

THE ELECTRICITY ACT

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THE ELECTRICITY ACT

Act
18 of 2015.

[17th August, 2015.]

PART I—*Preliminary*

1. This Act may be cited as the Electricity Act. Short title.
2. In this Act, unless the context otherwise requires— Interpreta-
tion.
 - “avoided cost” means the cost saved by buying retail energy or capacity or both instead of building a new plant after taking into account the capital cost and the operating cost of the plant;
 - “Codes” means the generation code, transmission code, the distribution code, the supply code and the despatch code;
 - “cogeneration” means the production of both useful heat and electrical power from a single generating source;
 - “despatch activities” means the activities involved in the central management and direction of generating plants and other sources of supply to the system in order to achieve the optimal safety, reliability and economic supply of electricity;
 - “despatch code ” means the rules made by the Office, with the approval of the Minister, to govern despatch activities;
 - “despatch licensee” means a person holding an electricity licence to conduct despatch activities;
 - “distribute”, in relation to electricity means electricity by means of distribution lines and the expression “distribution” shall be construed accordingly;

“distribution code” means the rules made by the Office, with the approval of the Minister, to govern the distribution system and activities relating thereto;

“distribution licensee” means a person holding an electricity licence to establish, maintain and operate a distribution system;

“distribution lines” means any electric power line operating below 69,000 volts;

“distribution system” means that part of the system that operates below 69,000 volts;

“electricity licence” means a licence granted under this Act to do one or more of the following with respect to electricity, namely—

- (a) generation;
- (b) transmission;
- (c) distribution;
- (d) despatch;
- (e) supply,

and includes any existing licence;

“energy efficiency” or “energy conservation” means the use of less energy to accomplish the same task or satisfy the same need, by the application of changing technology or patterns of usage;

“existing licence” means a licensee referred to in section 62;

“Fund” means an electricity fund including the System Benefit Fund established under section 50;

“generate”, in relation to electricity, means the production of electricity by means of a generation set;

“generation code” means the rules made by the Office, with the approval of the Minister, that govern generation activities in the electricity sector;

“generation licensee” means a person having an electricity licence issued by the Minister to conduct the activity of generating electricity in Jamaica for supply to a distribution line or a transmission line;

“Generation Procurement Entity” means the entity designated by Cabinet in section 20 to procure new generating capacity for the system;

“generation set” means any plant or apparatus used for the production of electricity;

“Government Electrical Regulator” means the entity responsible for regulating the work of electricians and electrical inspectors;

“grid parity” means when an alternative energy source can generate power at a levelized cost of electricity that is less than or equal to the price of purchasing power from the electricity grid;

“independent power producer” means a licensee that owns or operates facilities for the generation of electricity for use primarily by the public, and that is not the same legal entity as the Single Buyer;

“integrated resource planning” means the planning—

(a) by the use of any standard, regulation, practice, or policy to undertake a systematic comparison between demand side management measures and the supply of electricity by an electricity generator to minimize the cost of adequate and reliable services to electricity consumers;

(b) taking into account necessary features for system operation such as diversity, reliability, despatchability, and other

factors of risk; and

- (c) treating demand and supply to electricity consumers on a consistent and integrated basis;

“interconnection” means the connection of a transmission or distribution line between the generation sets of a generation licensee or a self generator and the transmission system or the distribution system respectively;

“licensee” means the holder of an electricity licence;

“local authority” means—

- (a) in relation to the parishes of Kingston and St. Andrew, the Council of the Kingston and St. Andrew Corporation as constituted under the Kingston and St. Andrew Corporation Act;
- (b) in relation to any other parish, the Parish Council of that Parish as constituted under the Parish Councils Act; or
- (c) in relation to a Municipalities Act, a Municipal Council established under the Municipalities Act;

together with any other government agencies from whom any approval or other form of authorization is required by law in respect of the matter concerned;

“net billing” means mechanism for self generators to sell or be otherwise credited with the value for the excess power generated under standard offer contracts with the Single Buyer that have been approved by the Office;

“Office” means the Office of Utilities Regulation established under the Office of Utilities Regulation Act;

“power purchase agreement” means the contract that governs the commercial relationship between an

independent power producer and the Single Buyer which is approved by the Office and, which contract requires the Single Buyer to buy electricity from the independent power producer and the independent power producer to sell electricity to the Single Buyer, in accordance with the terms and conditions thereof;

“renewable energy source” means energy sources that are not depleted when exploited and includes sources prescribed by the Minister by order published in the *Gazette*;

“self generator” means a person generates electricity for that person’s own exclusive use, and shall include a person who has entered into a net billing or wheeling arrangement;

“Single Buyer” means the licensee whose licence obligates it to purchase electricity generated by independent power producers and persons having net billing arrangements;

“Standard Offer Contract” means a contract developed and approved by the Office for use in promoting renewable energy with capacity limits established by the Minister under a net billing arrangement;

“supply”, with respect to electricity, means the activities involved in the sale of electricity to consumers;

“supply code” means the rules made by the Office, with the approval of the Minister, to govern the supply of electricity;

“supply licensee” means a person holding an electricity licence to supply electricity;

“system”, with respect to electricity, means the physically connected generation, transmission and distribution facilities operated under the central management of the system operator;

“System Operator” means the licensee holding the despatch licence that is a ring-fenced department within the Single Buyer;

“transmission”, in relation to electricity, means the conveyance of electricity by means of transmission lines and the expression “transmission” shall be construed accordingly;

“transmission code” means the rules made by the Office, with the approval of the Minister, to govern the transmission system and activities relating thereto;

“transmission licensee” means a person having an electricity licence to establish, maintain and operate a transmission system;

“transmission lines” means electric power lines operating at 69,000 volts or higher;

“transmission system” means the system that operates at 69,000 volts or higher;

“Tribunal” means the Electricity Appeal Tribunal established under section 51;

“use of system charge” means the regulated amount set by the Office for the access and use of the transmission system, distribution system or both;

“wheeling” means an arrangement whereby a self generator provides electricity to the system on terms pursuant to which an equivalent amount of electricity may be used from the system at one or more locations, in accordance with this Act and any regulations made hereunder.

Objects of
Act.

3. The objects of this Act are to—

- (a) provide for a modern system of regulation of the generation, transmission, distribution, supply, despatch and use of electricity;

- (b) promote transparency in the identification and allocation of costs and revenues within and between participants in the electricity sector;
- (c) promote clarity in relation to the respective roles and responsibilities of the stakeholders in the electricity sector;
- (d) facilitate the achievement of the efficient, effective, sustainable and orderly development and operation of electricity supply infrastructure, supported by adequate levels of investment;
- (e) promote energy efficiency and the use of renewable and other energy sources;
- (f) prescribe the required standards in the electricity sector;
- (g) ensure the protection and safety of consumers of electricity and the public;
- (h) ensure that the regulation of the electricity sector is transparent and predictable.

