

THE ELECTRIC LIGHTING ACT

Jamaica Energy Partners Supply of Electricity Licence, 1995 (as amended)

1. SHORT TITLE

This Licence may be cited as "Jamaica Energy Partners Supply of Electricity Licence 1995".

2. INTERPRETATION

Save as expressly set out elsewhere in this Licence, this Licence shall be read and construed subject in all respects to the provisions of the Electric Lighting Act ("The Act") the Office of Utilities Regulation Act as amended any statutory modification, consolidation or re-enactment thereof and all regulations made pursuant thereto. Unless the context otherwise requires expressions in this Licence shall bear the same meanings ascribed to those expressions under the Act.

3. THE LICENSEE

The Licensee is for the purpose of this Licence – Jamaica Energy Partners, a Limited Partnership registered under the Partnerships (Limited) Act of Jamaica, whose address for the purpose of this Licence is 1c Pawsey Place, Kingston 5 in the parish of St. Andrew and is the owner of a base-load/cycling power generation facility located at Old Harbour in the parish of Saint Catherine.

4. GRANT OF LICENCE

The Licensee is hereby granted the Licence, right and privilege (hereinafter called "this Licence") to develop, operate and maintain a medium-speed diesel power generating station and related facilities and to privately sell and supply bulk electricity therefrom ("the undertaking") subject however, to the provisions of the Act, to the extent provided herein in the Power Purchase Agreement dated 21st day of October, 1994 as amended from time to time and entered into by the Licensee and Jamaica Public Service Company Limited ("the Power Purchase Agreement"), the Implementation Agreement dated the 21st day of October 1994 as amended from time to time and entered into between the Licensee and the Government of Jamaica ("Implementation Agreement") and this Licence.

5. DURATION

Subject to the provisions herein contained the term of this Licence shall be thirty (30) years from the date hereof (hereinafter called "the date of the Licence") and this Licence may be extended on terms and conditions negotiated prior to the expiration of this Licence.

Nothing in this Licence shall be construed as preventing the Licensee from delegating to any third party (with the prior consent of the Minister or (the Office such consent shall not be unreasonably withheld) responsibilities relating to the operation and maintenance of the undertaking **PROVIDED** however, that such delegation shall not relieve the Licensee from any of the obligations herein imposed on the part of the Licensee required to be performed, and such delegated party shall not be required to obtain a separate licence.

6. RATES/PRICES

By reason of the provisions of the Power Purchase Agreement, 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 exempt from regulation by the Government, any agency of the Government or statutory body. Nothing herein contained, should preclude (the Office) from examining the prices so charged in order to satisfy himself that they are in accordance with the terms and conditions of the Power Purchase Agreement and the Implementation Agreement.

7. REGULATION

7.1 Save as expressly set out in this Licence, in the Power Purchase Agreement, the Implementation Agreement and their subsequent amendments, the Licensee shall be exempt from any further regulation or condition pursuant to Section 4; Section 4 (5) (a), (b) and (e); Section 11(1); Office of Utilities Regulation Act (2000) as amended (the OUR Act) and Section 5 (1) (a), (b), (d), (f) and (g); Section 5 (5); Section 25 and Section 35 of the Electric Lighting Act (1890) (The Act) but, shall otherwise be subject to all other relevant legislation, including but not restricted to, Section 4 (5) (g) and Section 10 of the OUR Act as well as the Generation Code as provided in Condition 22 of the All Island Electricity Licence (2001) granted to the Jamaica Public Service Company Limited, except that neither this Licence nor the enforcement of the Act, the OUR Act or any other legislation, regulation, standard, licence (or any statutory modification, consolidation or re-enactment thereof after the date of the Licence) by the Minister or the Office is intended to amend or modify the terms of the Power Purchase Agreement or the Implementation Agreement or increase the cost of or alter the Licensee's undertaking thereunder.

7.2 Save and except as provided in paragraph 7.1 above

- (a) The Licensee shall comply with any order made by the Office under the OUR Act as amended with all reasonable promptitude.
- (b) The Licensee shall provide such information and reports as may be requested by the Office from time to time.

The Licensee shall not alter any of the terms and conditions of the Power Purchase Agreement without the written approval of the Office, such approval not to be unreasonably refused or withheld.

7.3 **Regulatory Fees**

7.3.1 The Licensee shall pay to the Office commencing April 1, 2006 an annual Regulatory Fee to be paid out of the revenues as may be derived from the sale of energy to JPS under the terms of the agreement and which fee becomes payable on April 1 each year calculated as follows:

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

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

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

7.4 Audited Accounts

7.4.1 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.

7.4.2 The Licensee shall send to the Office within 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.

7.5 Appeal of Office Decisions

7.5.1 If the Licensee is aggrieved by a written order of the Office, the Licensee may, within thirty (30) days of receipt of the order, appeal against the Order to the Appeal Tribunal duly constituted to hear such appeals.

7.5.2 The Appeal Tribunal shall be established for the purpose of this Licence and Condition 32 of the All-Island Electricity Licence, (2001), granted to the Jamaica Public Service Company Limited, shall have effect as to the constitution of the Appeal Tribunal and otherwise thereto.

8. DISCHARGE OF OBLIGATIONS AND POWER LICENSEE

8.1 Save as set out in this Licence, the Licensee shall discharge its obligation and perform the duties imposed or authorized under the Act 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.

- 8.2 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.
- 8.3 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.
- 8.4 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.

9. ASSIGNMENT OF LICENCE

Subject to the provisions of the Power Purchase Agreement and the Implementation Agreement the Licensee shall have the right at any time during the terms of this Licence or any extension thereof to assign, or transfer this Licence to any company, firm, corporation, or individual acquiring substantially all of its assets.

10. UNCONTROLLABLE FORCES

The Licensee shall be excused for any non-compliance with this Licence caused by Uncontrollable Forces. For the purpose of this Licence,

"Uncontrollable Forces" shall mean and include Acts of God, action taken by or against the Queen's enemies, riot, civil commotion, strikes and lockouts and other industrial disturbances, acts of public enemy, wars, blockades, insurrections, epidemics, landslides, hurricanes, lightning, earthquakes, storm floods, washouts, arrests and restraints of Governments, wartime or other emergency Government controls, inability to obtain any requisite Government permits, fires, explosions, breakdown of machinery or equipment or other forces or causes of a similar nature not within the control of the Licensee and which by the exercise of reasonable diligence and observance of Prudent Utility Practice (as defined in the Power Purchase Agreement) it is unable to prevent including but not limited to any event defined as Force Majeure in the Power Purchase Agreement.

11. REVOCATION

This Licence may be revoked before the expiration of the term hereof or any extension thereof, if the term be extended, by notice in writing served upon the Licensee, if the Minister upon charges being preferred with proper particulars shall have determined that the Licensee has, without just cause or excuse, failed to comply with this Licence which determination shall specify in exact detail the respects in which the Licensee has so failed **PROVIDED** that the Licensee shall be given reasonable time (no less than 30 days) an opportunity to remedy the failure so specified and fails to do so.

12. 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.

13. ARBITRATION

In the event of any difference whatever arising under this Licence between the Government and the Licensee or between the Minister and the Licensee the matter in difference shall be referred to arbitration in accordance with the applicable arbitration provisions of the Power Purchase Agreement and the decision thereon shall be final and conclusive.

14. NOTICES

14.1 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.

14.2 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 the 26 day of October 2005.



Hon. Phillip Paulwell, M.P.
Minister of Commerce Science & Technology