

Mr. John van Brink.

EC - 9

ELECTRICITY COMMISSION

ADJUSTMENTS to DOCUMENT EC-5

February 2015

EC-5

Typos : 5, 9, 14, 21, 71,
56

Amend : 10, 11, 73
12, 72

THE SECOND ELECTRICITY CONCESSION CONTRACT

II

The REGULATORY ADDENDUM

The First Electricity Concession Contract came into force on 25th July 2008. This Second Electricity Concession Contract which replaces it will come into force on 1st July 2015.

2015

Effective Date : 1st July 2015

PARTIES to the ADDENDUM

1: **TONGA POWER LIMITED**

2: **THE ELECTRICITY COMM**

Type : para 2.3

INASMUCH as the Parties desire to enter into this regulatory Addendum following the recent Reset to record (ONE) the terms and conditions upon which the Concessionaire henceforth will Generate, Distribute and Supply electricity to consumers of electricity in the Kingdom of Tonga; and (TWO) other regulatory arrangements entered into by the Parties.

NOW THEREFORE the Parties have agreed and do hereby agree as follows, namely :-

1. DURATION

Without prejudice to the termination provisions of the Second Concession Contract (Clause 5 and Schedules 1-3 of the Agreement), this Addendum shall remain in full force and effect until at least 30th June 2020 unless any of the provisions thereof are amended in writing by the parties under and in terms of the provisions set forth in this Addendum.

2. GENERAL PROVISIONS

Amendments

2.1 Subject to any other Clause in this Addendum, no amendment to this Addendum will be effective unless it is in writing and signed by a duly authorised representative of each party.

Governing Law

2.2 This Addendum is to be governed by and construed in accordance with the laws of the Kingdom of Tonga.

Severability

2.3 If any provision of this Addendum is held to be invalid, illegal or unenforceable, the invalidity, illegality or unenforceability of that provision is not to affect the

- (f) ¹⁰ any one or more increases or decreases in an existing fee or charge that gives rise to Non-Supply Revenue (including any combination of increases or decreases), or introduction of a new fee or charge that gives rise to Non-Supply Revenue, that changes the Regulatory Revenues of the Concessionaire over any 12 month period by an amount greater than three percentage points;
- (g) any other event, which is not reasonably foreseeable, not reasonably under the control of either party, and which neither party was required or reasonably expected to provide against, that materially changes the revenues of the Commission or the Concessionaire or the non-fuel cost of service over any 12 month period; and
- (h) otherwise as the Commission and the Concessionaire may agree upon in writing.

¹⁰
any increase or decrease (or combination of increases or decreases) in an existing fee or charge, or introduction of a new fee or charge, that changes the Regulatory Revenue of the Concessionaire over any 12 month period by in excess of three percentage points.

5. SERVICE COVERA

5.1 Standard
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Amendment to para. 5.3(a)

5.2 New conn
Subject to
Standard
Concession

...ing electricity, is satisfied is able, to:

- (a) (i) pay a fee approved by the Commission that does not exceed the reasonable costs to the Concessionaire of connection or reconnection (including reconnection after have been disconnected) of that person to the Concessionaire's electricity distribution network (including the reasonable cost of installing any equipment or carrying out any work);
- (ii) pay, in the case of reconnection, all reasonable debt recovery and/or account management costs relating to that person approved by the Commission;
- (iii) pay the Regulated Tariff; and
- (b) Comply with the terms and conditions of the Concessionaire's Customer Contract, being the Terms and Conditions set forth in Schedule 1 to this Addendum.

5.3 Right to disconnect

Nothing in this Clause 5 shall prevent the Concessionaire from:

- (a) Disconnecting any Customer from the Concessionaire's electricity distribution network and ceasing the provision of Standard Service in accordance with the terms and conditions of an applicable Customer Contract (including, for the avoidance of doubt, for non-payment or due to the bankruptcy of the Customer); and
- (b) Charging a fee for reconnection after disconnection that does not exceed the reasonable costs of disconnection and reconnection (including any reasonable debt recovery and/or account management costs relating to

↳ (i) under the provisions of Clause 17 of this Addendum or (ii)

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adjusted only as set forth in
Schedule 6 (Adjustment of
Regulated Tariff) or Schedule 8
(Extraordinary Tariff Adjustment).

5.5 **Tariff Structure**

The Tariff Structure for the Regulated Tariff shall be as provided for in this Addendum, and not otherwise except in accordance with Schedule 7 regulating Adjustment to the Tariff Structure.

5.6 **Regulated Tariff**

The Regulated Tariff for each Island Group as from 1st July 2015 shall be as set forth in Schedule 6 : and may be altered only in accordance with the terms of ~~Schedule 7.~~

5.7 **Optional Tariff**

(a) Subject to Clause 5.7(b), the Concessionaire, with the prior written consent of the Commission, may offer:

- (i) tariffs for the provision of Standard Service to Customers that are different from, and may exceed, the Regulated Tariff (an Optional Tariff);
- (ii) additional services in relation to electricity Supplied via the Distribution Network, in addition to Standard Service (Optional Services).