PART II—*Administration of Act*

4. In the regulation of the electricity sector, the following persons shall have the following roles—

Roles and responsibilities.

- (a) the Minister shall plan the system and issue licences for the various activities;
- (b) the Generation Procurement Entity shall procure new generating capacity;
- (c) the Government Electrical Regulator shall regulate electricians and electrical inspectors; and
- (d) the Office shall regulate the electricity sector generally.

5. The Office may, where it considers necessary, give directions to any licensee with a view to ensuring that—

Directions of the Office.

- (a) the needs of the consumers of the services provided by the Single Buyer are met;
- (b) the Single Buyer operates efficiently and in a manner designed to—
 - (i) protect the health and wellbeing of users of the service and such elements of the public as would normally be expected to be affected by its operation;
 - (ii) protect and preserve the environment; and
 - (iii) afford to its consumers economical and reliable service.

Standards of
Single Buyer.

6.—(1) Subject to the conditions of its licence, the Single Buyer shall provide an adequate, safe and efficient service based on modern standards, to all parts of the Island at reasonable rates so as to meet the demands for electricity and to contribute to economic development.

(2) The Single Buyer shall not show any undue preference to or unduly discriminate against any person (whether or not it is any other business of the Single Buyer or an affiliate of the Single Buyer) or class of persons as respects the sale or purchase of any goods (including electricity), service (including connections and use of System) or opportunity or access to the same.

(3) The Single Buyer shall, save where it enters into special contracts with customers for the supply of electricity pursuant to section 14 of the Office of the Utilities Regulation Act, charge its customers for such a supply according to published tariffs, approved by the Office, as updated from time to time.

(4) The published tariff shall be cost-reflective, unless otherwise directed by the Office and each tariff category will apply uniformly across the Island and there will be no discrimination to customers on the tariff charged based on location.

PART III—*System Planning, etc.*

7.—(1) The Minister shall be responsible for planning the development of the system, which planning shall include—

Minister to be responsible for planning.

- (a) integrated resource planning;
- (b) the collection of data from electricity sector participants;
- (c) consultations with the Office, the Single Buyer and other electricity sector participants; and
- (d) the conduct of any relevant forecast.

(2) The planning process for transmission and distribution shall specifically consider the location of renewable and other generation sources, taking into account the potential for electrification of rural areas.

(3) A licensee shall comply with a request made by the Minister for information for the purposes of executing his planning responsibility under this section and failure to comply with a request under this subsection, without reasonable cause, shall be an offence.

PART IV—*Electricity Licences*

8.—(1) Subject to subsection (2), a person shall not—

Restrictions on certain electricity services without electricity licences.

- (a) engage in the generation, transmission, distribution, despatch and supply of electricity; or
- (b) erect, maintain or have any electric line or other works over, along, across or under any street or public road for the purpose of the supply of electricity,

unless authorized to do so by an electricity licence issued by the Minister.

(2) Subsection (1) shall not apply to a person who generates electricity as a self generator for that person's exclusive use, unless that person enters into a net billing arrangement, a wheeling arrangement or connects to a transmission line or distribution line for some other purpose.

(3) An application for an electricity licence may be made to the Minister in the prescribed form and manner.

(4) Any person who contravenes subsection (1) commits an offence.

Basis for grant
of electricity
licences.

9.—(1) Subject to subsection (2), an electricity licence may be granted by the Minister—

- (a) pursuant to procurement under a competitive bidding process initiated by the Generation Procurement Entity;
- (b) pursuant to an application in the prescribed form for the licence, in respect of net billing, wheeling arrangements or other arrangements; or
- (c) where the Cabinet has determined that any of the following circumstances exists, namely—
 - (i) an emergency situation exists such as to make a competitive bidding process impractical;
 - (ii) the grant of the licence is necessary in order to accommodate an offer from a foreign government to the Jamaican Government that will benefit the electricity sector;
 - (iii) due to exceptional circumstances or the prevailing economic and financial conditions in Jamaica, it is in the public interest to grant the licence.

(2) In respect of an electricity licence granted or application made pursuant to subsection (1), sections 4(1)(b) and 4B of the Office of the Utilities Regulation Act shall not apply.

(3) In considering the grant of a licence under subsection (1), the Minister may—

- (a) request of the proposed licensee such information and other particulars, in writing or otherwise, as he considers appropriate;
- (b) request the Office to provide technical or other advice or support as he may require;
- (c) required the proposed licensee to satisfy such other requirements as may be prescribed.

(4) A proposed licensee shall pay a non-refundable processing fee as may be prescribed in respect of a licence under subsection (1).

(5) Notwithstanding that a proposed licensee has met the requirements for the grant of an electricity licence, the Minister may refuse the grant the licence where he is satisfied that the electricity that would be supplied pursuant to the licence would exceed the system's needs or the grant of the licence would otherwise not be in the public interest.

10.—(1) An electricity licence granted under section 9(1)(a) or (c)—

Character-
istics of
electricity
licences.

- (a) shall be a non-exclusive licence for the generation of electricity for the entire Jamaica or any part thereof; or
- (b) may be an exclusive or non-exclusive licence (as the case may be) for any or all of the following services, namely the transmission, distribution, supply or despatch of electricity for the entire Jamaica or any part thereof.

(2) An electricity licence granted under section 9 (1)(b) shall be a non-exclusive licence.

(3) An electricity licence shall be in writing and shall continue in force until it expires or is otherwise terminated in accordance with its terms, or unless revoked or suspended in accordance with this Part.

(4) An electricity licence may include any restriction or condition (whether or not relating to the activities authorized by the electricity licence) which appears to the Minister to be necessary or expedient, and he may request the Office to make recommendations in this regard.

(5) Without prejudice to the generality of subsection (4), an electricity licence may—

(a) including any condition requiring the licensee—

- (i) to pay a prescribed fee on the grant of the licence, in addition to the processing fee referred to in section 9(4);
- (ii) to observe, with such modification as may be approved by the Office, such of the Codes as apply to the licensee's operations;
- (iii) to provide the Minister with such information and supporting documentation as he may require for the purposes of section 9(3)(a) or any other purposes under this Act or any regulations made hereunder;
- (iv) to do or not to do such things as are specified in the electricity licence;

(b) provide for any one or more of the conditions specified in the electricity licence to cease to have effect at such manner and circumstances as may be specified in or determined by or under the condition.

(6) The Minister shall in writing notify an applicant for the grant of an electricity licence under section 9(1)(b) of his decision to grant or refusal to grant the application and, in the case of a decision to refuse the application, the reasons for his decision.

(7) Where the Minister refuses to grant an electricity licence under subsection (6), the Minister shall afford the applicant an opportunity to show cause as to why the licence should be granted.

