

Grenlec Comments

On

Draft Generation Licence

February 27th, 2020

Reservations o Rights – Grenada Electricity Services Limited (Grenlec) submits these comments and responses without prejudice to (i) its several request for reasonable extensions of time to fully review, analyse and comment on the Draft Generation Licence 2019; (ii) its right to be engaged in pre-consultation with the PURC in relation to the Draft Generation Licence 2019; and (iii) its right to submit further comments on the Draft Generation Licence 2019. Grenlec does not waive, acquiesce in the waiving or he relinquishing of any of its legal or equitable rights by submitting these responses and reserves all its rights.

PART I – GRANT OF THE LICENCE

Page 5 1. Grant o Licence

“The Minister with responsibility for the electricity sector (the “Minister”), in the exercise of the powers conferred by section 14 and 66 **67** of the Electricity Supply Act, 2015 **2016** (the “Act”)....”

GRENLEC Section 67 is referenced in the title of page 5. The “Act” is 2016 and not 2015

PART II – TERMS AND CONDITIONS

B. Authorisation

Page 8 2. Eligibility to Propose and Bid on Generation Projects

“During the Term and subject to the other terms and conditions of this Licence, the Licensee -

“(b) shall be eligible to bid for any new projects for which the Government, pursuant to section 17(z)**(2)** of the Act, determines to holds a tender for the introduction of electricity generation capacity from renewable and/or efficient energy resources.”

GRENLEC Typographical error. 17(z) should be 17(2)

3. Prohibition on Cessation of Licensed Operations.

“Further to the provisions of section **4819** of the Act, except as this License expires or is revoked or suspended in accordance with its terms and the Act, the Licensee shall not cease to operate all or any part of the Authorised Generation

Electrical System and supply electricity generated at it to the Authorised Network Electrical System in the manner provided for herein, without first obtaining the written consent of the ~~Minister~~ **Commission**, who shall consult with the ~~Commission~~ **Minister** prior to determining whether to give any such consent.”

GRENELEC Incorrect reference. Correct reference is Section 19 of the Act.

See suggested change in wording.

4. Compliance with Legislation

“The Licensee shall comply with all the obligations established in the Act, the PURCA, Regulations, Orders and decisions of the Minister and the Commission. The Licensee shall also comply with all environmental legislation and any other legislation applicable to its operations and to the activities **it is** allowed to carry out pursuant to this Licence.”

GRENELEC Insert words “it is” as shown.

C. Term

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2. Amendment to Address New Generation Capacity (a) (i), (ii)

“(a) If the ~~Minister~~ **Commission** approves any request by the Licensee to install replacement or increased generation capacity at its existing Generation Electric Plants to carry out a new project for the generation of electricity from renewable and/or efficient energy resources, or if the Licensee is awarded the right in a tender process to carry out a new project for the generation of electricity from renewable and/or efficient energy resources, the Minister **after consultation with the Commission** may.”

GRENELEC See suggested change in wording.

“(i) Extend the term of the licence to correspond with the useful life of the relevant Generators, but no more than the maximum length of time permitted under section 22(1) of the Act; or”

“(ii) Grant a separate licence for the operation of the new generation capacities facility thus authorized which shall correspond with the useful life of the relevant Generators within the facility, but no more than the maximum length of time permitted under section 22 (1) of the Act.”

GRENLEC The above rewording is suggested as it allows new plant added to an existing facility to allow the facility to be operated under a new licence.

D. Technical and Performance Standards

Page 10 2. Reports on Compliance with Technical and Performance Standards

“Except as may be provided otherwise in regulations, by 15 January, April, July and October of each year of the Term, the Licensee shall file a quarterly report with the Commission, and shall provide a copy thereof to the Minister, providing such information as the Commission may require on the Licensee’s compliance and/or non-compliance with the technical and performance standards applicable to the Authorised Generation Electrical System during the previous quarter. In addition to the quarterly report, the Licensee shall also file an annual report with the Commission, and shall provide a copy thereof to the Minister, on the fulfilment of all its legal and licensing obligations during the previous year. The Commission may decide to publish this annual report on its website.”

GRENLEC Specific dates should not be placed in the licence. These should be in the regulations so they may be changed without going through the process of amending the licence.

GRENLEC A list of the standard reports required, their contents and their format needs to be communicated to the Licensee.

