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No. 49 of 2015

ELECTRICITY RATE REDUCTION BOND ACT, 2015

AN ACT TO PROVIDE A LEGAL FRAMEWORK FOR THE ISSUANCE AND REDEMPTION OF SECURITISED RATE REDUCTION BONDS TO PAY AND SATISFY CERTAIN DEBTS OF THE BAHAMAS ELECTRICITY CORPORATION; TO PROVIDE ADDITIONAL CAPITAL FOR THE RESTRUCTURING OF THE CORPORATION, THE ESTABLISHMENT AND INITIAL OPERATIONS OF BAHAMAS POWER AND LIGHT COMPANY LIMITED, THE REFORM OF THE ELECTRICITY SECTOR AND THE INSTITUTION OF A NEW ELECTRICITY SUPPLY REGIME IN THE BAHAMAS; TO PROVIDE FOR THE ORGANISATION OF THE RATE REDUCTION BOND ISSUER; TO ESTABLISH THE ISSUANCE OF RATE REDUCTION BONDS BY THE ISSUER AS A PUBLIC PURPOSE AND BENEFIT; TO PROVIDE FOR THE CREATION OF RATE REDUCTION BOND PROPERTY RIGHTS AND FOR CONNECTED MATTERS

[Date of Assent - 30th December, 2015]

Enacted by the Parliament of The Bahamas

PART I – PRELIMINARY

1. Short title and commencement.

- (1) This Act may be cited as the Electricity Rate Reduction Bond Act, 2015.
- (2) This Act shall come into force on such date as the Minister may appoint by notice published in the *Gazette*.

2. Interpretation.

- (1) In this Act, unless the context otherwise requires —

- “adjustment mechanism”** means the mechanism referred to in section 13 and in the Rate Reduction Bond Financing Order through which the rate reduction bond fee will be adjusted periodically to ensure it is sufficient to meet the financing cost obligations associated with the rate reduction bonds;
- “assignee”** means an individual, corporation, limited liability company, partnership or limited partnership, trust, or other legally recognised entity to which an interest in rate reduction bond property is assigned, sold or otherwise transferred, other than as a pledge or security, and includes an assignee of an assignee;
- “Board”** means the Board of Directors of the Issuer appointed in accordance with section 6;
- “BPL”** means Bahamas Power and Light Company Limited, including any successor owner of the electricity supply system assets;
- “Companies Act”** means the Companies Act (*Ch. 308*);
- “Electricity Act”** means the Electricity Act, 2015;
- “electricity charges”** means charges by BPL for electricity supply, inclusive of the rate reduction bond fee, in accordance with the tariff rate approved by URCA;
- “financing cost”** means the upfront financing costs and ongoing financing costs in relation to rate reduction bonds referred to in section 19 and approved for recovery by the Minister in the Rate Reduction Bond Financing Order;
- “financing documents”** means all financing documents, in compliance with this Act, in relation to the issuance by the Issuer of the rate reduction bonds;
- “financing entity”** means the Issuer, or a Servicer, trustee, collateral agent or other person or entity, acting for the benefit of owners of the rate reduction bonds (including the Issuer) who have one or more of the following rights —
- (a) ownership of the rate reduction bond property;
 - (b) to receive proceeds of the rate reduction bonds;
 - (c) to receive proceeds from the sale of the rate reduction bond property;
- “Issuer”** means the rate reduction bond Issuer, namely Bahamas Rate Reduction Bond Limited, a non-profit body corporate incorporated in accordance with section 5 for the sole purpose of issuing rate reduction bonds in accordance with this Act;
- “Minister”** means the Minister charged with responsibility for the administration of the Electricity Act;

“payment of the debt service” means payment sufficient to maintain a reasonable coverage margin of scheduled debt service in accordance with the terms of the financing documents;

“pledge lien” means the lien that arises in accordance with section 24 in favour of the pledgee upon the making of a pledge;

“pledge” means in relation to rate reduction bond property an instrument in writing giving or assuring such property as a guarantee or security for the fulfilment of a contract or payment of a debt;

“rate reduction bonds” means non-recourse financing instruments or evidences of indebtedness, referred to in section 10, issued in accordance with this Act;

“rate reduction bond fee” means the fee imposed by BPL, in accordance with and subject to sections 18 and 40 of the Electricity Act, which

- (a) provides security for the rate reduction bonds and to which the Servicer has first right;
- (b) is calculated per estimated kWh usage by the customer and subject to periodic adjustment in accordance with section 13;
- (c) applies to all consumers and customers of BPL in The Bahamas at the rate calculated pursuant to paragraph (b);
- (d) is the amount required for payment of the debt service and is the first allocation to be made in the distribution of aggregate BPL revenues from customer billings;

“rate reduction bond financing liabilities” means the debts of the Corporation and BPL referred to in section 18 of the Electricity Act, consisting of or relating to —