(8) It is the duty of a generation licensee to ensure that the generation licensee does not commit an act or omission that will adversely affect, directly or indirectly, the security and stability of the system or the safety of the public.

11. The Minister shall cause a register to be established and maintained in which the particulars of each electricity licence shall be entered.

Register
to be
kept.

12.—(1) No electricity licence shall be transferable to any other person without the approval in writing of the Minister, and before making his decision whether or not to give his approval under this subsection, the Minister may seek the advice of the Office.

Restriction
on transfer
of electricity
licence.

(2) Any purported transfer of an electricity licence in contravention of subsection (1) shall be void.

13.—(1) Subject to the provisions of this Act, the Minister may revoke an electricity licence, or suspend an electricity licence for such period as he thinks fit, if he is satisfied that—

Revocation or
suspension of
electricity
licence.

- (a) the licensee has committed an act of bankruptcy within the meaning of section 57 of the Insolvency Act;
- (b) the licensee has breached any of the terms or conditions of the electricity licence and the period provided, if any, for remedying the breach has expired and the breach has not been remedied to the Minister's satisfaction;
- (c) a licensee has not complied with any direction or requirement issued by the Office under section 5; or
- (d) the public interest of Jamaica so requires.

(2) Subsection (1) shall not apply to an electricity licence which contains provisions setting out the powers to revoke or to suspend the electricity licence and the circumstances in which those powers may be exercised, whether or not those circumstances are similar to any of those specified in subsection (1), save to the extent that the terms of the electricity licence expressly incorporate the provisions of subsection (1).

(3) Subject to subsections (7) and (8), the Minister shall not exercise his power to revoke or suspend an electricity licence under subsection (1) unless he has first afforded the licensee the opportunity to make representations, whether orally or in writing, as to why the power should not be exercised.

(4) The Minister may, if he thinks fit, appoint one or more persons to hear, receive and consider the representations referred to in subsection (3) and to submit to him for his determination, within such specified time as he may consider reasonable, a written report of the findings and recommendations arising from their consideration of the matter examined.

(5) The suspension or revocation of an electricity licence shall not relieve the licensee of any obligation incurred or assumed by the licensee prior to the suspension or revocation of the licence.

(6) Where the licensee is a party to an agreement with the Single Buyer for the sale or other supply of electricity to the Single Buyer, a breach of that agreement by the licensee or the Single Buyer shall constitute a breach of the electricity licence held by the licensee or the Single Buyer, as the case may be, for the purposes of subsection (1) (b); however, this subsection shall not apply to an existing licence unless that existing licence so provides.

(7) In affording the licensee the opportunity to make representation, the Minister shall notify the licensee in writing of the proposed suspension—

- (a) stating the reason therefor;
- (b) requiring the licensee, in the case of a breach, to remedy the breach within the time specified in the notice.

(8) A licensee who is served with a notice under subsection (7) shall, after remedying the breach which gave rise to the suspension, notify the Minister in writing that the breach has been remedied.

14. If the Office is satisfied that an electricity licensee is contravening, is likely to contravene or has contravened any condition of the licensee's electricity licence, any of the Codes, any provision of this Act or any regulations made hereunder, or any direction issued by the Office to or applicable to the licensee, the Office shall forthwith notify in writing to the Minister thereof and may provide the Minister with such recommendations as it considers appropriate.

Notification to the Minister by the Office.

15. A licensee who after investigation is determined to have failed to comply with any direction given by the Office under this Act commits an offence.

Failure to comply with directions of the Office.

PART V—*Generation*

16. The apparatus that is utilized to generate electricity shall supply that electricity at a nominal frequency of 50 Hertz.

Electricity frequency.

17.—(1) Subject to subsection (2), it is the duty of a generation licensee to develop and maintain a reliable, efficient, compatible, safe and economical system of electricity generation in accordance with the electricity licence held by the generation licensee and the generation code, this Act and any regulations made hereunder.

Duties of generation licensees other than self-generators.

(2) Subsection (1) shall not apply to self-generators.

(3) For the purposes of subsection (1) and section 18(1)(b), a system of electricity generation shall be considered compatible if it complies with the provisions of this Part.

18.—(1) A self-generator shall—

Self-generators.

- (a) develop and maintain a system of electricity generation in accordance with the generation code;
- (b) if the self-generator holds an electricity licence, develop and maintain a reliable, efficient, compatible and safe system of electricity generation in accordance with its electricity licence, this Act and any regulations made hereunder.

(2) Subject to subsection (4), prior to entering into any arrangement for the sale or other supply of excess electricity, a self generator shall—

- (a) enter into a Standard Offer Contract with the Single Buyer for such sale or supply; and
- (b) be the holder of an electricity licence.

(3) Where the self generator has met the requirements under subsection (2) and has paid the use of system charges, the self generator shall not be denied access to the system, except in circumstances where the System Operator determines that denial of access is necessary due to technical conditions, in which event the System Operator shall provide the self generator with written reasons for the denial access within forty-eight hours thereafter, and shall provide a copy of those reasons to the Minister and the Office.

(4) Notwithstanding subsection (2), the Minister may, in writing, where he is satisfied that it is in the public interest to do so, authorize the sale or other supply of electricity by a self generator to the Single Buyer, pursuant to an agreement approved by the Minister in circumstances where the requirements of subsection (2) are not met.

(5) Prior to granting an authorization pursuant to subsection (4), the Minister may consult with the Office.

(6) A self generator, who is the holder of a generation licence and has paid the use of system charge may engage in wheeling for its or his own exclusive use and, in the event that a market study conducted by the Office determines the need for additional capacity, that self generator may engage in wheeling to an entity in which it or he owns more than fifty per cent interest.

(7) The Office shall determine and prescribe by order the tariff payable to the Single Buyer within six months after the appointed day by a self-generator for wheeling and review the tariff periodically thereafter at intervals of not greater than five years.

(8) The Minister shall, having regard to the integrated resource plan, the size and efficiency of a cogeneration plant and the public interest, prescribe the excess capacity that a cogeneration plant will be permitted to supply to the system.

(9) The Single Buyer shall implement an electric power wheeling service in accordance with such terms and conditions as are approved by the Office.

19.—(1) Subject to subsections (2) and (3), the Single Buyer shall enter into a power purchase agreement with each independent power producer.

(2) No such agreement under subsection (1) shall be entered into unless the Office has in writing approved the terms and conditions thereof.

(3) The Single Buyer shall not be obligated to connect an independent power producer's generated electricity output to the system unless both the Single Buyer and the Chief Electrical Regulator agree that the independent power producer's connection will not compromise the safety and protection of the system.

