoked by URCA, perform the licensed services and obligations to the public of a public electricity supplier where, for any reason -
  - (a) the public electricity supplier ceases to, or fails to adequately, carry out its obligations to the public under the terms of its licence; or
  - (b) URCA revokes or suspends the licence of such public electricity supplier.
- (3) BPL may, where it performs the services and obligations of a public electricity supplier under this section -
  - (a) request from URCA a rate adjustment in the licence to reflect additional costs to perform such services and obligations; and
  - (b) take action in court for recovery of costs and damages incurred by BPL caused by the failure by such supplier to perform its obligations to the public in accordance with the terms of its licence.
- (4) This section does not apply to a public electricity supplier in the Port Area.

### 35. Prosecution of offences.

All proceedings for offences against this Part may be prosecuted -

- (a) summarily before a magistrate having jurisdiction in the place where the offence was committed; and
- (b) as applicable, by URCA or by a revenue officer or a peace officer in the name of the Minister or the Commissioner of Police respectively.

### 36. Definitions.

In this Part -

**"construct"** and its cognates, in relation to an electricity supply system, includes the construction, extension, installation, remodelling, equipping, re-equipping or operation of the system;

**"customs duties,"** means -

- (a) the duties levied by the Tariff Act and the Value Added Tax Act;



- (b) any other duties or taxes hereafter imposed on or payable in respect of goods imported into The Bahamas, excluding stamp duties;

**"materials"** means -

- (a) plant and machinery including together with spare parts, accessories and tools;
- (b) fuel and lubricating oils;
- (c) structural steel, including stanchions, girders, trusses, nuts and washers, purlins, joists, beams, cranes and crane beams, bolts, gutter pipes, flashings, windows and glass, galvanised steel and aluminium sheeting, fastenings and accessories;
- (d) fresh and salt water filtering and treatment plant apparatus, including spare parts and accessories;
- (e) air, steam, water, gas and oil pipes, valve fittings and accessories;
- (f) overhead and underground electricity distribution apparatus, materials and tools;
- (g) insulating materials, including compounds, varnishes, tapes, cloths, tubes and rods;
- (h) street lighting apparatus, fittings, lamps, spare parts and accessories;
- (i) electricity, thermal pressure and vacuum measuring apparatus and instruments, relays, signalling and radio apparatus, including spare parts and materials;
- (j) air filtering, cleaning and drying apparatus and instruments including spare parts and materials;
- (k) gas and electric welding and brazing rods and welding and brazing apparatus and equipment including spare parts and materials, solder of all grades, soldering irons, materials and apparatus;
- (l) fuel storage and road transporting tanks, flexible fuel pipes and valves and fuel measurement instruments, special vehicle bodies; and
- (m) such items related to renewable energy installations as may be prescribed by regulations.

## PART VII - ROLE, FUNCTIONS AND POWERS OF URCA

### 37. Role of URCA.

- (1) The primary role of URCA is the regulation of the electricity sector in accordance with the goals, objectives and principles underpinning the national energy and electricity sector policies.
- (2) URCA, in the regulation of the sector shall -
  - (a) operate in an independent and transparent manner so as to give the members of the public and regulated entities confidence in the regulatory process;
  - (b) demonstrate reasoned consistency and stability in its decision making;
  - (c) provide opportunities for public input in the regulatory process;
  - (d) develop a cadre of professionals knowledgeable about the electricity sector;
  - (e) *in accordance* with the provisions of this Act, license qualified entities that wish to provide services in the electricity sector;
  - (f) monitor the carrying out by BPL, all licensees and public electricity suppliers of contractual commitments made prior to and following the enactment of this Act;
  - (g) tailor regulatory and other measures so that regulatory burdens are proportional to the nature of the issue they are designed to address;
  - (h) encourage competition between public electricity suppliers;
  - (i) promote good utility practice and continuous improvement in all regulated activities;
  - (j) hold regulated entities accountable for operating in an environmentally responsible manner;
  - (k) ensure consumer protection and support appropriate billing, credit and collection practices;
  - (l) determine and assess fees on licensed entities as necessary to cover the costs allocable to the regulation of the electricity sector;
  - (m) provide for and carry out periodic rate reviews;
  - (n) engage inspectors as required, at the costs of the licensees, to conduct inspections of public electricity suppliers for compliance with the terms and conditions of their licences;
  - (o) support changes in the national energy policy as articulated by the Government.

### 38. Functions and powers of URCA.

- (1) The functions and powers of URCA are to -
  - (a) review and determine that the rates and scale of charges comprising the LARI rate for electricity supply services proposed by a public electricity supplier are reasonable, reflect efficiently incurred costs and are not inconsistent with, or in contravention of, this Act or any other law and allow an opportunity for public input;
  - (b) review and approve, or reject, a determination by a public electricity supplier of a need for additional electricity generation by an independent power producer to ensure that it is reasonable, reflects efficiently incurred costs and is not inconsistent with, or in contravention of, this Act or any other law;
  - (c) establish rules and approve competitive processes for procurement of power generation resources conducted by BPL, or any other public electricity supplier, and ensure such rules are fair, consistent and compatible with the objectives and principles of the electricity sector and national energy policies;
  - (d) ensure that the electricity supply system is operated efficiently and in accordance with applicable regulatory and other measures;
  - (e) in accordance with **this** Act, review, and grant applications for public electricity supplier licences;
  - (f) represent the Government in regional and international organisations and obligations where the Minister delegates such tasks to URCA;
  - (g) issue licences to and collect fees from all licensees and public electricity suppliers sufficient to cover the cost of the regulation of the sector by URCA;
  - (h) publish for public information, prior to granting approval, the initial and revised renewable electricity plans proposed by IWL and other public electricity suppliers in accordance with this Act;
  - (i) subject to section 39, promote energy efficiency in the generation, distribution and consumption of electricity throughout The Bahamas;
  - (j) subject to section 40, publish, monitor and enforce standards for the protection of electricity consumers;
  - (k) require public electricity suppliers and other licensees to submit periodic reports, as determined by URCA, on their operations; and
  - (l) perform such other functions as may be assigned to URCA by this Act or any other law in relation to the electricity sector.

- (2) URCA may in the performance and exercise of its functions pursuant to subsection (1) do all things as may be incidental to or necessary or expedient for the fulfilment of such functions.
- (3) Without prejudice to the generality of subsection (2), and for the purpose of carrying into effect the sector policy objectives, URCA may issue regulatory and other measures, including without limitation -
  - (a) making determinations and adjudications in accordance with sections 64 and 65 respectively;
  - (b) imposing conditions and penalties in accordance with section 45 and Part XI respectively;
  - (c) issuing regulations, directions, decisions, statements, instructions and notifications;
  - (d) publishing and maintaining registers or lists;
  - (e) for the purpose of enforcing compliance with this Act, instituting prosecutions in accordance with this Act, section 7 of the URCA Act, or any other law;
  - (f) issuing, suspending, varying or revoking licences, permits and exemptions under Part VII;
  - (g) issuing technical rules and standards;
  - (h) conducting inquiries, investigations and oral hearings including in response to complaints from regulated entities and their customers;
  - (i) requiring any licensee to furnish such information and submit such returns in relation to its operations at such intervals as it may require;
  - (j) conducting market investigations and market reviews and publishing regular information and reports; and
  - (k) exercising any other power granted to URCA by this Act or any other law.

**39. Promotion and approval by URCA of energy efficiency programs.**

- (1) URCA shall, in accordance with the electricity sector policy objectives, promote the establishment and continuation of energy efficiency programs by public electricity suppliers and consumers throughout The Bahamas.
- (2) URCA shall promote the establishment and continuation of energy efficiency programs under subsection (1) by instituting procedures that facilitate and foster proposals by public electricity suppliers and consumers in The Bahamas to develop, guide and administer energy efficiency programs and URCA shall, prior to a grant of approval, submit such proposals to a public consultation process.

- (3) Each energy efficiency program proposal approved by URCA shall include-
  - (a) a detailed estimation of how much opportunity exists for energy efficiency measures and corresponding savings;
  - (b) a proposal for cost-effective updates to electricity infrastructure to bolster energy efficiency measures;
  - (c) proposed energy efficiency requirement targets for buildings and appliances; and
  - (d) a three year schedule and agenda for energy conservation education programs for electricity customers.

**40. Consumer protection.**

- (1) BPL and every public electricity supplier shall, within three months of the date this Act comes into operation, submit to URCA for approval a plan proposing standards for the protection of its electricity consumers.
- (2) The consumer protection plan referred to in subsection (1) shall include
  - (a) standards of service, quality and safety of electricity service and equipment provided;
  - (b) procedures for receiving and responding to consumer complaints;
  - (c) procedures for resolving disputes with consumers;
  - (d) accelerated procedures for resolving disputes with customers related to billing;
  - (e) standards and procedures for terminating and resuming service that reflect that -
    - (i) electricity is a basic necessity;
    - (ii) all residents should be able to afford essential electricity supplies;
  - (f) special termination and restarting procedures for vulnerable customers who are unable to pay their electric bills and who satisfy eligibility criteria for assistance;
  - (g) procedures for amending the consumer protection standards adopted under this section when technological improvements or other changed circumstances require; and
  - (h) specific plans for dealing with vulnerable customers, as a universal service obligation, in accordance with international industry best standards.
- (3) URCA shall, before granting its approval, publish the proposed consumer protection plan for public consultation.