Page 10-11 3. Periodic Review of Technical and Performance Standards.

“The Commission may require the Licensee to review the technical and performance standards applicable to the Authorised Generation Electrical System, or the Licensee may of its own volition conduct such reviews, from time to time, and the Commission or the Licensee, or both jointly, may propose to the Minister any amendments to the technical and performance standards regulations that may be necessary or desirable to develop, operate and/or maintain the Authorised Generation Electrical System and/or to meet the needs of the Authorised Network Electrical System. If such proposals are recommended by the Commission and approved by the Minister (in the case of proposals made unilaterally by the Licensee), or approved by the Minister (in the case of proposals made jointly by the Commission and the Licensee), the Minister shall amend the relevant regulations accordingly.”

GRENLEC A formal change process needs to be developed and agreed with the licensee.

4. Enforcement of the Technical and Performance Standards.

Without prejudice to the Minister’s powers under section 23 and 24 of the Act, the Commission shall be responsible for monitoring and enforcing the Licensee’s compliance with the technical and performance standards established in the regulations, or pending the issuance of the regulations, as otherwise provided above, including the imposition of any penalties for non-compliance and other violations, **and incentives for better than required performances, provided for in the Act, the PURCA, and/or** the regulations

GRENLEC: A schedule of penalties **and incentives for good performance** should be established and made available for public consultation.

Page 11 4. Enforcement of the Technical and Performance Standards

“Without prejudice to the Minister’s powers under section 23 and 24 of the Act, the Commission shall be responsible for monitoring and enforcing the Licensee’s compliance with the technical and performance standards established in the

regulations or, pending the issuance of the regulations, as otherwise provided above, including the imposition of any penalties for non-compliance and other violations provided for in the Act, the PURCA, and/or the regulations.”

GRENLEC A schedule of penalties and incentives for good performance should be established and made available for public consultation.

5. Catastrophic Failure

“Notwithstanding any other provision of this Licence and in accordance with any applicable provisions in the regulations, in the event of a Catastrophic Failure the Licensee shall replace the failed **Generator asset** on an urgent basis, with the approval of the Minister and the Commission.”

GRENLEC Suggest the word generator be changed to asset as failure of other components other than a generator could impact the ability to generate. A process needs to be established for approval for replacement of equipment. The process should outline clearly the timeline or actions by all parties involved.

GRENLEC Why is ministerial approval required to replace a failed component?

E. Generation Operating Standards and Performance Targets

Page 11 1. Establishment of Generation Operating Standards and Performance Target

“The Licensee shall operate the Authorised Generation Electrical System and deliver electricity to the Authorised Network Electrical System in accordance with the Generation Operating Standards and Performance Targets set forth ~~in Schedule B, as may be revised from time to time by the Minister in accordance with this Part II (E) and Section 21 of the Act in Part 3 of the Tariff Methodology Regulations.~~”

GRENLEC The Licence does not need to describe the set up and the monitoring of standards or performance targets. The licence should compel the Licensee to comply with the standards and performance targets set elsewhere. The Licence is a 25-year document and in that time the standards and performance targets are expected to move. If they are in regulations it is easier to change them than if an amendment of the licence is required to change them. Conflicting standards can occur if one is changed/amended and the other was not. Grenlec suggests that this Part II-E be removed from the Licence to avoid conflict with other areas of the regulations which are also setting standards and performance targets.

F. Reporting Requirements; Books, Accounts and Other Records

Page 12

1. Required Reports and Other Information

“Without prejudice to the Licensee’s reporting requirements under the Act, the regulations, the PURCA, and as otherwise provided in this Licence, the Licensee shall submit to the Commission, with a copy to the Minister, ~~or to the Minister, with a copy to the Commission,~~ any reports or other information reasonably requested by the Commission ~~or the Minister~~ in writing, within the time periods specified by the Commission ~~or the Minister~~. Except as otherwise permitted by the Act, the PURCA, or the regulations, or expressly by the Commission ~~or the Minister~~, the Licensee shall provide annual and quarterly reports and other information under this Licence separately ~~from reports and other information submitted under the GRENLEC Network Licence,~~ in a manner that allows the Commission ~~and the Minister~~ to determine the Licensee’s adherence to the terms and conditions of, respectively, this ~~Licence and the GRENLEC Network Licence~~ and to obtain information relevant to their respective powers, functions and duties under the Act, the regulations, the PURCA, and this Licence ~~and the GRENLEC Network Licence.~~”

GRENLEC Timeline and structure of the reports should be established and agreed to by PURC and Licensees.