20.—(1) The Generation Procurement Entity shall be appointed by the Cabinet for the purpose of procuring new generating capacity and the Cabinet may revoke any such appointment and substitute new appointees and may supplement the provisions contained in this Act within which the Generation Procurement Entity shall operate.

(2) Subject to subsection (4), the Generation Procurement Entity shall manage and administer the process for the procurement, by means of competitive bidding, of generation capacity by potential independent power producers for sale of electricity to the Single Buyer.

(3) The Single Buyer may not replace existing generating capacity otherwise than in accordance with a right of first refusal and such protocols and rules as the Generation Procurement Entity may establish.

Third
Schedule.

(4) Subject to subsection (5), the first of first refusal shall comprise the Single Buyer being afforded the first opportunity to replace its existing generating capacity in accordance with conditions stated in the Third Schedule.

(5) The right of first refusal of the Single Buyer shall not be extended to any subsidiary company of the Single Buyer.

(6) Where the Single Buyer does not satisfy the conditions stated in the Third Schedule, the replacement capacity may be procured through a competitive bidding process managed and administered by the Generation Procurement Entity or such other process as the Cabinet determines to be in the public interest.

(7) In order to ensure appropriate transparency and continuity in procurement matters so as to attract needed levels of investment to the electricity sector, the Generation Procurement Entity shall establish protocols and rules governing critical aspects of procurement and the protocols and rules shall be subject to the approval of the Cabinet.

(8) The arrangements referred to in subsection (3) may, if approved by the Generation Procurement Entity, permit the replacement of generation capacity through a subsidiary of the Single Buyer provided that the legal and commercial terms and conditions of the power purchase agreement and other arrangements between the Single Buyer and the subsidiary shall be subject to the approval of Generation Procurement Entity.

Renewable
energy.

21.—(1) The Minister may, by order, after consultation with the Office, prescribe renewable energy targets which may include a feed in tariff set by the Office for each source for renewable energy.

(2) The electricity generated from renewable sources to be injected into the transmission lines or distributions lines shall be granted access when available and shall only be denied by the System Operator on the ground of technical reasons

which shall be communicated in writing to the licensee within forty-eight hours thereafter with a copy of the reasons to the Minister and the Office.

PART VI—*Transmission, Distribution and
Supply Activities*

22.—(1) It is the duty of—

Duties of
trans-
mission,
distribution
and supply
licensees.

- (a) a transmission licensee to develop, and maintain a reliable, efficient, coordinated, safe and economical transmission system in accordance with the terms of the licensee's transmission licence, the transmission code, this Act and any regulations made hereunder;
- (b) a distribution licensee to develop and maintain a reliable, efficient, coordinated and safe, economical distribution system in accordance with the terms of the licensee's distribution licence, the distribution code, this Act and any regulations made hereunder;
- (c) a supply licensee to develop, and maintain a reliable, efficient, coordinated and economical supply system in accordance with the terms of the licensee's supply licence, the supply code, this Act and any regulations made under this Act.

(2) It shall be the duty of an electricity licensee to ensure that it does not commit an act or omission that will adversely affect, directly or indirectly, the security and stability of the electricity supplied by it or by any other person to consumers.

(3) For greater certainty, where a licence under this Act, (including an existing licence referred to in section 62 authorizes the licensee to carry out more than one of the activities referred to subsection (1), the licensee shall comply with subsection (1) in relation to each of those activities which are authorized by the licence.

Approval of local authority for placement and removal of electric line.

23. Notwithstanding anything in this Act, the Single Buyer or a self generator shall not place or move any transmission line or distribution line above ground, underground, along, over or across any street, without the express written consent of the local authority and the local authority may—

- (a) require the Single Buyer or self generator to forthwith remove any transmission line or distribution line placed by them contrary to the provisions of this section, or itself remove the transmission line or distribution line;
- (b) recover the expenses of such removal from the Single Buyer or self Generator by civil proceedings (without limit of amount) in the Resident Magistrate's Court of that parish;

Order of Resident Magistrate to remove electricity line.

24. Where any transmission line or distribution line has been placed above ground or underground by the Single Buyer or a self generator in any position, a Resident Magistrate may, in any proceedings in the Resident Magistrate's Court, and if the Resident Magistrate is of the opinion that such transmission line or distribution line is or is likely to become dangerous to the public safety, may, notwithstanding any such consent as aforesaid, make an order directing and authorizing the removal of such electricity line by such person and upon such terms as the Resident Magistrate may think fit.

Wayleave agreement.

25. Nothing in this Act shall—

- (a) preclude the Single Buyer and the owner or occupier of any land from entering into an agreement for laying, placing or carrying on, under or over such land, any supply line, posts or apparatus (hereafter in this section referred to as a "wayleave agreement"); or
- (b) affect any wayleave agreement subsisting on the 1st day of October, 1958.

Wayleave agreement may be registered.

26. Where a wayleave agreement is made in respect of land, the title of which is registered under the Registration of Titles Act, the wayleave agreement may be registered in accordance

with the provisions of that Act as an encumbrance affecting the registered title of the land, and the provisions of the said Act shall have effect accordingly.

27. Where the Single Buyer and the owner of any land on which the Single Buyer has exercised powers in relation to electric line restrictions and where both have failed to agree as to the amount of compensation to be paid by the Single Buyer in exercise of the said powers, the dispute shall be referred to arbitration and the provisions of the Arbitration Act shall accordingly apply as if the arbitration were pursuant to a submission (as defined in that Act) agreeing to submit the question to a single arbitrator.

Arbitration.

28. Any person who unlawfully and maliciously cuts or damages any electric line or work with intent to cut off any supply of electricity commits an offence.

Offence of cutting or damaging electricity lines.

29. An agent appointed by the Single Buyer—

Right of entry to premises for inspection.

- (a) may at all reasonable times enter any premises to which electricity is or has been supplied by the Single Buyer, in order to carry out inspection or maintenance or both on the electric lines, meters, accumulators, fittings, works and of property or apparatus for the supply of electricity belonging to the Single Buyer for the purpose of maintaining its apparatus or ascertaining the quantity of electricity consumed or supplied; and
- (b) shall, where a supply of electricity is no longer required, or where the Single Buyer is authorized to take away and cut off the supply of electricity from any premises, for the purpose of removing any electric lines, accumulators, fittings, works or apparatus, belonging to the Single Buyer, repair all damage caused by such entry, inspection or removal.

30. Any person who obstructs an agent appointed under section 29 in the execution of his duties under that section commits an offence.

Offence of obstructing agent of Single Buyer.

[The inclusion of this page is authorized by L.N.]

Power of
Minister to
cause line
and work to
be removed.