- (4) URCA may, on completion of the public consultation, require a public electricity supplier to revise the proposed consumer protection plan.
- (5) The plan or revised plan, as the case may be, shall upon approval by URCA be implemented and enforced.
- (6) URCA shall monitor and enforce the consumer protection conditions in licences and, in this regard, URCA may from time to time appoint in writing one or more suitably qualified electrical inspectors to inspect -
  - (a) any electrical installation or apparatus of RPL or of any other public electricity supplier; or
  - (b) the wiring, fittings or apparatus used by any consumer.
- (7) An electrical inspector appointed by URCA pursuant to subsection (6) has a right of entry to premises at all reasonable hours for the purpose of conducting an inspection and the owner or occupier of premises shall, upon production of an official card or badge by an inspector, admit the inspector to the premises.
- (8) URCA may issue regulatory or other measures relating to the protection of consumers, including measures regulating -
  - (a) the standard of service and the quality and safety of electricity supply systems and equipment;
  - (b) the minimum requirements, qualifications and or tests a person must possess or undergo in order to be issued a licence or permit by any licensing or permitting authority to construct, erect, repair or alter, take charge or control the operation of any installation or apparatus;
  - (c) the handling of complaints by persons who are consumers in the market for services and ancillary equipment; and
  - (d) any other matter URCA deems necessary for securing the effective protection of persons who are in the markets served by public electricity suppliers and electricity supply systems;
- (9) A licensee shall -
  - (a) monitor its performance against such key performance indicators as may be set out in its licence or in any regulatory measures issued by URCA; and
  - (b) pursuant to a written request made by URCA, publish and provide in the manner required by URCA its performance results against the relevant key performance indicators.
- (10) URCA shall, as soon as reasonably practicable after this Act comes into operation, establish one or more alternative dispute resolution ("ADR") schemes for disputes between licensees and consumers and between

licensees and independent power producers or approve in accordance with subsection (12) a scheme or schemes proposed by licensees.

- (1) An ADR scheme may consist of-
  - (a) mediation, conducted by URCA, or persons appointed by URCA, or persons appointed by the parties to the dispute, or by a third party;
  - (b) arbitration by an expert, of specific identified matters having limited scope, appointed by URCA, or the parties to the dispute, or by a third party; or
  - (c) such other methods of alternative dispute resolution as URCA may determine.
- (12) Where URCA establishes an ADR scheme, URCA shall request and take into account proposals from licensees.
- (13) URCA may approve an ADR scheme proposed by licensees where such scheme is-
  - (a) fair, transparent and non-discriminatory;
  - (b) administered by persons who are independent of the licensees to whom the ADR scheme applies;
  - (c) administered in compliance with the electricity sector policy objectives; and
  - (d) designed to ensure that individuals to be engaged under the ADR scheme to function as mediators, adjudicators, arbitrators, or in such other roles as may be contemplated, have qualifications and experience adequate to effectively and efficiently carry out such functions.
- (14) URCA may require persons responsible for the management and operation of an approved ADR scheme to report to URCA on its functioning and URCA shall, where the ADR scheme ceases to comply with a requirement retained in subsection (12), withdraw its approval of the scheme.
- (15) An ADR scheme consisting of arbitration in accordance with subsection 10(b) may provide for binding decisions, including interim and conservatory measures.
- (16) An ADR scheme established under this section shall not prejudice rights existing under any other provision of this Act or any other law.

## **PART VIII - CONSULTATION AND PUBLICATION BY URCA**

### **41. Duty to consult.**

- (1) URCA shall follow the specific procedures set out in section 64 and section 65 respectively when issuing determinations, adjudications and other regulatory measures referred to in those sections.
- (2) URCA shall, where no specific procedures are provided for in this Act -
  - (a) allow persons with sufficient interest a reasonable opportunity to comment on proposed regulatory and other measures which, in the opinion of URCA, are of public significance;
  - (b) accept as having sufficient interest for the purpose of paragraph (a), persons whose rights; or interests may be materially adversely affected or prejudiced by the proposed regulatory and other measures; and
  - (c) give due consideration to the comments of persons having sufficient interest prior to introducing the regulatory and other measures concerned.
- (3) URCA shall, as soon as practicable after the date this Act comes into operation, publish its standard procedures for seeking comments including
  - (a) how a notice of consultation requesting comments will be published;
  - (b) the minimum time for responding to a notice of consultation which shall, in ordinary circumstances, be not less than thirty calendar days commencing on the day after URCA publishes the notice of consultation;
  - (c) how URCA will publish comments or summaries of comments received pursuant to a notice of consultation; and
  - (d) guiding principles for determining when URCA may depart from the standard procedures.

### **42. Regulatory and other measures of public significance.**

- (1) A regulatory or other measure is likely to be of public significance where it relates to electricity supply systems or services, energy efficiency programmes, or renewable energy resources, and can lead to one or more of the following-
  - (a) a major change in the activities carried on by URCA under this Act;
  - (b) a significant impact on persons carrying on activities in areas regulated by URCA under this Act; and
  - (c) a significant impact on the general public in The Bahamas.



- (2) Without prejudice to any other regulatory or other measures being considered of public significance, the following shall be considered regulatory or other measures of public significance for the purposes of this Act-
  - (a) the national energy policy; and
  - (b) regulations, technical rules, and standards issued by URCA.

#### **43. Duty to publish documents.**

- (1) Subject to section 42, URCA shall take promotional measures to make available to the public any regulatory and other measures which, in the determination of URCA, are of public significance and shall-
  - (a) as soon as practical after issuance, publish such regulatory and other measures on the IITZ-CA website;
  - (b) ensure that the URCA website-
    - (i) includes a notification system for registered users;
    - (ii) is regularly updated;
    - (iii) remains available to the public; and
  - (c) maintain copies of documents at URCA's principal office for inspection by the public, on request and without charge, during normal business hours.
- (2) URCA shall consider and determine whether it is additionally necessary or desirable to publish notice of regulatory and other measures of public significance in one or more newspapers of daily circulation in The Bahamas.

## **PART IX - LICENSING OF ELECTRICITY SECTOR AND OVERSIGHT OF LICENSEES BY URCA**

#### **44. Requirement of a licence.**

- (1) No person shall, unless authorised to do so by a licence granted under section 45 or exempted under section 50 -
  - (a) engage in the generation of electricity;
  - (b) engage in the transmission and distribution of electricity, including the international transmission, or inter-island transmission, of electricity within, into, from or through The Bahamas;
  - (c) except in the capacity of an employee or independent contractor of a licensee, transmit electricity for or on behalf of such licensee;
  - (d) engage in the retail of electricity;

- (c) import or export electricity; or
  - (f) trade in any wholesale electricity market.
- (2) A person who contravenes a provision of subsection (1) commits an offence and is liable on conviction to a fine not exceeding five hundred thousand dollars.

#### **45. Licence application and renewal.**

- (1) Persons requiring a licence under section 44 must submit an application in the form and manner required by URCA together with -
- (a) a copy of the approval granted by the approving authority; and
  - (b) such other documents and fees as URCA may specify or prescribe.
- (2) An applicant for a licence must-
- (a) be a legal entity incorporated in The Bahamas;
  - (b) conduct the administration and management of the business that is the subject of the licence application from premises in The Bahamas;
  - (c) be a fit and proper person to establish, maintain and operate an electricity service;
  - (d) demonstrate to the satisfaction of URCA that the applicant has sufficient intention, financial strength and resources to meet obligations under this Act and to provide electricity services in an effective manner consistent with the electricity sector policy objectives; and
  - (e) meet any other requirements, including but not limited to the provision of information and data, that URCA may require.
- (3) URCA shall review all applications for licences and within thirty calendar days of receipt of an application -
- (a) approve the application and grant a licence or licences;
  - (b) reject the application specifying the reasons for the rejection; or
  - (c) request further information necessary or desirable to evaluate the application.
- (4) Where URCA requests further information pursuant to subsection (3), URCA shall have a further thirty calendar days from the date of receipt of the information to evaluate the licence application.
- (5) URCA shall grant and issue a licence for a term not exceeding twenty-five years.
- (6) URCA shall renew a licence on application of a licensee, made no later than three years prior to the end of the term of the licence and payment of the prescribed fee, except where the licensee has repeatedly contravened,

or failed to cure a material contravention, of this Act, or a regulatory measure, or a condition of the licence.

- (7) Nothing in subsection (6) shall restrict URCA from amending the terms of a licence that is to be renewed in order to conform such licence to the requirements of this Act and any regulatory and other measures issued by URCA.

#### **46. Grant and types of licences.**

- (1) Subject to this Act, URCA may grant-
- (a) a public electricity supplier licence to a person -
    - (i) who has been granted an approval in writing by the Grand Bahama Port Authority to construct and operate an electricity supply system and perform GTDS functions in the Port Area;
    - (ii) who has been granted an approval in writing by BPL to construct and operate an electricity supply system and perform GTDS functions in the whole or part of a designated Family Island;
  - (b) an electricity generation licence to an independent power producer approved by an approving authority and or a public electricity supplier;
  - (c) an electricity transmission and distribution licence; and
  - (d) any other licence as URCA determines including, but not limited to, a licence for temporary use, or, for testing or trial of a new technology.
- (2) URCA shall, prior to the grant of a licence under subsection (1)(a) and (b), consult with the relevant approving authority.
- (3) Notwithstanding any provision of this Act but subject to paragraph 4 of the *Second Schedule*, URCA shall within ninety days of the coming into operation of this Act grant a public electricity supplier licence to -
- (a) BPL or any successor company approved by the Minister to perform GTDS functions in The Bahamas; and
  - (b) the Grand Bahama Power Company Ltd. or any successor company approved by the Grand Bahama Port Authority to perform GTDS functions in the Port Area.