- (a) payment of financial liabilities of the Corporation, including bank debts, bonds and other non-current financial liabilities, outstanding on the date the Electricity Act comes into operation;
- (b) payment of pension and other benefits and rights vested in employees or former employees of the Corporation on the date the Electricity Act comes into operation;
- (c) costs of environmental re-mediation, not exceeding the sum of twenty million dollars, inclusive of ancillary and associated costs, as determined by the Government;
- (d) costs of reform of the electricity sector and of restructuring the Corporation as provided for in the Electricity Act, inclusive of ancillary and associated costs;

- (c) financing costs to issue and administer rate reduction bonds and to incorporate and administer the rate reduction bond Issuer;
- (f) provision to BPL of initial working capital, and interim financing, to facilitate the operations of BPL;

“rate reduction bond property” means the property rights constituted in the rate reduction bond fee in accordance with Part IV and includes the proceeds of the rate reduction bond property whether in moneys, revenues or property;

“Rate Reduction Bond Financing Order” means the irrevocable final rate Order made by the Minister, referred to in section 11, setting out the terms and conditions on which the Issuer is to issue rate reduction bonds;

“residual revenues” means those revenues that remain in the waterfall account after the rate reduction bond fee is transferred to the Servicer and which are to be released to BPL to fund operations;

“Registrar of Records” means the Registrar under the Registration of Records Act (*Ch. 187*);

“Servicer” means the entity that contracts with the Issuer to provide the services referred to in section 7(3) for a servicing fee referred to in section 7(5);

“true sale” means in relation to rate reduction bond property a sale or other absolute transfer of all of the transferor's right, title and interest in such property; and

“waterfall account” means the trustee bank account established in accordance with section 19 of the Electricity Act, and referred to in section 11, into which all revenues from electricity charges inclusive of the rate reduction bond fee are initially deposited.

- (2) Words and phrases not defined in paragraph (1) and used in this Act shall, unless the context otherwise requires, have the same meaning ascribed to them in the Electricity Act.
- (3) This Act shall be read and construed together with the Electricity Act.

3. Application.

- (1) This Act applies to, and binds —
 - (a) BPL and all successor owners of the electricity supply system assets;
 - (b) the initial and any successor Servicer; and
 - (c) URCA and any successor regulator of the electricity sector.
- (2) This Act binds the Crown.

4. Purposes.

The purposes of this Act are to —

- (a) establish the legal framework for the organisation of the Issuer and the issuance of electricity sector rate reduction bonds, secured by the revenue streams of BPL, for the sole purpose of the payment and satisfaction of the rate reduction bond financing liabilities;
- (b) provide for the securitisation of specified revenue streams of BPL through the creation of rate reduction bond property;
- (c) ensure that the issuance of securitised rate reduction bonds under this Act —
 - (i) contributes as part of an overall plan for the reduction of tariff rates to customers and consumers of BPL;
 - (ii) creates no new financial obligations or liabilities for the Corporation, BPL or the Government;
- (d) codify the undertaking by the Government in section 33; and
- (e) enable and facilitate the incorporation of the Issuer as a non-profit company within the meaning of section 14, and in accordance with Part VI, of the Companies Act.

PART II – RATE REDUCTION BOND ISSUER

5. Organisation.

- (1) Pursuant to section 19 of the Electricity Act, the Corporation shall secure the incorporation under Part VI of the Companies Act of a non-profit company called Bahamas Rate Reduction Bond Limited for the sole purpose of issuing rate reduction bonds under this Act.
- (2) The issuance by the Issuer of rate reduction bonds under this Act shall be deemed to promote an object and purpose falling within the meaning, spirit and intendment of section 14 of the Companies Act.
- (3) The memorandum of association of the Issuer shall state that —
 - (a) the sole undertaking the Issuer is to carry on is the issuance of electricity sector securitised rate reduction bonds under this Act;
 - (b) the object and purpose of issuing rate reduction bonds is to pay and satisfy the rate reduction bond financing liabilities and thereby promote the welfare, utility and benefit of the public through facilitation of a safe, least cost, efficient and modern electricity supply system in The Bahamas;
 - (c) the issuer has no authorised share capital and is to carry on its undertaking without pecuniary gain to its members and any profits

or other accretions to the Issuer are to be used solely in furthering its undertaking;

- (d) each first director becomes a member of the Issuer upon its incorporation.
- (4) The proceeds of rate reduction bonds issued by the Issuer shall be applied solely in payment and satisfaction of the rate reduction bond financing liabilities.
- (5) Except as provided herein for actual services rendered, no part of the revenues or assets of the Issuer shall inure to the benefit of or be distributable to its directors, officers or any other private persons.
- (6) The articles of association of the Issuer shall provide that, upon dissolution, the remaining property of the Issuer shall be distributed to the Corporation and applied wholly to reduce the tariff rates of BPL to its customers.