31. Where any person had unlawfully erected, maintained, or had an electric line or other works for the purpose of supplying electricity and has been convicted therefor, at any time after the expiration of thirty days of the conviction, in case of the electric line or work in respect of the erection or maintenance of which the conviction was obtained not had been removed by the party who had erected, maintained, or had, the same, the Minister (unless in the meantime the person convicted has obtained a licence to maintain and have the line or works, and except in so far as such line or work is sanctioned by the licence) shall cause the line and work, together with all posts or erection used in supplying or carrying the same, to be removed, and to have the same sold, and out of the proceeds to pay the expenses of removal and sale, and he shall pay the surplus (if any) into Consolidated Fund; and in case such proceeds shall not be sufficient to pay such expenses, the Minister may recover the deficiency by claim in a Resident Magistrate's Court (without limit of amount) against the person who erected, maintained or had, the line or works.

Right of
easement of
Single Buyer.

32. Subject to any provision to the contrary, the Single Buyer may lay or remove, place or carry on, under, or over any land, except land used as a garden, park or pleasure ground, or land being the curtilage of a dwelling house or other similar land in the immediate vicinity of any building, such supply lines, posts and apparatus as are necessary or convenient for the safe supply of electricity in accordance with the relevant licence.

Compensation
for easement.

33. There shall be paid by the Single Buyer to the owner of the land in question by way of compensation such sum as may be agreed between them.

Notice to
owner of
land.

34. Not less than twenty-one days before entering upon on any land for the purpose of doing any work thereon by virtue of rights conferred under this Part, the Single Buyer shall give to the owner or occupier of the land notice in the prescribed form of the work proposed to be done on the land.

Joint use
poles.

35. The Single Buyer may enter into any arrangement or contract for the joint use of poles, and, if the public interest so requires, the Office may direct the Single Buyer, after consul-

tation, with the Single Buyer to use any poles jointly with any other persons so long as such use shall not contravene any law.

36. It shall be a condition of any such directions that the Single Buyer shall receive such fair compensation for the use of the Single Buyer's poles by any other person as may be agreed or if the parties fail to agree, fixed by the Office.

Fair compensation for use of poles.

37. Where the Single Buyer causes detriment, inconvenience or any damage, while installing any poles, it shall make compensation in full to the affected person.

Compensation.

38. Where any transmission lines, distribution lines, meters, accumulators, fittings, works or apparatus (in this section called the "equipment"), belonging to the Single Buyer are placed in or upon any premises not being the possession of the Single Buyer for the purpose of supplying electricity under this Act, or under any licence, the equipment shall not be subject to distress, or to the landlord's remedy for rent of the premises where the equipment may be, nor to be taken in execution under any legal proceedings, or any proceedings in bankruptcy against the person in whose possession the same may be except in any case where the Minister exercises his step-in rights or revokes the licence.

Lines, meters, etc., not subject to distress.

39. Subject to the provisions of this section, the Single Buyer, or any person authorized by it in that behalf, may—

Entry onto land by agent of Single Buyer.

- (a) at all reasonable times, enter upon any land on, under or over which electric lines have been laid, placed or carried, or upon which posts or apparatus have been erected, for the purpose of carrying out repairs thereto; and
- (b) carry out all requisite repairs and in the course thereof fell or lop trees, remove vegetation and do all other things requisite for the said purpose, causing as little damage or disturbance as possible.

40. There shall be paid by the Single Buyer to the owner of

Payments for damage to land.

the land in question, by way of compensation for any damage caused, such sum as may be agreed between them or, in default agreement, determined by the Office.

Where
compensation
not necessary.

41. No compensation shall be payable under this section in respect of the necessary felling or lopping of any tree which is within twenty-five feet of the centre line of any main road or parochial road and which was not in existence before the construction of the road, or in respect of the necessary felling or lopping of any tree, or the necessary removal of any vegetation, which has grown or been allowed to grow in such a manner as to obstruct or interfere with any supply line, post or apparatus of the undertakers placed on the land in question and in respect of which compensation has been paid.

Necessary
felling of
trees, etc.

42. For the purposes of this Act, the felling or lopping of trees or the removal of vegetation shall be deemed to be necessary if done for the proper maintenance of any supply line, post or apparatus.

Maintenance
plan.

43. The Single Buyer shall develop a maintenance plan for its apparatus that will be reviewed by the Office every year, or such other period as the Office shall determine.

PART VII—*The System Operator*

Obligation to
comply with
System
Operator's
directions.

44.—(1) A generation licensee shall comply with all the directions of the System Operator relating to despatch activities or to the other functions of the generation licensee that concern the System Operator.

(2) A licensee that fails to comply with a direction under subsection (1) commits an offence.

Duties of
System
Operator *re*
despatching
activities.

45.—(1) The System Operator shall, in accordance with this section, separate its despatch activities from its transmission activities and activities relating to generation, distribution and supply.

(2) In furtherance of the separation referred to in subsection (1), the System Operator shall establish a discrete

system operator department whose staff shall be employed in undertaking despatch activities, and the head of which department shall report directly to the System Operator's board of directors.

(3) The Minister, in consultation with the System Operator, may require the System Operator to make additional arrangements in a manner satisfactory to him to further establish the separation referred to in subsection (1).

(4) The System Operator shall establish such technical arrangements as may be necessary to provide the Office, the Minister and independent powers producers with access to real time information concerning the despatch activities for the purpose of enabling the Office to effectively monitor the despatch of generation capacity so as to ensure that the Merit Order as defined in the Second Schedule is being complied with.

Second
Schedule.

(5) In the event that the System Operator despatches generation capacity to the system in a manner that does not comply with the Merit Order and, the Office determines that the System Operator should compensate the consumer of electricity for despatching not in accordance with the Merit Order, the Office shall make the claim within three months of its determination, so, however—

- (a) the obligation to compensate consumers shall not arise where the System Operator satisfies the Office that the reason for departure from the Merit Order was due to technical exigencies relating to reliability of supply or system stability;
- (b) no claim shall be made by the Office against the System Operator under this section unless—
 - (i) the claim is delivered in writing to the System Operator within the prescribed period after the date on which the information on which the claim is based has been provided by the System Operator to the Office; and

- (ii) the claim is accompanied by the relevant data and basis on which the claim is based; and;
- (c) an appeal may be made to the Electricity Appeal Tribunal in accordance with section 51 against any decision of the Office under the subsection.
- (6) The compensation provided to consumers by the System Operator pursuant to subsection (5) shall be absorbed by the System Operator and shall not be passed on to or otherwise recovered from the consumer by the Single Buyer.
- (7) The Office shall cause the operations and despatch activities and related operations of the System Operator to be independently audited at least annually and the System Operator shall facilitate the audit and provide such access and information as the independent auditor may require to complete the audit within a reasonable timeframe determined by the Office.
- (8) The System Operator shall ensure that any information concerning its despatching activities that it provides to any generation licensee is also made available to every other generation licensee whose generation capacity is included in the despatching activity unless the information relates to a particular generation licensee or is otherwise not relevant to the other generation licensees.
- (9) The Minister shall consult with the Office and the System Operator before prescribing the period under subsection 5(b)(i).
- (10) The System Operator shall develop and maintain a plan for restoring the system to normal operating levels in the event of a major system failure due to failure of any part of system howsoever caused.
- (11) Where there is a major system failure the System Operator shall—
 - (a) as soon as practicable, inform the Minister and the Office of the status of the system;

- (b) seek to have the system restored to normal operating levels as soon as practicable, taking into account safety, reliability and economy;
- (c) coordinate the bringing back online of any apparatus forming part of the system that may have ceased to be available to the system.

