

THE ELECTRIC LIGHTING ACT
Munro College
Supply of Electricity Licence, 2008

1. SHORT TITLE

This Licence may be cited as "Munro College Supply of Electricity Licence, 2008".

2. INTERPRETATION

2.1 In this Licence -

"ELA" means Electric Lighting Act

"Government" means the Government of Jamaica

"Licensed Business" means the Generation and Supply of Electricity as carried out under this Licence and any other licence required by Jamaican Law

"MC" means Munro College

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

"Power Purchase Agreement" means the agreement for the purchase of power concluded between "*the Licensee*" named in this licence and "*the Licensee*" named under the All-Island Electric Licence 2001 or any successor or assign operating the Public Electricity Grid

"Prescribed Utility Service" means the supply of electricity

"The Appeal Tribunal" means any tribunal established by "*the Minister*" or pursuant to any applicable legislation.

"The Licensee" means Munro College, a secondary school registered under the Ministry of Education, Jamaica, with its registered office situated at Munro College, St. Elizabeth

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

"The Office" means the Office of Utilities Regulation

2.2 This Licence shall be read and construed, subject in all respects to the provisions of the Electric Lighting Act ("ELA"), The Office of Utilities Regulation Act, ("OUR Act") and any applicable legislation, statutory modification, consolidation or re-enactment thereto and all regulations or rules 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

"The Minister", pursuant to the powers conferred under Section 3 of the Electric Lighting Act as well as Section 4A of the OUR Act, as amended, hereby grants "*the Licensee*" a Licence authorising said Licensee to develop, operate and maintain a wind turbine generator unit and related facilities in order to generate, sell and supply bulk electricity therefrom ("the Undertaking") to the public electricity supply system subject however, to the provisions of the relevant statute.

4. DURATION

Subject to the provisions herein contained the term of this Licence ("the initial Licence") shall be **fifteen (15) years** from the date hereof (hereinafter called "the date of the Licence"). "*The Licensee*" may apply to the relevant authority for a new licence upon the expiry of the initial Licence.

5. ASSIGNMENT OF LICENCE

This Licence may not be assigned or transferred by "*the Licensee*" without the prior written consent of "*the Minister*".

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 approved 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 OUR Act, the ELA and any statutory modification, consolidation or re-enactment thereto and any other applicable legislation and all regulations and rules made pursuant thereto.

- 7.2 *"The Licensee"* shall comply with any order and/or directive made by *"the Office"* under the OUR Act as amended 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 such Regulatory Fee shall become due and payable upon issuance of this Licence and each subsequent Fee shall become due and payable upon the anniversary date of the issuance of this Licence. This fee shall be paid out of the revenues as may be derived from the sale of energy to the Power Purchaser under the terms of the agreement and shall be calculated as follows:

$$\text{Licence Fee (LF)} = \text{BUSP} \times 1\text{PPR}$$

Where BUSP = The portion of net 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.

$$1\text{PPR} = 0.0001$$

9. Audited Accounts

- 9.1 The accounts of *"the Licensee"* shall be audited 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 shall send to *"the Office"* such operating and other statistics as *"the Office"* may reasonably require.

10. Appeals

10A. Appeal Tribunal

10A.1 Subject to the provisions of any subsequent legislation, if *"the Licensee"* is aggrieved by any decision, order or directive of *"the Office"*, *"the Licensee"* may bring an appeal to the Appeal Tribunal. The Appeal Tribunal shall be the Appeal Tribunal established pursuant to the Jamaica Public Service Company Limited (JPS) All-Island Electricity Licence, 2001 provided that in appeals arising by virtue of this licence, the member of the Appeal Tribunal appointed on the recommendation of the Jamaica Public Service Company Limited (JPS) shall be replaced by a member appointed by *"the Minister"* on the recommendation of *"the Licensee"*.

10A.2 A member of *"the Tribunal"* who is not a standing member shall be paid in respect of any appeal, such remuneration, whether by way of honorarium, salary or fees, and such allowances as *"the Minister"* may determine.

10A.3 The decisions of *"the Tribunal"* shall be by a majority of votes of the Members.

10A.4 *"The Tribunal"* shall regulate its own proceedings.

10B. Appeal of Office Decisions

10B.1 If *"the Licensee"* is aggrieved by a decision of, or failure to act, by *"the Office"*, under this Licence, *"the Licensee"* may appeal to *"the Tribunal"*:

(a) in the case of a decision of *"the Office"*, within thirty (30) days after notification to *"the Licensee"* of that decision;

(b) in the case of a failure of *"the Office"* to act, within twenty-one (21) days after the date on which *"the Office"* was required to act.

10B.2 On hearing an appeal under this Licence *"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, state the reasons for its decision.

10B.3 "*The Tribunal*" may, on application by "*the Licensee*", order that the decision of "*the Office*" to which an appeal relates shall not have effect until the appeal is determined.

10B.4 "*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;

10B.5 Where "*the Tribunal*" dismisses an appeal, it shall inform "*the Licensee*" and "*the Office*" in writing stating the reasons for its decision.

10B.6 In making a decision, "*the Tribunal*" shall observe reasonable standards of procedural fairness and the rules of natural justice and act in a timely fashion.

11. DISCHARGE OF OBLIGATIONS AND POWER OF LICENSEE

11.1 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 or standards and shall enjoy the rights and exercise all powers conferred by such legislation on undertakers authorized to supply electricity.

11.2 "*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 and/or the Interconnection Agreement.

11.3 "*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*".

11.4 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, "*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.

