

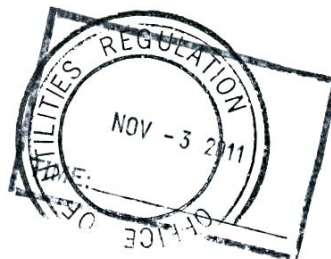


MINISTRY OF ENERGY AND MINING (MEM)

PCJ Building, 36 Trafalgar Road, Kingston 10, Jamaica W.I.
Tel. (876) 929-8990-9 Fax: (876) 960-8270
E-mail: info@mem.gov.jm Website: <http://www.mem.gov.jm>

Any reply or subsequent reference to this communication should be addressed to the Permanent Secretary and the following reference quoted.

Ref.



October 31, 2011

Mr. Earl Barrett
General Manager
Wigton Windfarm Limited
36 Trafalgar Road
Kingston 10

Dear Mr. Barrett,

Re: Wigton Windfarm Limited Supply of Electricity Licence, 2011

Reference is made to your application of October 6, 2011, for an Electricity Licence for generation and sale to Jamaica Public Service Company Limited of 18MW of electricity from the Wigton II generating facility. The application was made against the background that testing and related activities at the Wigton II plant was completed, and also pursuant to Condition 18(4) of the Amended and Restated All-Island Electric Licence, 2011.

By granting of this Licence, Wigton II is authorized to develop, sell and supply bulk electricity to the National Grid, on such provisional terms and conditions as outlined in the said Licence.

Yours sincerely,

Clive A. Mullings, MP
Minister

Copied to: *Mr. Damion Obligio, Chief Executive Officer, Jamaica Public Service (JPS)*
Mr. Hopeton Heron, Deputy Director General, Office of the Utilities Regulation (OUR)

Agencies:

Energy: Petroleum Corporation of Jamaica, Petrojam Ltd, Petroleum Company of Jamaica, Wigton Wind Farm Limited, Rural Electrification Programme Limited, Electricity Division.
Mining: Clarendon Alumina Production Ltd., Jamaica Bauxite Institute, Jamaica Bauxite Mining Ltd/Bauxite Alumina Trading Company, Mines and Geology Division.

**WIGTON WINDFARM LIMITED
SUPPLY OF ELECTRICITY LICENCE, 2011**

(Issued pursuant to the Electric Lighting Act)

WHEREAS:

- (A) On the 18th day of January 2011, the Minister of Energy and Mining in exercise of the powers conferred under the Electric Lighting Act ("ELA") and in accordance with the provisions of the All-Island Electric Licence, 2001 issued Wigton Windfarm Limited ("Wigton") a licence to supply 14 MW of electricity generating capacity to the National Grid, using wind power and which was subsequently extended to facilitate the execution of the power purchase agreement.
- (B) On the 12th day of January 2011, Wigton applied to the Minister of Energy and Mining for a licence to supply an additional 4 MW of electricity generating capacity to the National Grid using wind power.
- (C) The Office of Utilities Regulation ("Office") ceased the processing of the Power Purchase Agreement for the 14 MW facility and the licence application and supporting documents for the 4 MW facility on the basis that there was no clear separation of the generation, interconnection and metering facilities for the 14 MW facility and the 4 MW facility.
- (D) The Minister of Energy and Mining and Jamaica Public Service Company Limited - pursuant to Condition 30 of the All-Island Electric Licence, 2001 had agreed to amend and restate the said Licence to exempt the procurement of capacity additions up to 25 MW generated from renewable sources from competitive process.
- (E) Consequently, Condition 18(4) of the Amended and Restated All-Island Electric Licence, 2011 gazetted on 19th day of August, 2011 now reads as follows:

"For capacity additions of under 15 MW the Office may, after consultation with the Licensee, approve a simpler procurement methodology, on a case by case basis. Notwithstanding the foregoing, for capacity additions of up to 25 MW which are generated from Renewable Sources, the Office, may approve a simpler procurement methodology provided that the capacity from Renewable Sources shall not exceed twenty percent (20%) of net energy to the System and provided further that in exercise of its functions herein the Office shall take account of system stability and the overall price to be paid customers of the Licensee for a Supply of electricity."
- (F) Wigton has withdrawn its application for a licence to supply 4 MW of wind generating capacity and on the 6th day of October, 2011 Wigton applied to the Minister of Energy and Mining for a licence to supply 18 MW of electricity generating capacity, using wind power, to the National Grid.
- (G) On the issuance of this Licence, the existing licence to supply 14 MW of wind generating capacity to the National Grid is hereby revoked.