(12) Upon the system being restored to normal operating levels after a major system failure, the System Operator shall carry out an investigation of the causes of the failure and produce a report thereon, which report shall also describe the measures and procedures to restore the system and the measures that should be taken to avoid a recurrence of the failure, and shall provide an assessment of the cost associated with the failure.

(13) The System Operator shall submit the report under subsection (12) to the Office and to the Minister within thirty days of the system being restored to normal operating levels.

(14) The System Operator shall provide regular status updates to the Minister until the system is restored.

(15) If the System Operator contravenes any of the provisions of this section, it commits an offence.

(16) For the purposes of this section—

- (a) “major system failure” means a system failure that—
 - (i) has not been planned by the System Operator;
 - (ii) affects at least one thousand customers; and
 - (iii) lasts at least two hours;
- (b) the Merit Order system shall be determined in accordance with the Second Schedule.

Second
Schedule.

PART VIII—*Duty of Single Buyer to Maintain
Separate Accounts*

Single
Buyer to
maintain
separate
accounts.

46.—(1) The Single Buyer shall, at all times, keep the accounts for its generation, transmission, distribution and supply activities separate and distinct from each other and from the accounts kept by it in respect of any other part of its undertaking or business.

(2) The Single Buyer may engage in any other business in addition to the activities it conducts pursuant to its electricity licence but no revenues, costs, profits or losses resulting therefrom shall be taken into account in the fixing of rates by the Office.

(3) The Single Buyer shall furnish to the Office annually, not later than ninety days after the end of each financial year of the Single Buyer, a report relating to its activities during that year, in such form and including such content as the Office may require.

PART IX—*Codes*

Codes.

47.—(1) The Office, with the approval of the Minister, shall prepare and promulgate each of the Codes within twelve months after the appointed day, for the general direction of licensees in respect of the matters within the scope of each of the Codes.

(2) The Office shall cause the Codes, and every revised edition thereof, to be published on its website or in any other manner that it considers appropriate.

(3) A breach of any of the Codes by a licensee shall constitute a breach of the electricity licence held by the licensee (other than an existing licensee) for the purposes of section 13(1)(b).

(4) A breach of any of the Codes by a licensee or a self generator who is not a licensee shall constitute an offence.

(5) The Office shall review the Codes every three years, and in conducting that review shall consult stakeholders in the electricity sector in such manner as the Office considers appropriate.

(6) The despatch code shall contain a process whereby the Office shall investigate any significant power outage.

PART X—The Government Electrical Regulator

48.—(1) There is hereby established a department of Government to be known as the Government Electrical Regulator, having the functions set out in subsection (3). Government
Electrical
Regulator.

(2) The Government Electrical Regulator shall be governed by a Board, appointed by the Minister, and the Minister shall give policy directions to the Board.

(3) The functions of the Government Electrical Regulator are to—

- (a) recommend to the Minister persons who are considered suitably qualified to be licensed by the Minister as electrical inspectors;
- (b) recommend to the Minister the suspension or revocation of the licence of an electrical inspector in instances where it considers it appropriate;
- (c) investigate and seek to resolve complaints by members of the public about the work or conduct of licenced electrical inspectors;
- (d) establish rate classes among licensed electrical inspectors based on their qualifications, skill and experience;

- (e) establish to maintain a register of registered electrical inspectors, each of whom shall be assigned to a rate class;
- (f) monitor the quality of work being performed by electrical inspectors by conducting reviews on a random basis;
- (g) perform all other acts incidental to its functions; and
- (h) appoint a committee of not less than three persons, to be called the Committee of Examiners which shall have responsibility to—
 - (i) determine the categories of electricians to be registered under this Act;
 - (ii) certify, on such basis as may be prescribed, persons who may be duly certified and registered to practice as electricians in Jamaica;
 - (iii) ensure the maintenance of acceptable standards of professional conduct by persons registered as electricians under this Act; and
 - (iv) perform all other acts incidental to its functions.

(4) In performing its functions, the Government Electrical Regulator or its agent shall have the right of entry to any premises or property and any person who so obstructs the Government Electrical Regulator or its agent commits an offence.

Licensed
Electrical
Inspector.

49.—(1) A licensed electrical inspector assigned to a particular rate class may inspect premises of the corresponding rate class or any lower rate class.

(2) The register of licensed electrical inspectors shall be made accessible to the public by electronic means or otherwise.

(3) A licensed electrical inspector shall not inspect his

own work where he has undertaken any electrical wiring or installation or work done by persons whom he has engaged.

(4) A licensed electrical inspector shall certify that any premises, facility or apparatus is fit to be connected to the system, if he is satisfied that the electrical wiring and installations at the premises, facility or apparatus are safe and comply with the Codes.

(5) The Single Buyer shall not connect any premises, facility or apparatus to the system unless it has been duly certified by a licensed electrical inspector as fit to be connected to the system.

PART XI—*Electricity Funds*

50.—(1) There shall be established a Fund to be called the System Benefit Fund which shall be administered and controlled by the Office. System
Benefit
Fund.

(2) The System Benefit Fund shall be financed from—

- (a) tariffs, as the Office may direct;
- (b) fines collected pursuant to this Act;
- (c) monies from the Consolidated Fund;
- (d) any other source.

(3) The resources of the System Benefit Fund shall be utilized—

- (a) to increase the penetration of renewable energy or energy security;
- (b) for the promotion of energy conservation;
- (c) for the purpose of providing electricity to rural areas; and
- (d) for any other purpose that the Minister may prescribe by Order published in the *Gazette*.

(4) The Office shall have the power to establish such other electricity funds as it considers appropriate, after consultation with the Minister, for the benefit of the system.

(5) The Office shall cause an audit of the System Benefit Fund to be carried out at least every three years and the cost of conducting such an audit shall be paid from the said System Benefit Fund.

(6) The Office shall invest all funds in the System Benefit Fund which are not immediately required in an interest bearing account.

PART XII—*Electricity Appeal Tribunal*

Electricity
Appeal
Tribunal.
Fourth
Schedule.

51.—(1) There is hereby established a Tribunal to be called “the Electricity Appeal Tribunal”, which shall be constituted in accordance with the Fourth Schedule.

