

Grenlec Comments

On

Draft Network Licence

February 27th, 2020

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

PART II: TERMS AND CONDITIONS

A. Interpretation

Page 6 2. Definitions

“Generation Electric Plants” means the electric plants owned and operated by the Licensee as of the Effective Date, set forth on Schedule A to the GRENLEC Generation Licence; Network Licensee under the terms of its Generation Licence.

GRENLEC Suggests “Generation Electric Plants” means the generating plants owned and operated by the Network Licensee under the terms of its Generation Licence.

B. Authorisation

Page 8 1. Scope of Licence (b), (d)

“This Licence authorises and gives the Licensee the non-exclusive exclusive right, in the Authorised Area, to:”

GRENLEC Grenlec believes that each network licensee should have exclusive rights in its Authorised Area. The breaking up of a small entity into several micro entities generally ends up with higher charge for the customers.

“(b) ensure that sufficient generation reserve capacity is available;”

GRENLEC Is this spinning reserve? Or cold stand-by?

“(d) construct, reconstruct, modify, and replace the components of the Authorised Network Electrical System to maintain and extend it for the foregoing purposes, subject to and in accordance with any Renewable and Efficient Energy Portfolio Mandate, Sustainability Programmes, Orders or decisions of the Minister or the Commission

adopted or established pursuant to and in compliance with the Electricity Act, ~~201(6) 2016~~, Regulations and the terms and conditions of this Licence.”

GRENLEC Should be 2016

Page 8 **2. Transmission, Distribution and Supply of Electricity by Other Suppliers.**

“The manner in which this Licence shall be ~~non-exclusive~~ **exclusive** is limited to instances in which –“

GRENLEC Grenlec believes that each network licensee should have exclusive rights in its Authorised Area. For the same Reason stated above, that the breaking up of a small entity into several micro entities generally ends up with higher charges for the customers.

Page 8-9 **3. Prohibition on Cessation of Licensed Operations.**

“Further to the provisions of section ~~18~~ **19** of the Act, except as this Licence expires or is revoked or suspended in accordance with its terms and the Act, the Licensee shall not cease to operate all or any part of the Authorised Generation Electrical System and supply electricity generated at it to the Authorised Network Electrical System in the manner provided for herein, without first obtaining the written consent of the ~~Minister~~ **Commission**, who shall consult with the ~~Commission~~ **Minister** prior to determining whether to give any such consent.”

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

Also see suggested change in wording.

C. Term

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3. Procedure for Renewals

“(b) an application for renewal of this licence shall be made at least ~~(two)~~three) years prior to the expiry of the licence;”

GRENLEC We believe that in the case of the Network License there needs to be some mechanism for continuously extending the term to provide sufficient time for the Licensee to recover investments made in the system. Network investments are almost always long-lived (15 – 25 years) and therefore, as the expiration of the license gets nearer (i.e. only 20 years remaining) the licensee will be reluctant to invest further in the system as it will not have sufficient time to recover such investment. We suggest a system where every five (5) years the PURC determines if the Network Licensee is meeting its obligations and if so, then the term of the licence is automatically extended for a further five (5) years. In this way the overall term will never exceed twenty-five (25) years but will always ensure that the licensee can recover investments over a reasonable period (i.e. minimum twenty years).

D. Technical and Performance Standards

2. Reports on Compliance with Technical and Performance Standards.

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

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

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

Page 10 **3. Periodic Review of Technical and Performance Standards.**

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

4. Enforcement of the Technical and Performance Standards.

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

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

5. Catastrophic Failures

“Notwithstanding any other provision of this Licence and in accordance with any applicable provisions in the regulation, in the event of a Catastrophic Failure the Licensee shall replace the failed part of the Authorised Network Electrical System on an urgent basis, with the approval of the Minister and the Commission.”

- GRENLEC** Does the Licensee have to wait on approval to proceed with repairs or restoration? This is counterproductive and inefficient. It is Grenlec's opinion that the Minister would be delighted that the utility considered restoring reliability and/or service to customers so essential that they would start repairs/replacement without waiting for his say so.
- GRENLEC** For failures that will affect a large number of customers for a long period of time the company will inform the Commission and the Minister and appraise them of the efforts underway. The company will listen to the Minister's advice and may implement it.