12. FORCE MAJEURE

"The Licensee" shall be excused for any non-compliance with this Licence caused by Force Majeure. For the purpose of this Licence, Force Majeure 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 affect 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 (iv), including:
 - a) acts of God, fire, explosion, chemical contamination, earthquakes, 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) licences (other than this Licence), concessions or permits or other *Governmental Requirements* that are necessary for *"the Licensee"* to conduct its business on terms and conditions at least as favourable as those contained in the original licence (and not this Licence), concession or permit after the submission of an application that fulfils all the applicable requirements of the relevant *Government Requirements* and the exercise of due diligence to obtain such licence (other than this Licence), concession or permit;
 - 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.

13. STEP-IN RIGHTS

13.1 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 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 and may assume operational control of that system or equipment, provided that –

13.1.1 *“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”*.

13.1.2 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.
- (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 *"the Licensee's"* 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.

13.2 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 sub-paragraph (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.

13.3 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 his Licence and this Act and that Step-in event will be overcome or remedied.

13.4 *"The Licensee"* must demonstrate to *"the Minister"* that it can and will secure or otherwise acquire and utilize –

- (a) requisite qualified and skilled personnel;
- (b) sufficient financial resources; and
- (c) any other resources identified to be needed to resume proper operation of the system and any generating facility in accordance with the terms and conditions of this Licence and to overcome or remedy the Step-in event.

- 13.5 Where *“the Licensee”* is unable to demonstrate its ability to resume normal operation of the system or equipment to the reasonable satisfaction of *“the Minister”* within ninety (90) days after the Initial Period, *“the Minister”* shall have the right to acquire, and/or to have his designee acquire all of the rights, title and interest of *“the Licensee”* in the *“Licensed Business”* and Facilities for 50% of a “purchase price” which shall be an amount equal to 50% of the fair market value as defined and formulated in accordance with 13.5 (i) and (ii) below. If *“the Minister”* elects to exercise his right to acquire all such rights, title and interest, payments in accordance with this paragraph shall be made to *“the Licensee”* not later than one (1) year after the notice to exercise such right.
- (i) The “purchase price” referred to at paragraph 13.5 above shall be calculated at the present value of the *“Licensed Business”* present value being determined by the discounted cash flow methodology. The cash flows to be used in the calculation of the “purchase price” shall be the net cash and cash equivalent of the *“Licensed Business”* as reflected in the audited financial statements from the last financial period prior to the invoking of the “step-in rights” and the projected annual cash flow for the subsequent fifteen years at the level of the last audited statement.
 - (ii) The applicable interest rate to be used in the calculation of a “purchase price” shall be the Bank of Jamaica one-year Treasury Bill rates for the relevant financial period.
- 13.6 *“The Minister”* shall only indemnify and hold *“the Licensee”* harmless from any loss or damage to the system and/or generation facility and for any injury to persons incurred as a direct result of *“the Minister’s”* or designee’s gross negligence or wilful misconduct in the operation of the system and/or generating facility during the take-over period and then only to the extent that such loss, damage or injury is not covered by insurance.
- 13.7 *“The Minister”* may designate any other qualified person as his designee for the purpose of exercising any of the powers conferred in this paragraph.
- 13.8 Where a licensee who is a purchaser of a generator’s electrical output under a power purchase agreement decides to exercise any Step-in rights under terms of such agreement he shall notify *“the Minister”* prior to exercising such rights.

13.9 A licensee who exercises step-in rights in terms of paragraph 13.7 shall be deemed to be a designee of *"the Minister"* in terms of this Section and shall be bound by the provisions of this Section.

14. AMENDMENT TO LICENCE

This License may be modified at any time during the term of its continuance by agreement between *"the Licensee"* and *"the Minister"*, and upon the advice of *"the Office"*.

15. REVOCATION

15. 1 *"The Minister"* may, on the recommendation of *"the Office"* at any time revoke this Licence by not less than 30 days' notice in writing (the "Notice of Revocation") to *"the Licensee"*:

- (a) if upon charges being proffered with proper particulars, it shall have been determined that *"the Licensee"* has, without just cause or excuse, failed to comply with any term of this Licence or to carry out in good faith and with reasonable diligence the activities referred to in this License, including compliance with directives, orders, memorandum, or determinations issued by *"the Office"* which determination shall specify in exact detail the respects in which *"the Licensee"* so failed, provided that such failure shall have continued for a period of thirty (30) days and shall have impaired the *"Licensed Business"*.
- (b) if *"the Licensee"* has gone into compulsory or voluntary liquidation other than for the purpose of amalgamation or reconstruction;
- (c) if any fee or financial obligation payable under this Licence or in relation to any related Statute or any fine imposed by a Court of Law is unpaid thirty (30) days after it has become due and after the expiration of this thirty (30)-day period it remains unpaid for a further period of thirty (30) days after *"the Office"* has given *"the Licensee"* notice that the payment is overdue;
- (d) if any principal officer of *"the Licensee"* is convicted of a criminal offence by a Court of Law, which offence has impaired *"the Licensee's"* obligations under this Licence.

15.2 Prior to the recommendation for the revocation of this Licence pursuant to clause 15.1, "the Licensee" shall within a 30-day notification period be given an opportunity to be heard, including making written submissions to "the Office" as to why this Licence should not be revoked. "The Office" shall advise "the Minister" as to any such submission received.

16. RIGHTS OF ACTION RESERVED

Nothing specified or contained in this Licence shall be construed as depriving "the Licensee" of its ordinary rights to appeal to Her Majesty's Courts to redress any wrongs it may suffer or to enforce any rights to which it may be entitled under the Licence or otherwise.

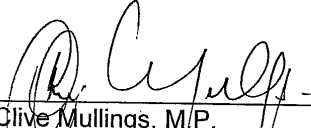
17. NOTICES

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 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 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, however, shall not become effective until it is actually received by the person to whom the Notice is addressed.

Dated this 31st day of January 2008



Clive Mullings, M.P.
Minister of Energy, Mining and Telecommunications