(b) The Concessionaire may only offer an Optional Tariff and/or Optional Services under Clause 5.7 (a) where :

- (i) the Customer is informed at the time the Customer is offered the Optional Tariff that Standard Service at the Regulated Tariff is also available; and
- (ii) the provision of Standard Service at the Regulated Tariff, and the differences between the Optional Tariff and Regulated Tariff, and

8. CUSTOMER COMPLAINTS

8.1 Customer Complaints

- (a) The Commission may only consider a complaint from a Customer (*a Customer Complaint*) or from any other person that is :
- (i) An allegation that the Concessionaire has breached the terms of a Customer Contract;
 - (ii) A dispute over a refusal by the Concessionaire to connect or reconnect a person to the Concessionaire's electricity distribution network and provide Standard Service to that person, including a dispute over whether the cost of connection, disconnection and/or reconnection, or debt recovery and/or account management charged by the Concessionaire is reasonable;
 - (iii) An allegation that a Customer-Specific Measure does not comply with this Addendum;
 - (iv) An allegation that the Customer is being required to pay more than a Regulated Tariff or an agreed Optional Tariff (as the case may be) for the supply electricity.
- (b) The Commission shall not require to consider a Customer Complaint if the Commission (acting reasonably) considers the Customer Complaint to be frivolous, vexatious or *de minimis*.
- (c) The provisions of Schedule 5 shall apply to any Customer Complaint received by the Commission. For the avoidance of doubt, complaints by a Customer that the Concessionaire has breached a Customer-Specific Standard shall be dealt with in accordance with Schedule ~~2~~/~~3~~

Typo : para. 8.1 (c)

the next Regulatory Period, unless the Commission and the Concessionaire agree a different proportion.

- (c) On cause shown the Commission may defer consideration of any such application until a date, subsequent to the Reset, agreed between the Commission and the Concessionaire.

11. REPORTING REQUIREMENTS

The Concessionaire shall comply with the reporting provisions of Schedule 12.

12. CUSTOMER INVOICES

The format and content of Invoices issued by the Concessionaire to Customers for Standard Service shall comply with the requirements of Schedule 13.

13. PUBLIC DISCLOSURE

The Public Disclosure provisions of Clause 7 of the Agreement shall apply *mutatis mutandis* to this Addendum and in the interests of brevity they are deemed to have been repeated herein *ad longum*.

Typo : para. 10.3(b)

SCHEDULE 4

1 Customer Specific Standards

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Typo : pg 56

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1.2 For the avoidance of doubt, the Concessionaire shall be liable to pay, and shall pay, a separate penalty for every separate breach of a Customer Specific Standard in accordance with the terms of paragraph 1.1 of this Schedule.

1.3 Where the Concessionaire has breached a Customer Specific Standard and has not provided the service required by the relevant Performance Measure within a period that is twice the standard, the Concessionaire shall be liable to pay, and shall pay, a separate penalty in accordance with the terms of paragraph 1.1 of this Schedule.

1.4 In any given calendar month the Concessionaire shall not be liable to pay to any Customer any amount in excess of TOP70.

2 Reporting Standards

2.1 If the Concessionaire is ⁱⁿ breach of a reporting requirement under Clause 11 and Schedule 12 of this Addendum, the penalty payable shall be 25,000 Pa'anga in respect of each such breach.

2.2 In respect of each such breach the Commission shall issue to the Concessionaire a Demand for immediate Payment of the Penalty.

3.2 In r
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Typo: para. 3.4

(b)

(c) Details of any capital investment undertaken (including identifying the costs and timing of any capital investment and the extent to which such expenditure was in accordance with the Approved Capital Expenditure Plan or as otherwise approved by the Commission);

(d) The Concessionaire's performance throughout the year measured against the Efficiency, Service, Metering or other Standards;

(e) The Concessionaire's Gross kWh of electricity generated, the invoiced kWh of electricity and Regulatory Revenue by Island Group and Customer Class;

(f) Details of the Concessionaire's insurance arrangements in accordance with Clause 9 of the Addendum;

(g) The statements by the Concessionaire's auditor required under paragraph 4 of this Schedule;

(h) Details of all Regulatory Levies or Fees paid by the Concessionaire to the Commission in accordance with this Addendum, including details of any amounts due, but not paid by the Concessionaire, to the Commission.

3.3 The Commission at its discretion may appoint Independent Consultants to audit or review all or any aspect of the Regulatory Annual Report or Half-Year Performance Reports. Any costs involved are payable by the Concessionaire.

3.4 If the Commission appoints ^{an} as Independent Consultant pursuant to paragraph 3.3 of this Schedule, the Concessionaire shall provide all reasonable assistance, including complying promptly with all reasonable requests for information, to

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4. **Appointm**

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other person, the following to the Commission as part of the Regulatory Annual Report :

- 4.1 a statement by the auditor acknowledging that the financial statements may be relied upon by the Commission in carrying out its functions, and performing its obligations, under this Addendum;
- 4.2 a statement whether, in the auditor's opinion :
 - (a) the Concessionaire has kept accounting records in a form that enables identification of the revenues, costs, assets and liabilities of the Concessionaire's Electricity Business;
 - (b) the financial statements give a true and fair view of the revenues, costs, assets and liabilities of the Concessionaire's Electricity Business;
 - (c) the updated RAV that forms part of the Annual Report is calculated consistently with the requirements of the Addendum.

For the avoidance of doubt, paragraph 4 of this Schedule does not limit the Concessionaire's obligation to prepare audited financial statements under any other applicable law.

5. **Commission may require information be provided**

The Concessionaire shall provide to the Commission any information required by the Commission to perform its functions under this Addendum and/or the Act. Without prejudice to the foregoing generality, the Concessionaire shall provide to the

Commission on or before the last day of each month a **Progress Report** in respect of the immediately preceding month in respect of the matters referred to above in Paragraphs 1.3 and 3.2(a), (c), (d) and (e). ^{to}

6. **Reporting**

If the Concessionaire fails to comply with any reporting obligation, then the Concessionaire shall pay a penalty to the Commission, calculated in accordance with the provisions of Schedule 4 of the Addendum.

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on or before the last day of May each year their CAPEX PROPOSAL for the following financial year; and on or before the last day of June each year details of the INSURANCE they propose to take out for the following Insurance Year.
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Letters of renewal?