1. SHORT TITLE

This Licence may be cited as "Wigton Windfarm Limited Supply of Electricity Licence, 2011".

2. INTERPRETATION

2.1 In this Licence -

"Acts" shall have the meaning set out in Clause 2.2.

"ELA" shall have the meaning set out in Recital A above.

"Control" or **"Controlled"** in relation to the Licensee, means the power of a person(s), and/or corporate entity to determine and implement the Licensee's policies and the day to day operations of such policies and the day to day operations of the facilities or services in relation to the Licensed Business, including inter alia, the construction, development and maintenance of the facilities and provisioning of the services in relation to the Licensed Business.

"Commercial Operations Date" shall have the meaning given thereto in the relevant Power Purchase Agreement.

"Government" means the Government of Jamaica.

"Governmental Authority" means any Ministry, Department, Agency of Government or Statutory Body and shall include any acts carried out by any of the said bodies in the exercise of government public policy.

"Governmental Requirements" means any Acts of Parliament, Proclamations, Regulations and Rules made there under and shall include inter alia, Government guidelines, Policies and Ministerial Directives.

"Licensee" or "Wigton" means Wigton Windfarm Limited, a limited liability company incorporated under the laws of Jamaica and having its registered office at 36 Trafalgar Road, Kingston 10.

"Licensed Business" means the generation and supply of electricity to the National Grid using 18 MW of wind generating capacity and to be carried out in accordance with the terms and conditions of this Licence and any other licence required by Jamaican law.

"Minister" means the Minister with the portfolio responsibility for electricity.

"National Grid" means public electricity supply system but does not include the network used for the distribution of electricity to individual members of the public.

"Office" shall have the meaning set out in Recital C above.

"OUR Act" means Office of Utilities Regulation Act, 1995 as amended.

"Owner Affiliate" means, with respect to any Owner, any entity that directly or indirectly through one or more intermediaries' controls, or is controlled by, or is under common control with, such Owner.

"Power Purchase Agreement" means the agreement for the purchase of power concluded between the Licensee and the licensee named under the Amended and Restated All-Island Electric Licence, 2011 or any successor or assign operating the National Grid.

"Prescribed Utility Service" means the supply of electricity.

"Pro forma Transaction" means

- (a) an assignment from one or more individuals to a body corporate owned or controlled by the same individual or individuals without any change in their relative interests;
- (b) an assignment from a body corporate to shareholders without effecting any change in the disposition of their interests;
- (c) a reorganization of a body corporate that involves no change in the beneficial ownership thereof;
- (d) an assignment or transfer -
 - (i) from a body corporate to its wholly owned subsidiary or *vice versa*;
 - (ii) between wholly owned subsidiaries of the same holding company;
- (e) an assignment from a body corporate to another body corporate owned or controlled by the assignor's shareholders without a substantial change in their relative interests.

- 2.2 This Licence shall be read and construed, subject in all respects to the provisions of the ELA, the OUR Act and any applicable legislation, statutory modification, consolidation or re-enactment thereto and all regulations, rules, guidelines, codes and standards made pursuant thereto (the "**Acts**"). Unless the context otherwise requires, expressions in this Licence shall bear the same meanings ascribed to those expressions under the Acts.

3. GRANT OF LICENCE

- 3.1 The Minister, pursuant to the powers conferred under Section 3 of the ELA as well as Section 4A of the OUR Act, hereby grants the Licensee a Licence authorising said Licensee to develop, operate and maintain the Licensed Business in order to generate, sell and supply bulk electricity therefrom to the National Grid subject to the provisions of the relevant Schedules attached hereto as well as any relevant statutes.
- 3.2 This Licence shall be null, void and of no legal effect in the event that the relevant parties fail to execute the relevant Power Purchase Agreement within forty-five (45) days of the date of this Licence.

4. DURATION

Subject to the provisions contained herein the Licence shall have full force and effect from the date of execution by the Minister (hereinafter called "**the Commencement Date**"). Notwithstanding, the term of the Licence shall be for a period of **twenty (20) years** from the Commercial Operations Date and shall terminate on the twentieth (20th) Anniversary of the Commercial Operations Date, provided however that the Licensee shall have the right to operate the Licensed Business and sell such electricity to the National Grid arising:

- (a) As a result of the testing of the facilities prior to the Commercial Operations Date; or
- (b) As may be reasonably required by the public electricity supply system prior to

the Commercial Operations Date.