#### **47. Subsidiary undertakings of a licensee.**

- (1) URCA may grant a licence jointly to a named licensee and any subsidiary undertaking of the named licensee included in the application for a licence or notified to URCA from time to time.
- (2) For the purposes of subsection (1), a notification shall-

- (a) be in writing;
  - (b) identify the area of supply and the location of the operations of the subsidiary undertaking;
  - (c) be given to URCA where a subsidiary undertaking carries on an activity referred to in section 44(1); and
  - (d) unless rejected by URCA, have effect thirty calendar days after the date it is received by URCA.
- (3) URCA may refuse to grant an applicant a licence on the grounds that a company of which the applicant is a subsidiary undertaking -
- (a) has a licence;
  - (b) requires or has applied for a licence; or
  - (c) has repeatedly contravened, or failed to cure a material contravention of, this Act, a regulatory measure or a condition of a licence.
- (4) A licensee who notifies URCA of a subsidiary undertaking to be included in the licence must submit the licence to URCA for the name of the subsidiary undertaking to be endorsed thereon or the licence to be re-issued jointly in both names.
- (5) Notwithstanding, the inclusion of its name in a licence, a subsidiary undertaking shall cease to be licensed for the purposes of subsection (1)
- (a) fourteen calendar days after URCA receives notice in writing from the named licensee or the relevant subsidiary undertaking excluding the subsidiary undertaking from the licence; or
  - (b) immediately subsequent to a determination by URCA excluding the subsidiary undertaking from the licence.

#### **48. Conditions of licences.**

- (1) URCA may make the grant of a licence subject to such terms, conditions and restrictions specified in the licence as URCA determines to be appropriate.
- (2) URCA shall publish the standard conditions to be included in each licence referred to in section 46(1).
- (3) URCA may make such modifications, variations or restrictions to any of the standard licence conditions as may be required for reasons justified by reference to the electricity sector policy objectives and the national energy policy.
- (4) URCA when granting a licence shall have regard to such conditions as it considers appropriate under the electricity sector policy objectives.

- (5) Conditions of licences that relate to the same or similar electricity services shall not unfairly discriminate between licensees.
- (6) A licence granted by URCA shall be in writing and continue in force, unless revoked or suspended in accordance with this Part, for such period as may be specified in the licence.
- (7) A licence may include a restriction or condition, whether or not relating to the activities authorised by the licence, which appears to URCA to be requisite or expedient having regard to the functions and duties of URCA under this Act including, but not limited to, a restriction or condition requested by BPL pursuant to section 31(5)(b).
- (8) Without prejudice to the generality of subsections (1) and (7), a licence may include a condition -
  - (a) requiring the licensee to -
    - (i) pay to URCA a fee on the grant of the licence or to pay to it periodic fees during the currency of the licence or both, of such amount as may be determined by URCA;
    - (ii) enter into an agreement or arrangement on specified terms, or on terms of a specified type, relating to its operations or for the connection to or use of any electric line or plant owned or operated by the licensee or the other party to the agreement or arrangement;
    - (iii) observe, with such modification or exemption as may be approved by URCA, specified codes of practice and any market rules;
    - (iv) maintain specified financial accounting records and prepare financial accounts according to specified principles;
    - (v) appoint, at such intervals and on such terms as URCA may direct, an independent technical auditor for the purposes specified in the condition;
    - (vi) prepare, for approval by URCA, guidelines regarding the procedures the licensee must follow, in the event of a public emergency or, in the case of BPL, in the event of the exercise of step-in obligations arising under section 34;
    - (vii) do or not to do such things as, at the specified in the licence or are of a description so specified; **and**
    - (viii) where the licensee provides transmission and/or distribution services, to carry out any work related to the development of a transmission or distribution system or the supply of electricity to any premises;

- (b) controlling or fixing prices to be charged for the services provided by a licensee providing any of the services referred to in section 44(1), including the -
    - (i) fixing of prices or the rate of increase or decrease in prices;
    - (ii) fixing of a maximum price or maximum rate of increase or minimum rate of decrease in the maximum price;
    - (iii) fixing of an average price or an average rate of increase or decrease in the average price;
    - (iv) setting of pricing policies or principles;
    - (v) setting of prices with reference to a general price index, the cost of production, a rate of return on assets employed or any specified factor; and
    - (vi) setting of prices with reference to the quantity, location, period or other specified factors relevant to the activities authorised by the licence;
  - (c) in the case of a public electricity supplier licensee, electricity generation licensee, electricity transmission and/or distribution licensee, or any other licensee -
    - (i) imposing controls and restrictions: directly or indirectly, on the creation, holding or disposal of shares in the licensee or its shareholders or of interests in the undertaking of the licensee or any part thereof;
    - (ii) imposing restrictions on the carrying on by the licensee of any trade or business which is not related to the activity which the licensee is authorised by its licence to carry on; and
    - (iii) providing for any one or more of the conditions specified in the licence to cease to have effect at such times and in such manner and circumstances as may be specified in or determined by or under the condition.
- (9) IIRCA shall notify an applicant for the grant of a licence of its decision to grant or refuse to grant the licence in writing and, in the case of a decision to refuse to grant the licence, the reasons for its decision.

#### **49. Amendment and revocation of licences.**

- (1) Subject to subsection (3), URCA may by determination, on its own motion or on the written application of the relevant licensee, modify, vary, restrict the conditions of, or revoke, a licence granted to a licensee where
  - (a) it is necessary to comply with or conform to international treaties, commitments or standards or the laws of The Bahamas;

- (b) it is necessary to further the electricity sector policy and national energy policy goals, objectives and principles and there is justification for the causing of any hardship that may result to that licensee;
  - (c) the licensee has repeatedly contravened, or failed to cure a material contravention of, this Act or any other regulatory measure, including any condition of its licence;
  - (d) the licensee has been convicted under section 33 and HPL has requested URCA to cancel the licence of the public electricity supplier under section 33(6)(a);
  - (e) the Licensee made a statement or omitted to make a statement resulting in a material misrepresentation in its licence application;
  - (f) the licensee has entered into receivership or Liquidation, takes any action for its voluntary winding-up or dissolution, or is the subject of an order by a competent court or tribunal for its compulsory winding-up or dissolution;
  - (g) the licensee is not providing the electricity service authorised by and specified in its licence and URCA is satisfied that the licensee does not have the intention or the financial strength and resources to provide such service;
  - (b) it is in accordance with the procedure specified in section 63; or
  - (i) it is in accordance with the terms of the licence.
- (2) Subject to a determination being suspended pursuant to section 64(12), a determination made by URCA to modify, vary, restrict or revoke a licence shall take effect on the date specified and -
- (a) such date shall not be less than thirty calendar days after the date of written notice given to a licensee affected by such determination; and
  - (b) the licensee may, before the date specified in the notice given, appeal to the Tribunal against such modification, variation, restriction or revocation.
- (3) Where any issue of national security may arise as a result of a determination made by URCA under this section, URCA shall, prior to making such determination, consult with the Minister responsible for National Security.

## 50. Exemptions,

- (1) URCA may, by determination, exempt a person or class of persons from the requirement of a licence under section 44 for a specified period -
  - (a) generally or to such an extent as may be specified in the determination; and

- (b) unconditionally or subject to such conditions as may be specified in the determination.
- (2) An exemption determination shall, unless previously revoked, continue in force for such period as may be specified in the determination.
- (3) In granting an exemption under this section, URCA shall act in a manner so as not to unfairly discriminate between members of a particular class.
- (4) Without prejudice to the generality of paragraph (b) of subsection (1), the conditions imposed under that subsection may require a person carrying on an activity in pursuance of the exemption -
  - (a) to comply with a direction given by URCA as to such matters as are specified in the exemption determination or are of a description so specified;
  - (b) to do or not to do such things as are specified in the exemption determination or are of a description so specified, except in so far as URCA consents to his doing or not doing them; and
  - (c) to refer for determination by URCA such questions arising from or under the exemption determination as are specified in the determination or are of a description so specified.
- (5) Where a condition of an exemption granted to a class of persons is not complied with by a person of that class, URCA may give to such person a direction declaring that the exemption, so far as the exemption relates to such person, is revoked to such extent and with effect from such date as may be specified in the direction.

#### **51. Licences and exemption determinations generally.**

- (1) An exemption determination under section 50(1) exempts a person or class of persons from the requirement of a licence only in relation to the provision of such electricity service as may be specified in the exemption determination and subject to the conditions of that exemption determination, if any.
- (2) Regardless of their form or content, licences and exemption determinations shall be and have effect as unilateral administrative actions of URCA pursuant to its powers under this Act and not bilateral agreements or contracts.
- (3) Subject to the provisions of this Act, URCA may issue licences or exemption determinations under this section notwithstanding any law, agreement, contract, arrangement, licence or other provision in existence on the date this Act comes into operation, including any prior licence.



**52. Public register of licensees.**

URCA shall keep a register in electronic or paper form of all the names of licensees under this Act and publish the register in accordance with the procedure set out in section 43.

**53. Licensee has access and right to enter on land.**

- (1) Subject to this Part, a licensee and its agents and employees, for the purpose of constructing, installing or repairing facilities in respect of a GTDS function the licensee is licensed to perform, at all reasonable times may-
  - (a) lay, place or carry on, under, or over any land such transmission and distribution lines, posts and apparatus as are necessary or convenient for the safe and efficient transmission and delivery of electricity;
  - (b) enter upon any land on, under or over which transmission and distribution lines have been laid, placed or carried, or upon which posts or apparatus have been erected, for the purpose of carrying out repairs; and
  - (c) carry out all necessary works in connection with such construction or installation and repairs and may, in the course of such works, fell or lop trees, remove vegetation and do all things necessary for such purpose, causing as little damage or disturbance as possible consistent with good utility practice.
- (2) A licensee shall pay owners for damage caused as a result of land entered upon pursuant to this section such sum as may be agreed between the licensee and the owner or, in default of agreement, as may be determined by the Tribunal.
- (3) Subject to subsection (4), a licensee or its agents shall serve on the owner or occupier of land notice of the work proposed to be done on the land not less than seven days before entering on the land.
- (4) A licensee or its agent is not required to serve the notice referred to in subsection (3) in cases of response to an emergency or, where necessary to restore service that has been lost.
- (5) A notice required to be served on any person pursuant to subsection (3) -
  - (a) shall be served personally or by registered post;
  - (b) where the identity or whereabouts of the owner, occupier or other person interested in the land is unknown, shall be served by -
    - (i) publishing a copy of the notice in at least two newspapers having national circulation; and
    - (ii) affixing a copy of the notice upon the land concerned.