(2) If an electricity licensee is aggrieved by a decision of, or failure to act, by the Office, the electricity licensee may make an appeal to the Tribunal—

- (a) in the case of a decision of the Office, within thirty days after notification to the electricity licensee of that decision;
- (b) in the case of a failure of the Office to act, within twenty-one days after the date on which the Office was required to act.

(3) On hearing an appeal under this Act the Tribunal shall have regard to the legality, rationality and procedural propriety of the Office in arriving at its decision and may—

- (a) confirm, modify or reverse the decision of the Office or any part thereof; or
- (b) by a direction in writing, refer the decision back to the Office for reconsideration by it, either generally or in relation to any matter specified in the direction,

and the Tribunal shall, at the same time inform the electricity licensee and, state the reasons for so doing.

(4) The Tribunal may, on application by an electricity licensee, order that the decision of the Office to which an appeal relates shall not have effect until the appeal is determined.

(5) The Tribunal may dismiss an appeal if it is of the opinion that the appeal is frivolous or vexatious or not made in good faith.

(6) In making a decision, the Tribunal shall observe reasonable standards of procedural fairness and the rules of natural justice and act in accordance with paragraph 11 of the Fourth Schedule.

Fourth
Schedule.

(7) Any existing licensee that has an appeal mechanism that is not subject to subsequent legislation, shall utilize the appeal process set out in its respective licence in relation to decisions of the Office.

PART XIII—*Rural Electrification*

52.—(1) The Single Buyer shall have the responsibilities for rural electrification, so however, the Single Buyer may waive its right to provide such service in respect of a particular geographical area.

Rural
electri-
fication.

(2) Where the Single Buyer has opted to waive its right to provide rural electrification, a person, may with the grant of a licence from the Minister, develop a micro-grid or renewable energy solutions for the rural electrification of that particular geographical location.

(3) The Single Buyer may not unreasonably withhold its consent to any person under subsection (2) but it may refuse to waive its right if it assumes the responsibility of supplying the demand of that particular geographical area in no more than two years.

(4) The Office shall have oversight of the tariff to be charged in that particular geographical area, and the Minister may grant the relevant licenses.

(5) Where the Single Buyer does not waive its right to supply electricity to a particular rural area, the cost of so doing shall be recovered from the customers of the Single Buyer as part of the tariff.

(6) Where there is the establishment of a micro-grid or a renewable energy solution for that particular rural area, by a person other than the Single Buyer, the cost of so doing shall be recovered from the customers of that particular rural area only.

(7) To the extent that the solution in the rural area is from renewable energy sources, the System Benefit Fund may be utilized to subsidise the tariff to rural customers to achieve grid parity.

PART XIV—*Penalties*

General
penalty
provision.

53. Any person who commits an offence against this Act, for which no penalty is specifically provided, is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding five million dollars in the case of an individual offender, in the case of a body corporate, an individual responsible for directing the affairs of the body corporate, to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Fixed
penalty.
First
Schedule.

54.—(1) Subject to subsection (7), this section shall apply to any offence specified in the First Schedule.

(2) Where the Office has reason to believe that a person is committing or has committed an offence against this section, it may give to the person the prescribed notice in writing offering the opportunity to discharge any liability to conviction of that offence by payment of a fixed penalty under this section.

(3) A person shall not be liable to be convicted of an offence under subsection (2) if the fixed penalty is paid in accordance with this section before the expiration of twenty-one days following the date of the notice or such longer period (if any) as may be specified therein or before the date on which proceedings are begun, whichever is later.

(4) Where a person is given a notice under this section in respect of an offence, proceedings shall not be taken against any person for that offence by any constable or local authority, as the case may be, until the end of the twenty-one days following the date of the notice or such longer period (if any) as may have been specified therein.

(5) In subsection (3) and (4), “proceedings” means any criminal proceeding in respect of the act or omission constituting the offence specified in the notice under subsection (2) and “convicted” shall be construed in like manner.

(6) Payment of a fixed penalty under this section shall be made to the Collector of Taxes and in any proceedings a certificate that payment of the fixed penalty was or was not made to the local authority or to the Collector of Taxes, as the case may be, by a date specified in the certificate shall, if the certificate purports to be signed by the secretary of the local authority or the Collector of Taxes, be sufficient evidence of the facts stated, unless the contrary is proved.

(7) A notice under subsection (3) shall—

- (a) specify the offence alleged, and give such particulars of the offence as are necessary for giving reasonable information of the allegation;
- (b) state the period during which, by virtue of subsection (3), proceedings will not be taken for the offence;
- (c) state the amount of the fixed penalty and that such fixed penalty shall be paid to any Collector of Taxes.

(8) In any proceedings for an offence to which subsection (1) applies, no reference shall be made after the conviction of the accused to the—

- (a) giving or affixing of any notice under this section; or
- (b) payment or non-payment of a fixed penalty thereunder;

in the course of the proceedings or in some document which is before the Court in connection with the proceedings reference

has been made by or on behalf of the accused to the giving or affixing of such a notice or, as the case may be, to such payment or non-payment.

(9) The Ministry may, by order subject to affirmative resolution make provision as to any matter incidental to the operation of this section, and in particular any such order may prescribe—

- (a) the form of notice under subsection (2) and the Collector of Taxes to whom a fixed penalty is payable;
- (b) the nature of the information to be furnished to the Collector of Taxes along with any payment;
- (c) the arrangements for the Collector of Taxes to furnish to the Office, information with regard to any payment under a notice under this section.

PART XV—*Miscellaneous*

Regulations.

55.—(1) The Minister may make such regulations as the Minister thinks fit to give full effect to the provisions of this Act, and without prejudice to the generality of the foregoing, regulations may prescribe provisions in relation to—

- (a) the additional purposes for which the System Benefit Fund may be utilized pursuant to section 50;
- (b) the supply of electricity for rural areas by the establishment of micro-grids that are not inconsistent with the licence held by the Single Buyer;
- (c) qualification criteria and fees for the licensing of electrical inspectors;
- (d) public liability insurance to be held by electrical inspectors;
- (e) define the duties of electrical inspectors, including the duty to re-inspect, and the standards to which those duties shall be performed;
- (f) fees that may be charged in relation to applications for electricity licences;

- (g) requirements relating to energy efficiency, including measures to reduce demand for electricity;
- (h) the implementation of intelligent network technology after consultation with the Office and the Single Buyer;
- (i) despatch activities and the functions of the System Operator.

(2) Regulations made under this section shall be subject to affirmative resolution.

(3) Notwithstanding section 29(b) of the Interpretation Act, regulations made under this Act may provide that a person who contravenes the regulations commits an offence and shall be liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding five million dollars to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

56. The Minister may, by order subject to affirmative resolution—

Minister may by order amend monetary penalty.