E. Dispatch of Sufficient Generation Capacity; Purchase of Electricity from Independent Power Procedures and Self-Generators and Interconnection.

Page 11 **2. Access and Interconnection to the Network. (2), (d), (g) (ii) (iii) (iv)**

Subject to the other terms and conditions of this Licence and the regulations and in addition to providing interconnection and access to its transmission and distribution network to the Authorised Generation Electrical System for the supply of electricity to the network and onward to consumers, the Licensee shall provide interconnection and access to its Authorised Network Electrical System to **duly authorised, holding licences or permits from the PURC** independent power producers and to self- generators on a non-discriminatory basis and as promptly as practically possible, subject to the safety and technical capability of such independent power producers' electrical systems and self-generators' generation facilities. For those purposes, the Licensee shall:

- GRENLEC** Access will only be allowed to duly authorized licence or permit holders.

~~“(d) conclude power purchase agreements that have been approved by the Commission with, and purchase, transmit and distribute to consumers electricity generated by, independent power producers; and negotiate and conclude power purchase agreements with independent power producers, the Commission may approve these contracts, and”~~

- GRENLEC** We suggest the rewording as indicated above. This is the normal regulatory practice.

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“(g) (ii) the procedures that self-generators and independent power producers must comply with to request interconnection to the transmission and distribution systems of the Licensee.”

GRENLEC We suggest that all Self generators and Independent Power Producers must comply with the Generation Expansion Planning and Procurement Procedures Regulations prior to requesting interconnection to the network of the Licensee.

“(g) (iii) the interconnection agreements models approved by the Commission and offered to self-generators and independent power producers and self-generators;

GRENLEC We suggest self-generators be subject to the same standards, as they are independent power producers who supply themselves and the network.

“(g) (iv) any limitation of capacity in the transmission and distribution systems of the Licensee.

GRENLEC Every transmission and distribution has a limitation in its current carrying ability.

5. Compliance with Legislation.

GRENLEC We believe this is in the wrong section. It should be in Section B - Authorization

F. Network Operating Standards and Performance Targets

Page 13 As outlined - 1, 2, 3, 4

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

G. Supply of Electricity to Consumers

Page 14 1. Duty to Provide a Universal Supply.

“Subject to the Act, the regulations and the provisions of Part II(B)(2), the Licensee shall have a duty to, and shall, connect and supply electricity to every person who requests such a connection and supply and who becomes a consumer by entering into an agreement for the Licensee’s connection and supply of electricity.” The Licensee may refuse to issue a new contract if the applicant has been disconnected for non-payment and is using a new contract to gain service while not paying the amount owed to the Licensee.

GRENLEC Customers with overdue bills may be refused a new contract until the old contract is satisfied.

3. Reports on Compliance with Consumer-Related Requirements.

1. Except as may be provided otherwise in the regulations, by February 1st of each year of the Term, the Licensee shall file a report with the Commission, and shall provide a copy thereof to the Minister , providing such information as the Commission may require on the Licensee’s compliance and/or non- compliance with the

Act, the regulations, the PURCA and any directions of the Commission with regard to the connection and supply of electricity to consumers and the conduct of its relationships with and services to consumers.

GRENLEC Specific dates like this should not be in the licence. They belong in the regulations where they can more easily be changed, rather than having to amend the Licence with each change of regulation.

Page 15 **5. Public Information**

The Licensee shall inform at least in its website and in any other manner as required by the Commission:

“(iv) Detailed information about the obligations of the Licensee in areas currently supplied by the Licensee and in areas without geographic coverage, and the corresponding charges and costs that the Licensee may require in each case to connect and supply new consumers in areas with and without geographic coverage;”

GRENLEC It should not be expected for the Licensee to have “detailed” information about areas without the “geographic coverage” by the Licensee. These areas will normally be outside the boundary of the authorized area.

GRENLEC Term “geographic coverage” to be defined.

H. Rates

Page 15 **1. Rates to be set by the Commission - c), e)**

“Subject to PartII(H)(2) and sections 4, 31 and 32 o the Act, the rates that the Licensee shall-”

“c) charge to consumers under special agreements;”

GRENLEC Please define what a special agreement is.