## PART X - URCA FEES AND PAYMENTS

### 54. URCA fees and payments.

- (1) The provisions of this section, unless stated otherwise, apply notwithstanding any other fees and charges payable by licensees in The Bahamas under -
  - (a) other Parts or sections of this Act; or
  - (b) other laws.
- (2) URCA may by determination impose fees or charges upon licensees, including-
  - (a) charges for services rendered by URCA in the performance and exercise of its functions and powers under this Act;
  - (b) fees for the processing of any application to URCA required under this Act;
  - (c) fees for providing copies of documents;
  - (d) annual URCA fees, based on the licensee's relevant turnover for the year in question;
  - (e) fees for the processing of merger applications under section 57 and related adjudications and orders under section 65; and
  - (f) fees and charges for administration services rendered by URCA in the performance and exercise of URCA functions and powers under this Act.
- (3) All fees and charges determined and levied by URCA under this section shall-
  - (a) be set on an objective, non-discriminatory, transparent and proportionate basis;
  - (b) be published by URCA on its website and in any other form as URCA considers appropriate;
  - (c) seek only to cover a proportionate share of the relevant operating costs of URCA for the performance of its regulatory functions under this Act;
  - (d) in respect of the issuance or renewal of a licence, be proportionate and published in an appropriate and sufficiently detailed manner so as to be readily accessible;
  - (e) be set so as to -
    - (i) cover the annual budgeted costs of performing and exercising its functions and powers under this Act and the URCA Act;

- (ii) exclude costs attributable to the performance of its functions under any legislation not pertaining to the regulation of the electricity sector;
  - (iii) recover any deficit from previous years; and
- (f) take account of any surplus in URCA's accounts carried over from the previous accounting year.
- (4) All fees and charges imposed under this section-
  - (a) are payable as and when demanded by URCA; and
  - (b) where they remain unpaid, constitute a debt due to URCA which may be recovered in a court of summary jurisdiction regardless of the amount.
- (5) Interest shall accrue on overdue URCA fees daily, at the lower of -
  - (a) a rate of four percent per annum over the prime lending rate as published by the Central Bank of The Bahamas; and
  - (b) any maximum applicable rate specified in the Rate of Interest Act<sup>2</sup>.
- (6) A licensee liable to pay fees to URCA under this Part commits an offence where such licensee -
  - (a) without lawful excuse, commences or carries on an undertaking without paying the relevant fee;
  - (b) in providing evidence for verification of relevant turnover and assessment of fees due by URCA, intentionally or recklessly makes a statement which is false in a material particular;
  - (c) obstructs URCA in the exercise of its functions under this Part;
  - (d) fails to submit payment *within* the relevant time period required by URCA; or
  - (e) is knowingly concerned in, or takes steps with a view to, the fraudulent evasion by any person of a sum due to URCA in respect of fees and payments under this Part.

## **PART XI - PROHIBITION OF ANTI-COMPETITIVE AGREEMENTS AND PRACTICES**

### **55. Anti-competitive agreements.**

- (1) Subject to subsection (5), no person shall without the grant of an approval by URCA enter into a contract or arrangement or *arrange* at an understanding *with*, which -

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- (a) contains a provision that has the purpose, or has or is likely to have the effect, of substantially lessening competition in an electricity market; or
  - (b) creates new monopoly situations in the generation, transmission, distribution or supply of electricity in The Bahamas.
- (2) No person shall give effect to a provision of a contract, arrangement or understanding that has the purpose, or has or is likely to have anti-competitive effects.
- (3) Subsection (2) applies -
- (a) where the contract, arrangement or understanding is, or is intended to be, implemented in The Bahamas; and
  - (b) to a contract, arrangement or understanding implemented on or after the date this Part comes into operation.
- (4) Subject to subsection (3), a contract, arrangement or understanding "which is prohibited by subsection (1) is unenforceable and or void.
- (5) This section -
- (a) is subject to the functions and powers of an approving authority under this Act;
  - (b) does not apply to or invalidate any practice or conduct that has been authorised under Part V or Part VI; and
  - (c) applies, but is not limited to, to such contracts, arrangements or understandings as may be specified by URCA in regulatory and other measures.

**56. Abuse of dominant position.**

- (1) A person that has a substantial degree of power in an electricity market in The Bahamas shall not take advantage of such power for the purpose of
- (a) restricting the entry of a person into that or any other market;
  - (b) preventing or deterring a person from engaging in competitive conduct in that or any other market;
  - (c) eliminating a person from that or any other market; or
  - (d) engaging in courses of conduct which are or may be detrimental to the interests of consumers of electricity in The Bahamas including economic interests; or interests in respect of health, safety or other matters, which may affect GTDS services within The Bahamas.
- (2) The existence of a purpose referred to in subsection (1) may be inferred from the conduct of any relevant person or from the relevant circumstances.

- (3) For the purposes of this section, a reference to a person includes two or more persons that are interconnected.
- (4) This section -
  - (a) is subject to the functions and powers of an approving authority under this Act;
  - (b) does not apply to or invalidate any practice or conduct that has been authorised under Part V or Part VI; and
- (c) applies, but is not limited to, to such conduct constituting abuse of a dominant position as may be specified by URCA in regulatory and other measures.

## **PART XII - MERGER CONTROL BY URCA**

### **57. URCA to approve a change in control in relation to licensees.**

- (1) Without prejudice to any other law or existing obligations in a licence to notify URCA of changes in control, a person shall not implement a change in control of a licensee without obtaining the prior written approval of URCA in accordance with this Part.
- (2) Failure to obtain prior written approval of URCA makes the acquirer and the licensee liable to -
  - (a) prosecution for an offence under subsection (7);
  - (b) an adjudication by URCA and an order under section 63 for the acquirer to divest or procure the divestment of the licensee or any part of the licensee as a going concern to a purchaser on terms of sale approved by URCA; or
  - (c) both (a) and (b).
- (3) The acquirer or the licensee must apply for approval by notifying URCA within seven calendar days of concluding an agreement, or announcing a public bid, that would result in a change in control of a licensee.
- (4) The notification referred to in subsection (3) shall be in writing in such form and manner as may be specified by URCA and include -
  - (a) a description of the terms of the transaction;
  - (b) information about the acquirer and the licensee, each of their shareholders and any person being the beneficial owner or voting controller of more than fifteen percent of the voting shares of either or both of the acquirer and the licensee;
  - (c) financial information of the persons involved in the transaction, including-

- (i) annual revenues from the provision of networks or carriage services or content services identified by specific product and geographic markets;
  - (ii) copies of the most recent annual and quarterly reports and financial statements; and
  - (iii) a description of the electricity market or markets in which the persons involved in the transaction operate.
- (5) URCA may, for the purpose of carrying out its functions under this Part, request in writing from a licensee or acquirer in a merger application all necessary information.
- (6) A request made by URCA under subsection (5) shall -
- (a) state the legal basis and the purpose of the request;
  - (b) specify what information is required;
  - (c) state the time limit within which information is to be provided; and
  - (d) contain a warning that a failure to provide requested information within the time limit, or the supply of incorrect or misleading information, is an offence.
- (7) A person who contravenes subsection (1) or, on request made by URCA under subsection (5), fails to provide requested information within the time limit, or supplies incorrect or misleading information, commits an offence.
- (8) In this Part, an acquirer is a person who acquires, by whatever means, control of a licensee or part of the undertakings of a licensee.

**58. When a change in control takes place.**

- (1) A change in control occurs in relation to a licensee where a person, either alone or with an affiliated company -
- (a) acquires control (including by the acquisition of voting shares), by virtue of any powers conferred by the memorandum or articles of association or other instrument regulating the licensee or any other corporation or otherwise, to ensure that strategic decisions of the licensee are conducted in accordance with the wishes of that person;
  - (b) becomes the beneficial owner or voting controller of more than thirty percent of the voting shares in the licensee; or
  - (c) becomes the beneficial owner or voting controller of more than fifteen percent of the voting shares but not more than thirty percent of the voting shares in the licensee concerned unless that person, either alone or with any affiliated company -

- (i) is not, or does not concurrently become, the beneficial owner or voting controller of more than five percent of the voting shares in any other licensee; and
  - (ii) does not have the power (including by the holding of voting shares), or does not concurrently acquire control (including by the acquisition of voting shares), by virtue of any powers conferred by the memorandum or articles of association or other instrument regulating any other licensee or any other corporation or otherwise, to ensure that the affairs of such other licensee are conducted in accordance with the wishes of that person.
- (2) In this Part -
- "voting control" means the control of, or ability to control, directly or indirectly, the exercise of the right to vote attaching to one or more voting shares in a licensee -
- (a) by directing the exercise of, or directly exercising, as the case may be, the right to vote ;
  - (b) through an entitlement to exercise the right to vote;
  - (c) through a nominee; or
  - (d) through or by means of a trust, agreement, instrument, understanding or practice, whether or not having legal or equitable force or based on legal or equitable rights; and
- "voting controller" means a person who exercises voting control.