Page 12-13 3. Books, Accounts and Other Records.

“The Licensee shall comply with the requirements of the Act, the regulations and the PURCA with regard to the establishment and maintenance of its books, accounts and other records. The Licensee shall maintain entries in its books, accounts and records for the Authorised Generation Electrical System that are separate from the entries for the Authorised Network Electrical System, in a manner and detail to allow the Commission and/or the Minister to determine the Licensee’s adherence to the terms and conditions of this Licence and the GRENLEC Network Licence, and to obtain information from the Licensee relevant to the Commission’s and the Minister’s exercise of their respective powers, functions and duties under the Act, the regulations, the PURCA, and this Licence.”

GRENLEC The requirement to maintain separate entries in its books, accounts and records for the Generation Electrical System vs. the Network Electrical System will pose significant challenges and additional cost on Grenlec, and by extension its customers. There are a significant number of resources throughout the company that are shared. For example, the Board of Directors, the General Manager, the Chief Financial Officer and the accounting department, the Chief Engineer, the Planning and Engineering Department, the Human Resources department, the Public Relations department, the IT department, etc. How does the Commission propose that these shared costs be properly allocated between the two proposed entities? Has any consideration been given to the time and resources that will be needed to implement this requirement, and the associated cost? Has any consideration been given to the potential for ongoing increased staff costs to address potential duplication of job functions? **Grenlec believes that much more extensive discussion must take place regarding this matter before a definitive position can be reached. Further the tariff regulation makes no distinction between the Network Licensee’s costs and the Generation Licensee’s costs except for fuel. This gives further credence to treating this as one company with one set of books but two licences.**

G. Sustainability Programmes

Page 14 1. Initial Sustainability Programmes

“In accordance with section 37(3)(a) of the Act, the initial [five-year] sustainability programmes of the Licensee for its activities under this Licence shall be as set forth on Schedule C, and shall remain in effect until subsequent sustainability

programmes have been submitted by the Licensee to the Minister and approved by him or her as provided in Part II(G)(2) and section 37 of the Act.”

GRENLEC It is impossible for Grenlec to prepare an initial sustainability programme before the Integrated Resource Planning exercise, the National Electricity Strategy and the first tariff review have been completed.

H. Procurement of Goods and Services

Page 14 1. Competitive Procurement

“The Licensee shall procure goods and services for the development, operation and maintenance of the Authorised Network Electrical System prudently and on a competitive basis, having regard to the **cost**, quantity, timing and nature of the goods and services to be procured.

GRENLEC Some minimum level of cost has to be indicated.

2. Transactions with Affiliates

“An Affiliate of the Licensee, and Affiliates of such Affiliates, shall not be precluded from participating in the competitive procurement for goods and services carried out by the Licensee in accordance with **Part II(K)(1)** **Part II(H)(1)**, so long as every such Affiliate is treated on the same arm’s length basis and on the same terms and conditions that apply to unaffiliated parties participating in the competitive procurement process. As further provided for in **Part II(K)(3)** **Part II(H)(3)**, the Licensee shall bear the burden to prove that the award to an Affiliate under a competitive procurement process meets such standards.”

GRENLEC References incorrect.

Page 14 **3. Submission on Procurement to the Commission**

At the conclusion of each competitive procurement process, the Licensee shall bear the burden to prove, and shall, **if requested**, promptly submit to the Commission evidence demonstrating, that its procedures for, conduct of, and award of the procurement was carried out on a fair, transparent and arm's length basis as to prospective participants and all parties that actually participated in the competitive process.

GRENLEC Suggest inserting the words "if requested" as this requirement may not be necessary for every competitive procurement process.

I. Activities Requiring the Prior Consent of the Minister

Page 15 1. Conditions in Section 20 of the Act

(c) "lend funds or give credit to any of its officers or directors, or to any company by-

GRENLEC Officer needs to be defined. The company has a loan policy for assistance with health and other emergency needs. Is the Commission saying that this must cease?