The Licensee may apply for a renewal of the Licence prior to the expiration date.

5. ASSIGNMENT OF LICENCE

5.1 The Licensee may, with the prior approval of the Minister, assign the Licence or any rights thereunder or transfer control of its operations.

5.2 An application for approval of an assignment or transfer under this clause shall be made in writing to the Minister who shall grant such approval if he is satisfied that the assignee satisfies the requisite requirements as regards the obligations imposed on the Licensee by this Licence or Acts and on such terms and conditions as he deems fit.

5.3 Paragraph 5.2 shall not apply to a Pro forma Transaction and the following provisions shall apply in relation thereto -

The Licensee shall with reasonable promptness, initially notify the Office of the transaction and within forty-five (45) days after the completion of the transaction the Licensee shall-

(i) submit to the Office, proof of the completion of the transaction either in the form of an application that is appropriate for the class of licence to which it relates or such other written correspondence as the Office may authorize, containing all of the information included in the application;

(ii) certify that the transaction is a Pro forma Transaction;

5.4 A Pro forma Transaction shall be deemed null and void by the Office for the purposes of the obligations under this Licence if the provisions of paragraph 5.3 are not strictly adhered to.

6. RATES/PRICES

The prices to be charged and/or rates to be applied by the Licensee in respect of the supply of electricity pursuant to this Licence shall be determined by the Office and included in the Power Purchase Agreement.

7. REGULATION

7.1 The Licensee in carrying out the Licensed Business shall be subject to regulation by the Office pursuant to the Acts.

7.2 The Licensee shall comply with any Order, Memorandum, Determination and/or Directive made by the Office under the OUR Act as amended or any other relevant legislation with all reasonable promptitude.

7.3 The Licensee shall provide such information, reports, and records as may be requested by the Office from time to time.

8. REGULATORY FEES

8.1 The Licensee shall pay to the Office an annual regulatory fee, the first of which shall become due and payable upon the issuance of this Licence and thereafter,

each subsequent fee shall become due and payable upon the anniversary date of the issuance of this Licence. This fee shall be calculated based on the revenues as may be derived from the sale of energy to the power purchaser under the terms of the Power Purchase Agreement and shall be calculated as follows:

Licence Fee (LF) = BUSP x 1PPR

Where BUSP = The portion of revenue attributable to the power purchaser in the audited financial statements for the financial year ending in the calendar year preceding the due date of the first payment.

1PPR = One Ten Thousandth (0.0001)

- 8.2 In the event that the Licensee will not be in operation for a full year following the issuance of the Licence, the regulatory fee applicable for such period shall be a minimum fee of Twenty Five Thousand Jamaican Dollars (J\$25,000.00)

9. AUDITED ACCOUNTS

- 9.1 The accounts of the Licensee shall be audited annually at the expense of the Licensee by an independent auditor of the Licensee's choice, provided that such auditor shall be of good standing and reputation.

- 9.2 The Licensee shall send to the Office within three (3) months of the end of the Licensee's financial year a copy of the annual audited balance sheet and profit and loss account of the Licensee related to the supply of electricity pursuant to this Licence and such operating and other statistics as the Office may reasonably require.

9.3 Licensee's Information Reporting

The Licensee shall procure and furnish to the Office, in such manner and at such times in respect of the items set out at **SCHEDULE 1** or, as the Office may reasonably require, such other information and reports as the Office may consider necessary concerning the performance by the Licensee of its obligations under this Licence.

10. DISCHARGE OF OBLIGATIONS AND POWER OF LICENSEE

- 10.1 Save as set out in this Licence, the Licensee shall discharge its obligation and perform the duties imposed or authorized under the ELA and any other applicable legislation, guidelines or standards and shall enjoy the rights and exercise all powers conferred by such legislation on undertakers authorized to supply electricity in accordance with clause 3.1.
- 10.2 The Licensee shall not be obliged to undertake extension of any transmission or distribution lines to deliver the power generated, save as provided in the Power Purchase Agreement.
- 10.3 The Licensee may exercise such rights and shall observe such conditions relating to easements, way leaves, entry of private property and the construction of any lines above, or below ground, as may be prescribed by law. In addition the

Licensee shall have the right to trim trees or shrubbery which may overhang any public way and may interfere with electric lines or cables constructed by the Licensee.