**59. Questions to be determined by URCA in granting approval of a change in control.**

URCA, on receiving a notification given under section 57(3), shall review the application and form an opinion whether a proposed change of control of a licensee-

- (a) would have, or be likely to have, the effect of substantially lessening competition in a market in The Bahamas; and
- (b) whether the change of control would have an effect, or would be likely to have an effect, contrary to the public interest.

**60. Principles to be applied in appraising a change in control.**

- (1) For the purposes of section 59(a) in determining whether to give its consent, URCA shall take into account in particular -
  - (a) the promotion of sustainable competition for the market in the electricity sector within The Bahamas or part of The Bahamas in view of, among other things, the structure of all the markets

- concerned mind the actual or potential competition from undertakings located either within or outside The Bahamas; and
- (b) the market position of the licensee or licensees concerned and their economic and financial power, the alternatives available to suppliers and users, their access to supplies or markets; any legal or other barriers to entry, supply and demand trends for the relevant services, the interests of the intermediate and ultimate consumers, and the development of technical and economic progress provided that it is to consumers' advantage and does not form an obstacle to competition.
- (2) To the extent that the creation of a joint venture or an arrangement involving one or more licensees has as its object or effect the coordination of the competitive behaviour of licensees that remain independent, the creation of such joint venture shall be considered as though it were a change of control under this Part. In making this appraisal, URCA shall take into account in particular -
- (a) whether two or more parent companies retain, to a significant extent, activities in the same market as the joint venture or in a market which is downstream or upstream from that of the joint venture or in a neighbouring market closely related to this market; and
  - (b) whether the coordination which is the direct consequence of the creation of the **joint** venture affords the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products or services in question.

#### **6-1. Procedures for appraisal of a change in control.**

- (1) Where URCA, on receiving a notification given under section 57(3) -
- (a) forms an opinion that the proposed change of control would not have the adverse effects set out in section 59(a) or (b), URCA shall issue an adjudication giving consent to the merger; or
  - (b) forms an opinion that the proposed change would have the adverse effects set out in section 59(a) or (b), URCA shall by adjudication take one of the following actions -
    - (i) declare the merger incompatible with the adverse effects URCA has formed the opinion it would have and deny its consent;
    - (ii) give consent subject to an order that the acquirer or the licensee concerned takes the action that URCA considers necessary to eliminate or avoid such effects; or
    - (iii) give consent without issuing an order under subsection (H) if URCA is satisfied that any substantiated and likely



efficiencies put forward by the acquirer or the licensee are necessary and outweigh any potential harm to consumers and citizens.

- (2) URCA shall, within thirty calendar days of receiving a complete notification, and, before forming any opinion or issuing any adjudication under subsection (1) -
  - (a) give the acquirer, the licensee and any interested persons a reasonable opportunity in accordance with section 48(3) to make representations; and
  - (b) consider the representations, if any, made under paragraph (a).
- (3) URCA shall, by notice in writing, inform the acquirer and the licensee of
  - (a) the adjudication made under subsection (1); and
  - (b) where an adjudication is made under subsection (1)(b)(ii), the action that URCA orders the acquirer or the licensee to take.
- (4) The acquirer in an application for a change of control must-
  - (a) be a legal entity incorporated in The Bahamas;
  - (b) conduct the administration and management of the business which is the subject of the application from premises within The Bahamas;
  - (c) be a fit and proper person to establish, maintain and operate an electricity service;
  - (d) demonstrate to the satisfaction of URCA that the applicant has sufficient intention, financial strength and resources to meet obligations under this Act and to provide electricity services in an effective manner consistent with the sector policy objectives; and
  - (e) meet any other requirements of URCA, including but not limited to the provision of information and data.

## **62. Timetable for appraisal of a change in control.**

- (1) URCA shall promptly review a complete notification under section 57(3) and shall within thirty calendar days of receiving representations pursuant to section 61(2)-
  - (a) issue its adjudication under section 61(1)(a) or 61(1)(b)(ii) or 61(1)(b)(iii); or
  - (b) inform the acquirer and relevant licensee or licensees that it is opening an in-depth investigation under subsection (2).
- (2) URCA may open an in-depth investigation where it considers that there is a significant prospect that the change of control is likely to have the adverse effects set out in section 59(a) or (b) and the parties have not volunteered any proposals to eliminate URCA's concerns.

- (3) Within ninety calendar days of opening an in-depth investigation under subsection (2) CIRCA shall issue its adjudication under the provisions of section 61 as applicable.
- (4) The timetable in this section shall be paused if URCA requests further information from the ac4uirer or relevant licensee rmdr sectfon 57(5) and complete response is not provided to URCA within the time limit specified in the request. From the date when URCA receives a complete response to its request, the timetable shall re-start from the stage that it .vas paused.

## **PART XIII -ENFORCEMENT BY URCA**

### **63. URCA enforcement orders.**

- (1) URCA may issue an order to enforce a determination or an adjudication made by URCA under this Act.
- (2) An enforcement order pursuant to subsection (1) may he issued concurrently ,;v-itll the determin lion or adjudication and may -
  - (a) requirt'. a licensee or any person that contravenes a provision of this Act, regulatory or other measures, or a licence condition, to do or to refrain from doing such thiogs as are specified in the order to remedy, prevent or rectify tht breach or anticipated brt'.ach which is the subject matter of the determination or adjudication; and
  - (b) impose an objectively justified and non-discriminatory regulatory penalty on a licensee and noli [y lthe licensee that the licence may be revoked if the licensee fails to comply \with the determination or pay the regulatory penalty or bolh.
- (3) \ /here a licensee fails to comply with an order or part of m1 order within the time determined by URCA, URCA may -
  - (a) impose a penalty or additional penalties for a continuous breach of the order; and
  - (h) revoke the licence with immediate effect, where the licensee was notified in the order that non-compliance could result in a penalty or 1ice.nee revocation or both.
- (4) URCA may on its own initiative or at the request of an affected party issue an intclim mdcr in cases of urgency involving a risk of serious and irreparable damage.
- (5) An interim order shall -
  - (a) be limited to such reasonable period of time as URCA considers is required to complete its investigation;

- (b) address only such actions or omissions that are likely to result in serious and irreparable damage; and
  - (c) be followed by a full investigation by IIRCA.
- (6) On completion of the investigation referred to in paragraph (c) of subsection (5), URCA shall issue a final order that confirms, amends or revokes the interim order.
- (7) Where URCA issues an interim or final order under this section -
- (a) the order shall be in writing;
  - (b) the order shall specify the contravention that the licensee or other person has committed and the penalty imposed by URCA;
  - (c) a copy of the order shall be given to the licensee or the other person;
  - (d) the payment of any penalty imposed by the order may be enforced at the instance of URCA in a court of summary jurisdiction regardless of the amount;
  - (e) any steps taken by URCA to recover a penalty imposed by the order shall not preclude steps being taken to prosecute a person for an offence under this Act;
  - (f) upon satisfaction by a licensee of the requirements of the order, the licensee is not liable to further investigation by URCA in respect of the contravention;
  - (g) the order shall be legally binding on the parties to the order unless suspended by an order of the Tribunal; and
  - (h) URCA shall promptly publish the order on the URCA website, taking into account any legitimate reasons of commercial confidentiality under section 75 that may apply.

#### **64. Determinations by URCA.**

- (1) URCA may, upon application in writing by a person having an interest in the subject matter of the determination, or upon its own motion "where URCA has reason to believe that a determination is necessary, make determinations relating to -
- (a) a contravention of a provision of this Act, or an obligation **on** a licensee relating to the terms **or** conditions of a licence, including obligations in licence conditions, regulatory and other measures, standards or technical rules; and
  - (b) any matter in respect of which this Act provides for GRCA to "determine" or to "make determinations".
- {2) URCA shall not consider applications for a determination that -
- (a) are vexatious or frivolous or where the applicant lacks standing;

- (b) do not fall within the regulatory functions of URCA under this Act;
  - (c) in the view of URCA, would involve resources disproportionate to the likely benefit ensuing from a determination; or
  - (d) are inappropriate because, in the view of URCA, a determination is not the most effective or efficient manner to resolve the subject matter of the application.
- (3) URCA shall, in making a determination -
- (a) consult persons with sufficient interest in the subject matter of the determination and provide reasons in writing for the determination; and
  - (b) take into account the urgency of the application or an investigation commenced on its own initiative and consider whether an interim determination is required.
- (4) URCA may issue an interim determination where -
- (a) the application appears likely to succeed; or
  - (b) URCA is likely to find that a licensee has breached a provision of this Act, regulatory or other measures, or a licence condition and irreparable harm would result if an interim determination is not made.
- (5) URCA shall issue an interim determination for a specified period of time, renewable to the extent necessary and appropriate, and URCA shall in determining the period of time consider the -
- (a) length of time required to complete its investigation of the application;
  - (b) extent of irreparable harm that would be caused if no interim determination were made; and
  - (c) financial, administrative or other burden on the licensee.
- (6) Subject to subsection (2), where a person applies to URCA for a determination URCA shall -
- (a) acknowledge the application within five working days of receipt;
  - (b) expeditiously request from the applicant or other parties such additional information as URCA reasonably requires to make a determination; and
  - (c) use all reasonable efforts to make a determination no later than four months after receiving the application.
- (7) Prior to issuing a determination under subsection (1), URCA shall give a notice of preliminary determination to the proposed addressee or addressees specifying
- (a) the determination to be made;