2. Transfer of Shares in or Assets of the Licensee (a) (i)

"(a) The Licensee shall promptly notify the Minister in writing of any proposal to transfer:

"(i) shares or other ownership interests in the Licensee that would have the effect of changing the controlling ownership interest in the Licensee or in any parent company of the Licensee; and"

GRENLEC We suggest deleting this reference. Otherwise, a definition of what constitutes a “parent company” is required

Page 15 **3. Void Agreements and Revocation of Licence**

“(a) Any agreement relating to any transaction of the nature described in Part II(I)(1) and (2), unless made with the written consent of the Minister, shall be void.”

“(b) The Minister may revoke a licence if the Licensee transfers shares or assets without complying with all the requirements established in Part II(**LI**)(1) and (2).”

GRENLEC Incorrect reference

K. Licence Fees and Contributions

Page 16 **1. Initial Fee**

“Upon issuance of this Licence on the Effective Date, the Licensee shall pay to the Government of Grenada and for deposit into the Consolidated Fund, the initial licensing fee of EC\$50,000.”

GRENLEC What is the basis used for arriving at the \$50,000 Initial Fee?

Page 16

2. Annual Fee

“On each anniversary of the Effective Date during the Term, the Licensee shall pay to the Government of Grenada and for deposit into the Consolidated Fund, an annual licensing fee which shall be determined in accordance with the Regulations of the Minister **this Licence.**”

GRENLEC See suggested change. **If the licensees are already covering the cost of the PURC by paying up to 2% of its revenues why does any licensee have to pay annual fees?**

In reviewing the Regulations on Rules and Procedure for Applying for Licences and Permits, Grenlec does not see any reference to annual licence fees. This implies that other sector licensees will not be assessed annual licence fees which is unfair and contrary to good regulatory practice (i.e. treating all sector participants equally).

The quantum and/or basis for calculation of the annual fee must be stated here in this Licence.

3. Fees upon Extension of the Term

Upon any extension of the Term, the Licensee shall pay (to the Government of Grenada) the fee for the extension and the annual fees provided for in the regulations in effect on the effective date of the extension.

GRENLEC Again, the quantum and/or basis of calculation of these fees must be stated here in this Licence.

Page 17

4. Universal Service Fund

The Licensee shall contribute **with to** the Universal Service Fund. The Licensee shall comply with the obligations established in section 69 of the Act, in Regulations and Orders of the Minister, and shall submit all the information,

documents and reports that the Commission may require in order to monitor compliance of the obligations established in section 69 of the Act.

GRENLEC See suggested edit.

The quantum and basis of calculation of the required contribution to the Universal Service Fund must be stated here in this Licence.

L. Suspension and Revocation of Licence

Page 17 1. Grounds for Suspension or Revocation (a) (g)

“The Minister may, by notice in writing served on the Licensee, suspend or revoke his Licence on any of the following grounds:

“(a) any of the grounds set forth in section ~~23~~ **24** (1)(b) – (g) of the Act;”

GRENLEC This should be section 24.

“(g) for reasons of national security or in the public interest.

GRENLEC Please give examples of what public interest issues could result in the Suspension or Revocation of a licence.

2. Procedures

“The procedures provided for in section ~~23~~ 24 of the Act and any relevant provisions of the regulations shall apply to any proceeding for the suspension or revocation of this Licence.”

GRENLEC: Should be section 24.

3. Disposition of the Licensee upon Revocation of the Licence.

“Upon revocation of this Generation Licence, the Licensee’s Network Licence (together “the Licences”) is also automatically revoked, and the Minister may give the Licensee written notice requiring the Licensee to compulsorily divest both the Authorised Generation Electrical System and the Authorised Network Electrical System (together the “Authorised Systems”) to a third party selected in accordance with the regulations. In such case, the Licensee shall take such reasonable steps, and shall cooperate with efforts by the Minister, to identify a third party purchaser for acquisition of the Authorised Generation Electrical Systems. If no such acquisition is concluded within the ~~twenty-four (24)~~ twelve (12) months following the revocation of this Licence the Licences, the Government ~~may~~ must acquire the Authorised Generation Electrical Systems.”

GRENLEC See proposed edits required to effect the intent of this clause.

It must be recognized that Grenlec owns both the Authorised Generation Electrical System and the Authorised Network Electrical System (together the “Authorised Systems”) and that Grenlec is a widely held publicly traded company. Hence the concept of divesting of one licensed system or the other in isolation is simply not practical or possible. Additionally, any acquisition of the Authorised Systems, either by a third party or the Government, must by necessity include all outstanding shares not held by the Government itself.