“e) charge to telecommunications entities and any other person for the joint use of the Licensee’s poles and other apparatus,”

GRENLEC Why is the Commission determining what rates the joint pole usage charges between two privately owned utilities?

Page 16 **2. Savings Continuation of Rates in Effect on the Effective Date (b)**

GRENLEC Suggest changing “Saving” to “Continuation”.

“(b) Provided further that, commencing on the Effective Date, the Licensee shall pay to and charge any self-generator from which it, respectively, purchases excess electricity and supplies electricity only for the net amount of electricity actually taken or supplied, respectively, by the Licensee.”

GRENLEC Further clarification of this is required. Before such a provision can be implemented, a more comprehensive study of the impact of net metering on all customers must be undertaken. Grenlec strongly believes that any such program is unfair to customers who are not self-generators, as they will be subsidizing those customers that can afford to install their own generation equipment.

I. Reporting Requirements: Books, Accounts and Other Records

Page 17 **3. Books, Accounts and Other Records.**

“The Licensee shall comply with the requirements of the Act, the regulations, and the PURCA with regard to the establishment and maintenance of its books, accounts and other records. The Licensee shall maintain entries in its books, accounts and records for the Authorised Network Electrical System that are separate from the entries for the Authorised

Generation Electrical System, in a manner and detail to allow the Commission and/or the Minister to determine the Licensee's adherence to the terms and conditions of this Licence and the GRENLEC Generation Licence, and to obtain information from the Licensee relevant to the Commission's and the Minister's exercise of their respective powers, functions and duties under the Act, the regulations, the PURCA, and this Licence."

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

J. Sustainability Programmes, Expansion Studies and Renewable Generation Projects

Page 18 1. Initial Sustainability Programmes

"In accordance with section 37(3)(a) of the Act, the initial five-year sustainability programmes of the Licensee for its activities under this Licence shall be as set forth on Schedule C, and shall remain in effect until subsequent sustainability programmes have been submitted by the Licensee to the Minister and approved by him or her as provided in Part II(G)(2) **Part II(J)(2)** and section 37 of the Act."

GRENLEC Reference should be Part II (J)(2)

GRENELEC It is impossible for Grenlec to prepare an initial 5 year sustainability programme before the Integrated Resource Planning exercise, the National Electricity Strategy and the first tariff review have been completed.

Page 19 **5. Renewable Generation Projects (a), (i) (ii)**

“In accordance with section 37 of the Act, with Regulations and with instructions or decisions of the Commission, the Licensee shall also regularly identify consider, evaluate and potentially favour new Renewable Generation Projects, and shall prepare and submit-”

GRENELEC: Rewording suggested.

“ (a) Pre-feasibility studies and the business case of Renewable Generation Projects in accordance with the requirements established in the Generation Expansion Planning and Competitive Procurement Regulations identifying:

“(i) Economic, commercial, technical, environmental, social and fiscal feasibility of the project; the cost such studies will be included in the NFRR.”

GRENELEC See added text. This allows the Network Licensee to recoup the cost it incurred when doing studies relevant to the system’s development and expansion regardless of the entity doing the development.

“(ii) all kinds of risks:”

GRENELEC Required risks assessments should be defined. It is too broad. “kind” needs to be “kinds”.

K. Procurement of Goods

Page 20 1. Competitive Procurement

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

GRENLEC Some minimum level of cost has to be indicated.

3. Submissions on Procurement to the Commission.

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

GRENLEC See suggested wording change.

L. Activities Requiring the Prior Consent of the Minister

Page 21 1. Conditions in Section 20 of the Act

The Licensee shall not, without the prior written consent of the Minister:

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

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

M. Other Obligations of the Licensee; No Waiver

Page 22 2. Sharing of Poles and Other Facilities with Other Public Utilities

“The Licensee shall allow other public utilities, upon any other such public utility’s written request, to access and jointly use the Licensee’s tracks, conduits, poles, wires, and other works, installations or facilities. Where any such written request is made to the Licensee, it may deny such access and/or joint use only where it first demonstrates to the satisfaction of the Commission that there is insufficient capacity on or in such work, facility or installation, taking into account the reasonably anticipated requirements of such public utility itself, or for reasons of safety, security, reliability of service or difficulty of a technical or engineering nature that it would be unreasonable to require the Licensee to overcome. In case where the Commission overrides the judgement of the Licensee the Commissioners will sign a commitment indemnifying the Licensee from any consequence of workplace accidents resulting from this installation. Failing such an agreement the Licensee’s shall not be obligated to obey the Commission’s order and shall not be subject to a penalty.”