- (b) the obligations the compliance or contravenlion OR which arc the subject of the determination;
- (c) in accordance with subsection (9), ttle period during which the addressees have ,m opportunity to -
  - (i) make representations about the matters in lthe preliminary determination;
  - (ii) comply with the obligaLions referred to in the preliminary determination of which they are in contravention, where applicable; and
  - (iii) remedy the consequence of contraventions notified in the preliminary determination, where applicable.
- (8) URCA shall enclose vvith a notice of preliminary determination a copy of any order under section 63 that O RCA proposes to issue with the final determination.
- (9) The period specified under subsection (7)(c) in a notice OR preliminary determination -
  - (a) shall be no less than one month, commeneing on the day after which notice of the preliminary determination was given; or
  - (b) may be a shol l er period where the preliminary determination relates to a contravention and URCA has reasonable grounds for believing the contravention is a repeated contravention.
- (10) URCA shall -
  - (a) consider any representations or objections received from the addressees within the period specified in the notice of preliminary determination;
  - (b) within one month commencing on the day after the expiry of the period specified in the notice, issue a final determination -
    - (i) referring to the matters contained in the preliminary determination;
    - (ii) summarising the representations and objections received;
    - (iii) containing the response of URCA lo repre:c;e11tatinn and objections and URCA's reasoning behind the delerminalion in sufficient detail to enable it to be understood and the reasons for it to be knO\vn;
    - (iv) stating whether or not URCA intends to issue an order under section 63; and
    - (v) where URCA stZttes that it intends to issue an order under section 63, enclosing such enforcement order;

- (c) publish determinations promptly on the URCA website after taking into account legitimate reasons of commercial confidentiality under section 75 that may apply.
- (1) Except in the case of repeated breaches, URCA shall not issue an order under section 63(2)(b) where in the opinion of URCA the relevant person **has-**
- (a) complied with the obligations referred to in the preliminary determination of which they are in contravention; and
  - (b) remedied the consequence of contraventions notified in the preliminary determination.
- (12) A determination is legally binding on the parties to the determination unless suspended by order of the Tribunal.

## **65. Adjudications by URCA.**

- (1) URCA may, acting on receipt of a complaint or notification or upon its *own* initiative, make adjudications relating to any contravention of sections 63, 64, or 57.
- (2) An adjudication may impose behavioural or structural remedies which are proportionate to the infringement committed and necessary to bring the contravention to an end.
- (3) URCA acting on its *own* initiative may issue an interim adjudication -
  - (a) on the basis of a *prima facie* finding of contravention; and
  - (b) in cases of urgency involving risk of serious and irreparable damage to competition.
- (4) An interim adjudication under subsection (3) shall be for a specified period of time and may be renewed to the extent a renewal is necessary and appropriate.
- (5) URCA, in determining the period of time referred to in subsection (4), shall consider the -
  - (a) length of time required to complete its investigation;
  - (b) extent of irreparable harm that would be caused if an interim adjudication is not made; and
  - (c) financial, administrative or other burden on the licensee.
- (6) In making an adjudication, URCA shall -
  - (a) provide reasonable notice to a person who may be affected by the adjudication;
  - (b) allow an affected person an opportunity to be heard; and
  - (c) provide reasons in writing for the adjudication.

- (7) URCA shall establish procedures for conducting investigations for the purposes of sections 63 and 64 and for issuing adjudications under this section.
- (8) Prior to issuing an adjudication, URCA shall-
  - (a) notify each party against whom objections are raised of the objections raised against them by way of a written statement of objections; and
  - (b) in the notification to the parties of the statement of objections, set a time-limit within which the parties may respond in writing to URCA to the objections raised.
- (9) The time-limit referred to in subsection (3) shall be no less than one month, commencing on the day after which the notification of the statement of objections was given.
- (10) The parties in their written statements in response -
  - (a) may set out all facts known to the parties which are relevant to their defence against the objections raised; and
  - (b) shall attach any relevant documents as proof of the facts set out in the statements.
- (11) Prior to issuing an adjudication, URCA may -
  - (a) conduct a public oral hearing, where requested to do so by the parties in their statements in response; and
  - (b) give the parties an opportunity to develop arguments in their defence to the objections raised in the statement of objections.
- (12) Where URCA states in a final adjudication that it intends to issue an order under section 63, URCA shall issue the order at the same time as the final adjudication.
- (13) URCA shall publish promptly its adjudications on the URCA website after taking into account legitimate reasons of commercial confidentiality under section 70 that may apply.
- (14) An adjudication shall be legally binding on the parties to whom the adjudication is addressed unless suspended by order of the Tribunal.

## PART XIV - APPEALS TO THE UTILITIES APPEAL TRIBUNAL

### 66. Jurisdiction of the Tribunal.

The Tribunal has exclusive jurisdiction to hear and determine all appeals; matters and disputes referred to it, and to issue orders, in accordance with the provisions of this Act and the Utilities Appeal Tribunal Act.

### 67. Appeals to the Tribunal.

- (1) An appeal to the Tribunal may be made against the following appealable decisions by URCA or a public electricity supplier -
  - (a) an adjudication by URCA under section 65, in relation to a breach of sections 55 or 56, and any order issued under section 63 attaching to such adjudication;
  - (b) an adjudication by URCA under section 65, and any order issued under section 63 attaching to such adjudication;
  - (c) a determination by URCA under section 64, and any order issued under section 63 attaching to such determination;
  - (d) any decision by URCA for the modification or withdrawal of-
    - (i) an adjudication;
    - (ii) a determination;
    - (iii) an order attached to an adjudication;
    - (iv) an order attached to a determination
  - (e) a refusal to grant a permit by a public electricity supplier under section 27(12);
  - (f) any decision by URCA, or a public electricity supplier, which has an immediate effect on a person and, in particular; does not require a further act to be given effect; or
  - (g) a decision or conduct by a public electricity supplier or approving authority under sections 26(8) and 31(8) in respect of the conduct of competitive procurement processes.
- (2) The Tribunal shall decide an appeal under subsections (1)(a), (1)(d)(i) or (1)(d)(iii) on the merits and by reference to the grounds of appeal set out in the notice of appeal.
- (3) The Tribunal shall decide an appeal under subsection (1)(b) by applying the same principles as would be applied by a court on an application for judicial review.
- (4) The Tribunal shall decide all appeals, other than those appeals referred to in subsections (2) and (3), by drawing any inferences, not inconsistent



with the findings of fact made by URCA or the public electricity supplier, necessary for determining questions of law or jurisdiction.

- (5) This section does not apply to -
- (a) an act by URCA, BPL or another public electricity supplier to institute, bring or carry on a criminal prosecution;
  - (b) any preliminary step taken by URCA, BPL or another public electricity supplier for the purpose of enabling a criminal proceeding to be instituted.

#### **68. Notice of appeal.**

- (1) A person affected by an appealable decision of URCA, BPL or another public electricity supplier may appeal the decision by filing a notice of appeal with the Tribunal in accordance with, and within the period specified in, the Tribunal rules.
- (2) A notice of appeal shall set out the section of this Act under which the decision appealed against was taken and the grounds of appeal.
- (3) The grounds of appeal shall be set out in sufficient detail to indicate to what extent, if any, the appellant contends that the decision appealed against was based on an error of fact or was wrong in law or both.

## **PART XV - OFFENCES, FINES AND PENALTIES**

#### **69. General offences.**

- (1) A person who wilfully tampers with or adjusts an installation, or part of an installation, so as to cause or to be likely to cause --
  - (a) danger to human life or limb; or
  - (b) damage to any apparatus or other property,commits an offence and is liable on conviction for each such offence to imprisonment for a term not exceeding five years.
- (2) A person who, by any reckless or negligent act or omission in respect of an installation under his control, causes injury to any person or damage to property commits an offence and is liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding twenty-five thousand dollars or to both such imprisonment and fine.
- (3) A person who in any manner dishonestly--
  - (a) abstracts energy;
  - (b) consumes energy;
  - (c) uses energy;

- (d) alters the index of a meter or other instrument used in connection with an installation under the control of a licensee for recording the output or consumption of energy; or
- (e) prevents a meter or instrument referred to in paragraph (d) from recording the output or consumption of energy,

commits an offence and is liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding fifty thousand dollars or to both such imprisonment and fine.

- (4) A person who, without the consent of the licensee and relevant Government agency approvals, affixes or causes to be affixed any advertisement, bill or notice or any paper against upon, or otherwise defaces, any building, post or bracket or other apparatus or the enclosure thereof used for or in connection with an installation under the control of the licensee commits an offence and is liable on conviction to a fine not exceeding ten thousand dollars.
- (5) A person who wilfully or negligently -
  - (a) causes energy to be diverted from its proper course; or
  - (b) breaks, throws down, causes to fall or damages any supply line or any post, pole, or other apparatus connected with the supply of energy,

commits an offence and is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding fifty thousand dollars or to both such imprisonment and fine.

- (6) A person who -
  - (a) obstructs or impedes an employee, officer or agent of a licensee in the exercise of the licensee's duties under this Act or any regulations made pursuant to this Act; or
  - (b) fails to comply with an order or request lawfully given under this Act or regulations made pursuant to this Act,

commits an offence and is liable on conviction to a fine not exceeding ten thousand dollars and, in the case of a continuing offence, to a fine not exceeding five hundred dollars for every day or part of a day during which the offence is continued after the first day of the conviction.

- (7) Where a person is summarily convicted of an offence under this Part, a magistrate may make an order for expenses and costs incurred in relation to the prosecution of the offence.

## **70. Specific offences.**

- (1) A person convicted of an offence under -
  - (a) section 23(5);

- (b) section 30(3),
- (c) section 33(5),
- (d) section 57(7),
- (e) section 74(3),

is liable to a fine not exceeding five hundred thousand dollars.