All further references in this section to the Authorised Generation Electrical System must be changed to the Authorised Systems.

Page 18

4. Valuation of the Authorised Generation Electrical System.

Any acquisition of the Authorised Generation Electrical System by a third party or by the Government under this Part II(L) shall be concluded at Fair Market Value, determined in accordance with the following procedures:

“ii failing agreement between the Minister, or the third party purchaser, as the case may be, and the Licensee within forty days of the Government’s service of the written notice under Part II(L)(3), the valuator shall be **appointed nominated** by the President of the Institute of Chartered Accountant of the Eastern Caribbean, at the **joint** written request of the Licensee, the Government, **or and**, if a third party purchaser has been selected, such purchaser;”

“v the Fair Market Value purchase price for the acquisition of the Authorised **Generation Electrical Systems** shall be paid in full to **the Licensee all shareholders** within such time and in such manner as may be agreed upon between the Licensee and the selected third party purchaser or, if the Government elects to acquire the Authorised **Generation Electrical Systems** in accordance with Part II(L)(3), **by** the Government, and where there is no **such other** agreement, no later than **twenty four months twelve months** after the Minister’s service of the written notice provided for in Part II(L)(3).”

GRENEC See proposed edits required for this clause to be practical.

M. Force Majeure

Page 19

5. Termination for Force Majeure

“If the event of force majeure subsists for more than thirty (30) days from the date of occurrence of such event, the Licensee shall discuss with the Minister and the Commission in good faith alternatives to the obligations that the Licensee has been delayed or prevented from performing, any reciprocal or related obligations hereunder, and any extension of

time for the Licensee to perform such obligations. Except as may be agreed between the Licensee and the Minister, the Minister may terminate this Licence if within sixty (60) days of the date of occurrence of the event of force majeure the Licensee has not made good faith efforts towards restoring its the performance of the its obligations. it has been delayed in performing within sixty (60) days of the date of occurrence of the event of force majeure.”

GRENLEC See suggested wording change.

N. Termination of Licence for Expiration of its Term

Page 20 1. Transfer of shares of Grenlec to the Government

“When the Term of this Licence expires in accordance with Part II.C.2, the property of all shares of GRENLEC held by private persons shall be irrevocably transferred to the Government of GRENADA free of charge and without payment for such transfer.”

GRENLEC Such a clause, if it remains in the Generation Licence that may be granted, would be wholly unconstitutional and susceptible to constitutional challenge by the Licensee’s shareholders. The procedure to be followed at the expiration of the Term of the Licence (assuming no application for extension has been made or granted) should be the same as provided in Section L.3 Disposition of the Licensee upon Revocation of the Licence (as amended by our comments).

O. Notices and Other Communications

1. Contacts and Addresses for Written Notices and Other Communications.

“All notices and other documents required or permitted to be given under this Licence, the Act, the regulations, and the PURCA shall be in writing and shall be mailed by prepaid registered mail or delivered personally by hand against receipt, addressed as follows:”

GRENLEC Consideration should be given to the environment to use less paper. Electronic communication should be used as much as possible.

SCHEDULE B: GENERATION OPERATING STANDARDS AND PERFORMANCE TARGETS

Page 23 “The Generation Operating Standards and Performance Target applicable to the Licensee shall be as provided in this Schedule, to be reviewed, revised, monitored and enforced as provided for in Part II(E) and this Schedule.”

1. Fuel Efficiency Standards and Targets – Generation from Diesel Fuel

“The Licensee shall achieve and maintain the following fuel efficiency standards and targets from the Generators utilising diesel fuel and forming part of the Authorised Generation Electrical System:”

GRENLEC These efficiency standards and targets should be promulgated by Regulation and not specified in the Licence. The Licence is for a term of 25 years and the standards and targets will change over that time. The Licence should compel the Licensee to adhere to any standards and targets so promulgated in the future.

Page 23

3. Technical Losses Standards and Targets

“The Licensee shall achieve and maintain the following standards and targets with regard to technical losses from the Authorised Generation Electrical System:”

GRENEC Such technical losses are not associated with Generation and hence are not applicable to this Licence.