- (a) amend any monetary penalty specified in this Act;
- (b) amend any Schedule to this Act.

58. Any person who lawfully abstracts, uses or consumes, diverts or causes to be diverted any electricity supply by a Single Buyer commits an offence and shall be liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding five million dollars, or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Unlawful abstraction or use of electricity.

60. The provisions of this Act shall be reviewed by a Joint Select Committee of the Houses of Parliament not later than five years after the appointed day.

Review of Act.

Saving of
regulations
made under
repealed Acts.

61. Notwithstanding the repeal of the repealed enactments, regulations made under those enactments, as in force immediately before the appeal—

- (a) shall remain in full force and effect, with such changes as may be necessary, as if made under this Act; and may be amended or revoked accordingly;
- (b) any reference in any enactment to specific provisions of the repealed enactments shall be construed as a reference to the equivalent provision in this Act.

Saving and
transitional.

62.—(1) Any individual or entity that immediately prior to the appointed day was the holder or purported holder of a licence, certification or other authority under any one or more of the repealed Acts (in this Act called an “existing licensee”) shall, subject to the provisions of this Act, be deemed to be duly licensed, certified or authorized under this Act, as if the relevant provisions of this Act were in force at the date on which any such licence, certification or other authority was granted.

(2) Any existing licensee that, before the appointed day, has carried out any activities in accordance with any of the repealed enactments but which is incompatible with this Act shall, within three months after the appointed day, submit to the Office, a statement giving particulars of all such activities and shall submit a programme to the Office for rectifying the incompatibility of each such activity after the appointed day or, as the case may be, for the cessation of the activity.

(3) Nothing in this subsection (2) shall require an existing licensee to rectify or cease any activity which is authorized by the terms and conditions of its licence, certification or other authority referred to in that section.

FIRST SCHEDULE

(Section 54)

Offences to which Fixed Penalty is Assigned

| <u>Section</u> | <u>Offence</u> | <u>Penalty</u> |
|----------------|--|----------------|
| 15 | Failure of licensee to comply with directions of the Office | \$2,000,000 |
| 44 | Failure of licensee to comply with directions of System Operator | \$2,000,000 |
| 47 | Contravention of section 47 by System Operator | \$2,000,000 |

Merit Order Despatch

1. The Licensee shall establish and operate as part of the generation code a merit order system, for generation set that are subject to central despatch.

2. The Licensee shall schedule and issue direct instructions for the despatch in accordance with a merit order system of all available generation sets of each authorized electricity operator which are required or are agreed to be subject to such scheduling and instructions.

3. Subject to the factors in Paragraph 4, the Licensee shall schedule and issue direct instructions for the despatch of such generation sets are at such times available to generate or transfer or electricity—

- (a) in ascending order of the marginal cost in respect of any hour for the generation and delivery or transfer of Incremental Cost-System, to the extent allowed by Transmission operating constraints based on “Equal Incremental Cost-System” principles; and
- (b) as will aggregate and after taking into account electricity delivered into or out of the System from or other sources be sufficient to match at all times (so far as possible in view of the availability of generation sets) demand forecast taking account of information provided by authorized electricity operators, together with an appropriate margin of reserve for security operation.

4. The factors referred to in paragraph 3 above include—

- (a) forecast demand (including transmission losses and distribution losses);
- (b) economic and technical constraints from time to time imposed on the System or any part or parts thereof;
- (c) the dynamic operating characteristics of available generation sets; and
- (d) other matters provided for in the Generation Code.

THIRD SCHEDULE

(Section 20)

Right of First Refusal

1. The right of first refusal will be subject to the satisfactory fulfillment of the following conditions—

- (a) the existing generation sets will be replaced according to a planned schedule to be maintained by the Minister;
- (b) the Single Buyer shall not be permitted to exceed the generating capacity of the existing generation sets to be replaced;
- (c) the time for the exercise of the right of first refusal will commence as of the date of the letter of notification from the ministry with responsibility for energy stating that the particular generation set has come to the end of its useful life, considering all the retrofits that have been made over time. That written notification shall also state the deadline for the exercise of the right of first refusal; and
- (d) the replacement cost should not exceed the generation avoided cost, which will be updated every two years by the ministry with responsibility for energy and published.

2. In the event that the owner of the generation set—

- (a) does not exercise its right of first refusal; or
- (b) in exercising its right, exceeds the avoided cost,

then that replacement capacity will be procured competitively from the local and international market.

Appeal Electricity Tribunal

1. The Tribunal shall consist of three (3) members appointed by the Minister as follows—

- (a) one member shall be a former Judge of the Supreme Court or the Court of Appeal who shall be the Chairman of the Tribunal;
- (b) one member, who has expertise in the electricity sector, on the recommendation of the Dispute Resolution Foundation; and
- (c) one member, who has expertise in the electricity sector, shall be appointed on the recommendation of the Jamaica Bar Association.

2. The members of the Tribunal shall hold office for such period not exceeding two (2) years as the Ministry may determine and shall be eligible for reappointment.

3. The Minister may appoint any person to act in the place of the chairman or any other member of the Tribunal in the case of the absence or inability to act of the chairman or other member.

4. Any member of the Tribunal other than the chairman may at any time resign his office by instrument in writing, addressed to the Minister and transmitted through the chairman, and from the date of the receipt by the Minister of such instrument that member shall cease to be a member of the Tribunal.

5. The chairman may at any time resign his office by instrument in writing addressed to the Minister and such resignation shall take effect as from the date of receipt by the Minister of that instrument.

6. The Minister may at any time revoke the appointment of any member of the Tribunal if such member—

- (a) becomes of unsound mind or becomes permanently unable to perform his functions by reasons of ill health;
- (b) is convicted and sentenced to a term of imprisonment;
- (c) fails without reasonable excuse to carry out any of the functions conferred or imposed on him under this Act;
- (d) engages in such activities as are reasonably considered prejudicial to the interest of the Tribunal.

FOURTH SCHEDULE, *cont'd.*

7. If any vacancy occurs in the membership of the Tribunal, such vacancy shall be filled by the appointment in accordance with the provision outlining the procedure for the appointment of members.

8. The names of all members of the Tribunal as first constituted and every change in the membership thereof shall be published in the *Gazette*.

9. There shall be paid to the Chairman and other members of the Tribunal in respect of each appeal, such remuneration, whether by way of honorarium, salary or fees, and such allowances as the Minister may determine.

10. The decision of the Tribunal shall be by a majority of votes of the members.

11. The decision of the Tribunal shall be delivered within 90 days of the conclusion of the hearing of an appeal, so however, the decision may be extended by such period as the parties may agree to.

12. The Tribunal shall regulate its own proceedings and may award costs against the losing party in any proceedings.