GRENLEC What is a track?

GRENLEC: The highlighted text has to be added to protect the Licensee from incurring liability based on the Commission’s actions.

N. Licence Fees and Contributions

Page 23 2. Annual Fee

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

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

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

The quantum and/or basis for calculation of the annual fee must be stated here in this Licence. Suggested word change to for alignment with other regulations. Basis of fee calculation should be stated.

3. Fees upon Extension of the Term

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

GRENLEC These fees and the basis for their calculation needs to be stated.

Page 23 **4. Universal Service Fund**

The Licensee shall contribute ~~with to~~ the Universal Service Fund. The Licensee shall comply with the obligations established in section 69 of the Act, in Regulations and Orders of the Minister, and shall submit all the information, documents and reports that the Commission may require in order to monitor compliance of the obligations established in section 69 of the Act.

GRENLEC See suggested edit.

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

~~5. Social Fund~~

~~“The Licensee shall contribute every financial year five percent (5%) of its net income before taxes to the Social Fund. The Licensee shall comply with the obligations established in section 70 of the Act, in Regulations and Orders of the Minister, and shall submit all the information, documents and reports that the Commission may require in order to monitor compliance of the obligations established in section 70 of the Act.”~~

GRENLEC This was ruled as unconstitutional by the High Court.

O. Suspension and Revocation of Licence

Page 23-24 **1. Grounds for Suspension or Revocation (a), (g)**

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

“(a) any of the grounds set forth in sections 23 24 (1)(a) and (c) – (g) of the Act;”

GRENELEC Reference incorrect. Section 24 of the ACT speaks to Suspension of Licence.

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

GRENELEC: Can examples be given of national security or public interest reasons for revocation?

Page 24 **3. Disposition of the Licensee upon Revocation of the Licence**

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

GRENELEC See proposed edits required in Part I of both Generation and Network licences to effect the intent of this clause.

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

All further references in this section to the Authorised Generation Electrical System or Authorised Network Electrical System must be changed to the **Authorised Systems** in both Licences.

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4. Valuation of the Authorised Network Electrical System

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

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

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

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

P. Force Majeure

Page 27 5. Termination for Force Majeure.

“If the event of force majeure subsists for more than thirty (30) days from the date of occurrence of such event, the Licensee shall discuss with the Minister and the Commission in good faith alternatives to the obligations that the Licensee has been delayed or prevented from performing, any reciprocal or related obligations hereunder, and any extension of time for the Licensee to perform such obligations. Except as may be agreed between the Licensee and the Minister, the Minister may terminate this Licence if within sixty (60) days of the date of occurrence of the event of force majeure the Licensee has not made good faith efforts towards restoring its the performance of the its obligations. it has been delayed in performing within sixty (60) days of the date of occurrence of the event of force majeure

GRENLEC See suggested wording change.

Q. Termination of Licence for Expiration of its Term

Page 27 1. ~~Transfer of shares of Grenlec to Government~~

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

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

Schedule B: Network Operating Standards and Performance Target

Page 30 **A. Technical and Financial Losses Standards and Targets**

1. System Technical Losses, Collection Rae, and Outstanding Sales Standards and Targets”

GRENLEC TO BE REMOVED. THESE ARE VALUES THAT WILL BE CHANGED SEVERAL TIMES OVER THE LIFE OF THE LICENCE. EACH CHANGE WOULD REQUIRE THAT THE LICENCE BE AMENDED. THEY ARE SPECIFIED IN OTHER REGULATIONS AND THIS LICENCE COMPELS THE LICENSEE TO COMPLY WITH THOSE REGULATIONS.