- (2) A licensee convicted of an offence under section 54(6) is liable to -
  - (a) a fine not exceeding three hundred thousand dollars;
  - (b) in addition to a fine, a sum not exceeding ten thousand dollars for each calendar day the offence continues subsequent to the date of conviction; and
  - (c) five times the amount of any sum shown to the court that would have been payable as the proper fee but for the commission of the offence.

### **71. Unspecified penalties.**

- (1) A person convicted of an offence under this Part for which no penalty is specified shall be liable to a fine not exceeding twenty thousand dollars and, in the case of a continuing offence, to a fine not exceeding two thousand dollars for every day or part of a day during which the offence is continued after the first day of the conviction.
- (2) A person charged with an offence under this Part may be tried summarily on complaint made, as applicable, by URCA, BPL, or by a revenue officer or a peace officer in the name of the Minister or the Commissioner of Police, respectively.

### **72. Regulatory fines, penalties and remedies.**

- (1) Subject to subsection (3) a licensee who contravenes a provision of this Act, or a licence condition, or regulatory and other measures, is liable to a regulatory fine or other penalty determined by URCA, not exceeding ten percent of the licensee's relevant turnover.
- (2) URCA may in respect of a contravention or breach of a provision of this Act, or a licence condition, or regulatory and other measures -
  - (a) issue a determination or adjudication;
  - (b) issue an enforcement order;
  - (c) amend, suspend or revoke the licence; or
  - (d) any combination of (a), (b) and (c).
- (3) An order issued by URCA imposing a regulatory fine or penalty -
  - (a) shall specify the date on which such regulatory fine or penalty becomes due and payable;

- (b) where the order relates to the contrnvention of a licence condition, a code of practice, or regulatory and other measures, shall in specifying the date affor<l a reasonable period within which to remedy the relevant contravention;
  - (c) except in the case of repeated contraventions, shall not be enforced in respect of Lhe regulatory fine or penalty where the relevant contravention has been remedied by the date specified in the order; and
  - (d) may he en forced in the same manner as an order of a court.
- (4) In specifying a dale for the purposes or subsection (3), URCA shall have regard to-
- (a) the seriousness of the contravention and the need for mgnt remedy; and
  - (h) the conduct of the person liahle to pay the regulatory fine or penalty, including any previous or repeated contravention of the same or any other licence condition, provision of the Act, regulatory or other measmes, or provision of any code of practice.
- (5) A person who fails or refuses on or before the date specified for the purposes of subsection (3)-
- (a) to remedy a contravention; or
  - (b) to pay a regulatory fine or penalty,
- shall in respect of each failure or refusal be liable to pay an additional daily default regulatory fine not exceeding one hundredth of one percent (0.01%) of the licensee's relevant tmnover.

**73. Other requirements not affected.**

- (1) Nothing in this Part shall be construed to allow a licensee to do any act in breach of any applicable provision of any law, any regulatory or other measure or to grant it right<; not gmnted in the licence.
- (2) An exemption from licensing requirements shall not affect the requirement for persons to comply \with all other applicable provisions of this Act, and any regulatory or other measure made or issued under lhis Act.

## PART XVI - MISCELLANEOUS

### 74. Power to request information.

- (1) In order to carry out the duties assigned to it under this Act, URCA may by request in writing require a licensee, consumer, acquirer, or any other person to provide all necessary information.

When sending a request for information pursuant to subsection (1), URCA shall-

- (a) state the legal basis and purpose of the request;
  - (b) specify what information is required;
  - (c) fix the time limit within which information is to be provided; and
  - (d) state that a person who fails to provide information as and when lawfully requested to do so, or supplies incorrect or misleading information, commits an offence.
- (3) A person requested by URCA to provide information pursuant to subsection (1) -
- (a) shall provide the information within the time period requested by URCA; and
  - (b) commits an offence where such person fails to provide the information in accordance with paragraph (a).

### 75. Confidentiality.

- (1) Subject to subsection (2), URCA shall not be required to publish or otherwise divulge information that in the view of URCA is commercially confidential.
- (2) Nothing in this Act shall limit the duty of URCA to provide information to a court or the Tribunal.

### 76. National interest matters.

- (1) During any period in which Article 29 of the Constitution applies and the Governor-General considers it necessary in the interests of defence, public safety and public order -
- (a) the Government shall have control over any and all electricity supply systems, generating stations or facilities; and
  - (b) the Governor-General may, for use by the Government, take possession of and assume control over, or direct other persons as the Governor-General thinks fit to assume control over, part or all of the electricity supply system of any licensee or of any generating stations or facilities.

- (2) Notwithstanding any provision of this Act or any other law to the contrary, the Governor-General may, for the purpose of exercising the powers conferred by subsection (1), appoint and pay out of the Consolidated Fund temporary operative or engineering staff, for a period not exceeding six months, under such terms and conditions as the Governor-General may prescribe and determine.
- (3) The Minister may, where the Government declares or seeks to prevent a civil emergency, consult with and give directions as the Minister considers requisite or expedient to a licensee or person to whom this section applies for the purpose of-
  - (a) preserving the security of buildings or installations used for, or for purposes connected with, the generation, transmission or supply of electricity; or
  - (h) mitigating the effects of the civil emergency that occurs or may occur.
- (4) A direction under subsection (3) -
  - (a) shall be given after consultation with the licensee or person;
  - (b) may direct that the licensee or person do, or not do, a particular thing specified in the direction; and
  - (c) notwithstanding any other duty imposed on the licensee or person by or under this Act, shall be given effect to by the licensee or person.
- (5) The Minister shall lay before each House of Parliament a copy of every direction given under subsection (3) unless the Minister is of the opinion that disclosure of the direction is against the interests of national security or the commercial interests of any person.
- (6) A licensee or person under subsection (3) shall not disclose, or be required by virtue of any enactment or otherwise to disclose, anything done pursuant to a direction given by the Minister where the Minister has notified such licensee or person that in the Minister's opinion such disclosure is against the interests of national security or the commercial interests of some other person.
- (7) Subsection (3) applies to any licensee and to any person authorised by, or exempted from the requirement of, a licence to generate or supply electricity.
- (8) In this section, a civil emergency means any natural disaster or other emergency which, in the opinion of the Minister, is or may be likely to disrupt electricity supplies.

## **77. Regulations.**

The Minister may, on the recommendation of the Corporation, make regulations prescribing -

- (a) any matter requiring to be prescribed, where not within the regulatory powers of URCA, under this Act; and
- (b) without prejudice to paragraph (a), anything necessary or desirable for carrying out all or any of the purposes of this Act and the functions, powers and duties conferred or imposed on **BPL** by this Act.

## **78. Repeals.**

The Electricity Act (*Ch. 194*) and the Out Islands Electricity Act (*Ch. 195*) are repealed.

## **79. Savings and transitional.**

- (1) Nothing in this Act shall affect-
  - (a) the continuation of civil or criminal proceedings commenced under any of the enactments repealed by this Act; or
  - (b) any liability to pay fees or penalties under any one of the enactments repealed by this Act, or subordinate legislation made thereunder, that accrues before the date on which this Act comes into operation.
- (2) All subordinate legislation made under any of the enactments repealed by this Act and in force immediately before the coming into operation of this Act, so far as it is not inconsistent with the provisions of this Act, continues in force as if made under this Act until such time as expressly or impliedly repealed by -
  - (a) regulations issued by the Minister inconsistent with such subordinate legislation ; or
  - (b) regulatory and other measures issued by URCA inconsistent with such subordinate legislation.
- (3) The savings and transitional provisions specified in the *Second Schedule* shall apply for the purposes of this Act.

## FIRST SCHEDULE (Section 8(6))

### THE CORPORATION AND THE BOARD

#### 1. Eligibility requirements.

- (1) A person appointed as a non-executive member of the Board must have appropriate knowledge of and ability, expertise and experience in the energy sector and broad experience such as would be expected of persons professionally qualified in engineering, finance, economics, accounting, business or law, or other related fields.
- (2) The Minister shall not appoint a person as a Board member, if, in terms of the law in force in The Bahamas, such person-
  - (a) has been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged;
  - (b) has made an assignment to, or arrangement or composition with, his or her creditors which has not been rescinded or set aside; or
  - (c) has been convicted -
    - (i) in The Bahamas or in another country an offence involving dishonesty; or
    - (ii) outside The Bahamas, of conduct which, if committed in The Bahamas, would have constituted an offence involving dishonesty.
- (3) A person is not qualified for appointment as a member of the Board and shall not hold office as a member of the Board if such person -
  - (a) is a member of Parliament;
  - (b) has a financial interest in any entity licensed by URCA under this Act, whether such interest is held directly or indirectly through a spouse or minor children; or
  - (c) is an employee, consultant or board member or any entity licensed by URCA under this Act.
- (4) The appointment, removal, death or resignation of members of the Board shall be notified in the Gazette.

#### 2. Vacancy.

- (1) Where the Minister is satisfied that a member -
  - (a) has been absent from meetings of the Board for a period longer than six consecutive months without the permission of the Board;
  - (b) has become bankrupt or made an arrangement with his or her creditors;



- (c) is incapacitated by physical or mental illness; or
  - (d) is otherwise unable or unfit to discharge the functions of a member,
- the Minister may declare his or her office as a member to be vacant and shall notify the declaration in such manner as the Minister thinks fit whereupon the office shall become vacant.
- (2) On the expiration of the period for which a member is appointed, the member shall continue to hold office for a further period not exceeding three months or until a successor has been appointed, whichever is the first to occur.
  - (3) A member of the Board may resign upon giving one month's notice in writing to the Minister and, whenever the office of a member becomes vacant before the expiry of the term of office, the Minister may appoint another member in place of the member who vacates office but such member shall hold office only for the unexpired part of the term.
  - (4) The members of the Board shall be paid such allowances as the Board may, with the approval of the Minister, determine.
  - (5) Subject to this Act, the Board may regulate its own procedure.