- 10.4 If in the construction, maintenance and repair of its electric lines, it shall be necessary for the Licensee to disturb public ways and places or the plant of any other utility provider, the Licensee shall restore or pay the cost of restoring such public ways and places and utility plant to at least as good condition as they were before such disturbance.

11. FORCE MAJEURE

The Licensee shall be excused for any non-compliance with this Licence caused by "Force Majeure", which, for the purpose of this Licence, means any event or circumstance or combination of such events or circumstances that:

- (i) occurs inside Jamaica, except as provided in clause (h) below;
- (ii) is outside the reasonable control of the Licensee;
- (iii) cannot be prevented or overcome by the exercise of reasonable diligence; and
- (iv) materially and adversely affects the performance by the Licensee of its obligations under this Licence, to the extent that such event(s) or circumstance(s) meet the foregoing requirements (i) through (iii), including:
 - (a) acts of God, fire, explosion, chemical contamination, earthquakes, flood, lightning, drought, tsunami, flood, torrential rain, storm, cyclone, typhoon, or tornado, pestilence or other natural catastrophes, epidemics or plague, or any strikes, work to rule, go-slows or other labour disturbances that directly affect the assets of the Licensee;
 - (b) obligations under licences (other than this Licence), concessions or permits or other Governmental Requirements that are necessary for the Licensee to conduct its business and which will adversely impact performance under this Licence;
 - (c) any strikes, work to rule, go-slows or other labour disturbances that extend beyond the assets of the Licensee, are widespread or nation-wide or are of a political nature, including labour actions associated with or directed against a ruling political party, or those that are directed against the Licensee (or its contractors or suppliers) as part of a broader pattern of labour actions against companies or facilities with foreign ownership or management;
 - (d) expropriation, requisition, confiscation, nationalization or compulsory acquisition by a Governmental Authority of the Licensee or any substantial portion of the assets;
 - (e) acts of war (whether or not declared), invasion, blockade or embargo;
 - (f) acts of threats of terrorism or threat from terrorists, widespread riot, widespread violent demonstrations, widespread armed insurrection, widespread rebellion or revolution;
 - (g) the closing or drastic reduction in capacity of public harbours, ports, docks,

canals, roads, airports or other infrastructure, the rationing thereof or any import or export restrictions; or

- (h) to the extent that they result in disruption of the Licensee's ability to receive shipments of fuel, major equipment or critical spare parts, any strikes, work to rule, go-slows or other labour disturbances that occur outside of Jamaica.

12. STEP-IN RIGHTS

- 12.1 After the Commercial Operations Date, if the Licensee shall have ceased to operate all, or any substantial part of the system or equipment necessary for the performance of functions under its Licence ("**Licensed Business Facilities**") for a period of forty-eight (48) consecutive hours (the "**Initial Period**") without the prior consent of the Minister ("**Step-in Event**"), the Minister or his designee may enter any site at which the Licensee operates the Licensed Business ("**Site**") and may assume operational control of that system or equipment, provided that:
 - 12.1.1 The Minister shall give prompt notice to the Licensee determining that the Initial Period has concluded such notice to be given by means reasonably calculated to ensure prompt actual notice to the Licensee.
 - 12.1.2 A Step-in Event shall not have occurred and the Minister or his designee shall not be entitled to enter any of the Licensee's Sites for the purpose of assumption of operational control if the cessation of operation under subparagraph (1) resulted from:
 - (i) circumstances beyond the reasonable control of the Licensee; such as an event of Force Majeure or a material breach by the power purchaser under the Power Purchase Agreement; or
 - (ii) a forced stoppage; or
 - (iii) an action or failure to act by the Minister or the Office in contravention of any right or entitlement of the Licensee under applicable legislation or regulation being in force, or this Licence; or
 - (iv) to the extent that the Licensee is proceeding with diligence and good faith to overcome or remedy such event and such event is overcome and remedied within forty-eight (48) hours immediately after the Initial Period.
- 12.2 If the Minister or his designee assumes operational control of all or part of the system or equipment upon the event of a Step-in Event in terms of clause 12.1, the Minister or his designee shall operate the system or equipment in accordance with prudent utility practice and in any event in accordance with standards no lower than those which were binding on the Licensee prior to the occurrence of the Step-in Event.
- 12.3 Upon the occurrence of a Step-in Event the Minister or his designee shall be entitled to operate all or part of the system generating facility and/or equipment until such time as the Licensee has demonstrated to the reasonable satisfaction of the Minister that it can resume normal operation of the system or equipment in accordance with the terms and conditions of this Licence and the Acts and that Step-in Event will be overcome or remedied.
- 12.4 The Licensee must demonstrate to the Minister that it can and will secure or otherwise acquire and utilize:

dispute shall be referred to arbitration in accordance with the applicable arbitration provisions of the Arbitration Act and the decision thereon shall be final and conclusive.

17. NOTICES

- 17.1 Any notice, document or other instrument required or permitted to be given or delivered to any person under any provisions of this Licence shall be in writing and may be delivered or given by registered mail addressed to the person to whom the notice is to be given, or delivery is to be made, at its usual or last known address and if so given by mail shall be deemed to have been given or delivered five (5) days after the date on which it is deposited in the mail as registered mail.

If notice is given or any document delivered other than by registered mail, as provided in the preceding sentence, such notice shall not be deemed to have been given or document delivered until it is actually received by the person to whom the notice is given or delivery is made.

- 17.2 Any person may change its address for the purposes of this clause by giving notice of such change by hand delivery, or registered mail, which change shall not become effective until it is actually received by the person to whom the notice is addressed.

18. WAIVER

Neither the failure nor any delay on the part of the Minister or the Office to exercise any right, remedy, power or privilege under the Acts or this Licence shall operate as a waiver thereof, nor shall any single or partial exercise of same preclude any other or further exercise of the same or of any other rights with respect to any occurrence be construed as a waiver of such rights, remedies, powers or privileges with respect to any other occurrence.

SCHEDULE I (Clause 9.3)

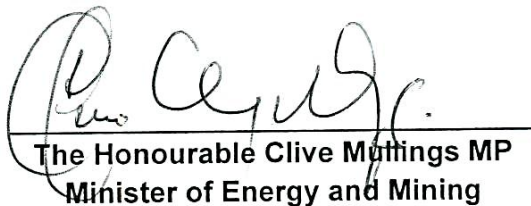
1. Submissions by the Licensee:

The Licensee shall submit to the Office the under mentioned documents on or before the date specified in respect of each and in addition, inter alia, any amendment or modification in respect of each.

- 1.1 Ten (10) days after receipt of Licence, the Licensee shall provide a copy of its proposed plan for the operations and maintenance of the Licensed Business Facilities (the "O&M Plan") and any O&M Contract entered into by the Licensee, together with all amendments executed as of that date;
- 1.2 Ten (10) days after receipt of Licence, the Licensee shall lodge with the Office a copy of the Construction Contract entered into by the Licensee for the Licensed Business Facilities, including all schedules, plans and specifications attached thereto, plus all amendments executed as of that date;

- 1.3 Ten (10) days after receipt of Licence, the Licensee shall lodge with Office copies of any contracts executed with Direct Contractors for the Licensed Business Facilities;
- 1.4 Ten (10) days after receipt of Licence, the Licensee shall lodge with the Office copies of all permits, licenses, approvals and other governmental authorizations that have been issued to the Licensee for the design, financing, construction, ownership, operation and maintenance of the Licensed Business Facilities;
- 1.5 Ten (10) days after receipt of Licence, the Licensee shall lodge with the Office a start-up and test schedule for such Commissioning, including, without limitation, appropriate milestone dates for such start-up and testing;
- 1.6 Not later than ten (10) days after the date of execution of the Power Purchase Agreement, copies of all insurance policies and certificates of insurance required to be obtained together with all amendments.
- 1.7 Ten (10) days after receipt of Licence, the Licensee shall lodge with the Office the final design drawings for the construction of the Complex;
- 1.8 Ten (10) days after receipt of Licence, the Licensee shall lodge with the Office certificate(s) signed by the Licensee's licensed professional engineers of the Construction Contractor stating that the Licensed Business Facilities (a) has been constructed in accordance with the Construction Contract, the final design drawings, and Prudent Utility Practice, and (b) is designed and constructed to have a useful life of at least twenty (20) years.

Dated this 1st day of NOVEMBER 2011


The Honourable Clive Muttings MP
Minister of Energy and Mining