### **3. Functions of the Board.**

- (1) The principal functions of the Board shall be to -
  - (a) monitor and oversee BPL in the performance of its functions and the implementation and achievement of the national energy policy goals and electricity sector policy objectives;
  - (b) monitor and manage the rate reduction bond financing liabilities, monitor the rate reduction bond Issuer and the securitisation of the rate reduction bond foe;
  - (c) give general policy directions to BPL and, in particular, direct and approve the formulation by BPL of a five-year and other business plans.
- (2) Without limiting the generality of subsection (1), the Board shall-
  - (a) review each year the business plans submitted by BPL to the Board;
  - (b) review and approve reports of BPL, including annual reports, financial reports and any other reports of BPL as may be required by the Board or the Minister;
  - (c) approve the work programmes and projects of BPL and the System Operator on an annual basis or as and when required;
  - (d) examine and approve the budget of BPL;
  - (e) consider and approve matters relating to the acquisition and disposal of assets by BPL; and

- (f) exercise such other powers and perform such other functions as may be necessary for the implementation of this Act.

#### **4. Procedures of the Board.**

- (1) A person shall not be appointed to serve on the Board as chairperson or deputy chairperson for more than two consecutive terms.
- (2) The chairperson or in the absence of the chairperson, the deputy-chairperson, shall chair all meetings of the Board.
- (3) The Board shall meet at least once in every three calendar months and may hold extraordinary meetings as and when necessary.
- (4) Extraordinary meetings of the Board shall be convened by the chairperson when considered necessary or on the written request of at least two members of the Board.
- (5) The quorum for any meeting of the Board shall be two-thirds of its members.
- (6) Decisions on all matters of the Board shall be made by a simple majority of the members present and voting.
- (7) The chair in addition to an original vote shall have, in any case in which the voting is equal, a casting vote.
- (8) The Board may co-opt or invite any expert or any other person to give advice or guidance as and when necessary.
- (9) The validity of any proceeding of the Board shall not be affected by any vacancy among the members or by any defect in the appointment of a member.
- (10) Subject to this *Schedule*, the Board may regulate its own proceedings.

#### **5. Officers and employees of the Corporation.**

- (1) The Board may appoint officers and employees of the Corporation, or engage other services, only as may be necessary for the implementation of the provisions of this Act.
- (2) No officer, employee, or attorney of the Corporation shall have a monetary interest in or over the stocks and bonds of any electricity GDS business or enterprise.

#### **6. Conflicts of interest.**

- (1) The Minister, Board members, and employees of the Corporation shall not control, manage or operate any electricity GDS business or enterprise while in office.

- (2) A person referred to in subsection (1) who has a financial interest in any electricity GTDS business or enterprise shall make full disclosure of such interest to their respective appointing authorities.
- (3) A person referred to in subsection (1) is prohibited from participating in any action or decision that may, directly or indirectly, affect their financial interest(s) in an electricity GTDS business or enterprise.
- (4) Where a member or any person is present at a meeting of the Board at which a matter is the subject of consideration in which the member or person, or the spouse of the member or person, is directly or indirectly interested; in a private capacity -
  - (a) the member or person shall, as soon as is practicable after the commencement of the meeting, declare such interest; and
  - (b) the member or person shall not, unless the Board otherwise directs, take part in any consideration or discussion of, or vote on, any question touching that matter.
- (5) A declaration of interest made under sub-paragraph (4) shall be recorded in the minutes of the meeting at which it is made.
- (6) A person shall not, without the consent in writing given by, or on behalf of, the Corporation, publish or disclose to any person otherwise than in the course of duties the contents of any documents, communication or information which relates to, and which has come to that person's knowledge in the course of, duties under this Act.
- (7) A person who knowingly contravenes sub-paragraph (6) commits an offence and shall be liable, upon conviction, to a fine not exceeding one thousand dollars, or to imprisonment for a term not exceeding three months, or to both a fine and imprisonment.

## **7. Administration of the Corporation.**

- (1) The seal of the Corporation shall be kept by the Secretary.
- (2) The affixing of the seal shall be authenticated by the chairperson or the deputy-chairperson and the Secretary or any other person authorised in that behalf by a resolution of the Board and such seal shall be officially and judicially noticed.
- (3) A contract or instrument which, if entered into or executed by a person not being a body corporate, would not be required to be under seal may be entered into or executed without seal on behalf of the Corporation by the Secretary or any other person generally or specifically authorised by the Board in that behalf.
- (4) A document purporting to be a document under the seal of the Corporation or issued on behalf of the Corporation shall be received in evidence and

deemed to be so executed or issued) as the case may be, without further proof, unless the contrary is proved.

## **8. Financial Provisions.**

- (1) There shall be paid from the funds of the Corporation -
  - (a) such remuneration as the Minister may determine, and reasonable travelling and subsistence allowances, for members of the Board when engaged on the business of the Corporation and at such rates as the Corporation may, with the approval of the Minister, determine; and
  - (b) any other expenses incurred by the Corporation in the performance of its functions.
- (2) The Corporation shall direct that the business plans submitted to the Board by BPL contain financial targets and performance indicators and have regard to -
  - (a) the need to maintain high standards of electricity generation safety;
  - (b) the goals and objectives of the national energy and electricity sector policies;
  - (c) any directions given by the Board;
  - (d) the priority of the rate reduction bonds and the rate reduction bond fee in the allocation of BPL revenues;
  - (e) the need to maintain a reasonable level of reserves, having regard to estimated future infrastructure requirements;
  - (f) the need to earn a reasonable rate of return on the assets acquired by or transferred to BPL;
  - (g) the expectation of the Corporation that BPL will pay a reasonable dividend; and
  - (h) any other commercial consideration the Board considers appropriate.

## **9. Consolidated accounts and audit of Corporation.**

- (1) The financial year-end of the Corporation and BPL, respectively, shall be determined by the Board.
- (2) The Corporation shall -
  - (a) cause to be kept proper books of account and other records relating to the operations of the Corporation and BPL, respectively; and
  - (b) cause to be prepared a consolidated statement of account and annual report for each financial year of the Corporation.
- (3) The consolidated accounts of the Corporation and BPL shall within four months of the end of each financial year be audited annually, in

accordance with International Financial Reporting Standards and other standards promulgated by the International Accountants Standards Board, by independent auditors.

- (4) The annual report shall include information on the consolidated financial affairs of the Corporation and BPL and there shall be appended to the report-
  - (a) an audited balance sheet;
  - (b) an audited statement of income and expenditure; and
  - (c) such other information as the Minister may require.
- (5) The fees of the auditors shall be paid by BPL.
- (6) The Corporation shall, within four months of the end of each financial year, publish the audited accounts together with the annual report on the respective websites of the Corporation and BPL, where applicable, and in other media.
- (7) The Corporation shall, on or before publication under subsection (6), provide the Minister with a copy of the audited accounts and annual report.
- (8) The Minister shall, within three months of receipt of the audited accounts and annual report, cause the same to be laid before both Houses of Parliament.

SECOND SCHEDULE (Section 79)

**SAVINGS AND TRANSITIONAL PROVISIONS**

**1. References to the Corporation to be construed as references to BPL.**

On the transfer date, a reference in a written law or any other legal document to the Bahamas Electricity Corporation as it relates to the functions of the Corporation transferred to BPL under this Act shall be read and construed as a reference to BPL.

**2. Validity of existing rights, privileges, etc.**

- (1) A person claiming an existing right, privilege, licence, permit or certificate granted or issued by the Corporation may, within six months from the appointed date, notify BPL of the claim.
- (2) An existing right, privilege, licence, permit or certificate shall terminate if the person entitled fails to notify BPL of the claim within the period specified in sub-paragraph (1).
- (3) Subject to sub-paragraph (1), an existing right, privilege, licence, permit or certificate notified to BPL shall continue to be valid for a period of one year from the appointed date or until its expiry in accordance with its terms, whichever is the earlier.

**3. Licensed undertakers.**

- (1) A licensed undertaker under the Out Islands Electricity Act ("the repealed Act") is deemed to have the approval of BPL under Part VI to provide GTDS services in the relevant Family Island in accordance with the terms of the agreement entered into by the licensed undertaker with the Minister.
- (2) A licensed undertaker must, within three months of the date this Act comes into operation, apply to URCA for a public electricity supplier licence under Part VI.
- (3) URCA shall within thirty days issue a public electricity supplier licence to a licensed undertaker who applies for a licence in accordance with subsection (2) and shall incorporate and reflect in such licence the terms of the agreement entered into by the licensed undertaker with the Minister under the repealed Act.

**4. Continuation of operations by existing electricity GTDS service providers.**

Notwithstanding any provision of this Act -

- (a) BPL shall on and from the transfer date perform in the island of New Providence and the designated Family Islands the GTDS functions previously performed by the Corporation until such time as it receives a public electricity supplier licence from ORCA in accordance with this Act;
- (b) the Grand Bahama Power Company shall, until such time as it receives a public electricity supplier licence from JRCA in accordance with this Act, continue to perform GTDS functions in the Port Area under the terms of the licence granted by the Grand Bahama Port Authority; and
- (c) a licensed undertaker shall, until such time as it receives a public electricity supplier licence from JRCA in accordance with paragraph 3(3), continue to perform GTDS functions in the relevant Family Island under the terms of the agreement entered into by the licensed undertaker with the Minister under the repealed Act.

## 5. Registration.

Where under this Act any property, rights, liabilities and obligations incurred, held or vested by or in the Corporation are deemed transferred to BPL, the appropriate registration authority shall make such entries in the appropriate register as shall give effect to such transfer.