6. Governance.

- (1) The Issuer shall be governed by a Board of Directors comprising three persons appointed by the Minister.
- (2) A person is not eligible for appointment to the Board of Directors of the Issuer who is —
 - (a) a director, officer, or employee of the Corporation, BPL, URCA, the Servicer or the System Operator;
 - (b) a Member of Parliament; or
 - (c) a director, shareholder, officer or employee of the bond arranger.
- (3) The *First Schedule* has effect with respect to the constitution and procedure of the Board.

7. Functions and powers.

- (1) The activities of the Issuer are, in accordance with this Act and the incorporation documents of the Issuer, limited to the issuance of rate reduction bonds and performance of any activities necessary and related to the issuance and servicing of the bonds for the public benefit.
- (2) The functions and powers of the Issuer are to —
 - (a) issue rate reduction bonds in accordance with the Rate Reduction Bond Financing Order, after receipt of a notice of confirmation from the Minister, and provide for the rights of the owners of such bonds;
 - (b) apply the proceeds of rate reduction bonds issued by the Issuer in accordance with section 21;

- (c) contract with a Servicer for the servicing of rate reduction bond property and rate reduction bonds, including the provision of administrative services;
- (d) pledge the rate reduction bond property transferred to the Issuer to secure the rate reduction bonds and the payment of ongoing financing costs;
- (e) maintain the assets and liabilities of the Issuer separate and distinct from those of any other entity;
- (f) in the capacity of the Issuer as a financing entity —
 - (i) sue and be sued;
 - (ii) design and commission a seal and alter same at pleasure;
 - (iii) subject to this Act, make and alter by-laws and rules for the organisation and internal management, and for governing the use of the property, of the Issuer;
- (g) make and execute contracts and all other instruments necessary or convenient —
 - (i) for the exercise of its functions and powers under this Act;
 - (ii) to commence action to protect or enforce any right conferred on the Issuer by law, contract or other agreement;
- (h) pursuant to paragraph (g), make and execute as relevant and necessary to carrying out the functions of the Issuer contracts with —
 - (i) the Government;
 - (ii) BPL or any successor owner of the electricity supply system assets;
 - (iii) a Servicer;
 - (iv) a financing entity;
 - (v) any other public or private entities;
- (i) pursuant to paragraph (h), as necessary or convenient make and execute, and pay compensation for, service contracts to —
 - (i) service rate reduction bond property owned by the Issuer;
 - (ii) service rate reduction bonds issued by the Issuer;
 - (iii) provide administration services in relation to rate reduction bonds issued by the Issuer;
- (j) appoint and employ as necessary officers, employees and agents, prescribe their duties and qualifications and fix their compensation;
- (k) engage the services of private consultants, accountants, counsel, agents, underwriters and others, as necessary or convenient, on a

- contract basis to render professional and technical assistance and advice;
- (l) pay the Issuer's operating expenses, the debt service on the rate reduction bonds, and other ongoing financing costs;
 - (m) procure insurance against any loss in connection with its activities, properties and assets in such amount and from such insurers as the Issuer deems desirable;
 - (n) invest funds or other moneys under its custody and control in investment securities or pursuant to any ancillary agreement entered into by the Issuer;
 - (o) establish and maintain such reserves, special funds and accounts, to be held in trust or otherwise, as may be required by a bond arranger agreement or other agreement made in connection with the rate reduction bonds or by any agreement between the Issuer and third parties;
 - (p) pledge as security for the payment of principal of and interest on the rate reduction bonds all or any part of its revenues or assets including, without limitation —
 - (i) rate reduction bond property;
 - (ii) the rate reduction bond fee;
 - (iii) required cash reserves;
 - (iii) earnings from the investment and reinvestment of the revenues or assets referred to in (i), (ii) and (iii); and
 - (q) do all things necessary or convenient to carry out the purposes of the Issuer and effectively exercise the functions and powers herein granted.
- (3) The Issuer shall, pursuant to subsection (2)(c), enter into a contract with BPL or another entity, as Servicer, to —
- (a) impose, bill and collect the rate reduction bond fee and deposit same into the waterfall account;
 - (b) maintain separate records of the rate reduction bond fee and prepare periodic reports on billings and collections;
 - (c) receive the rate reduction bond fee from the trustees of the waterfall account and remit same to the rate reduction bond Issuer or other appropriate financing entity; and
 - (d) provide such other services as may be stated in or contemplated by the Rate Reduction Bond Financing Order.
- (4) The service contract with the Issuer referred to in subsection (3) shall provide —

- (a) that BPL may authorise an agent, subcontractor or, where a management contract exists between BPL and a System Operator, the System Operator, to act as Servicer on behalf of BPL; and
 - (b) subject to subsection (5), for payment to the Servicer of a servicing fee.
- (5) The servicing fee shall, except to the extent otherwise authorised in the Rate Reduction Bond Financing Order, consist of a periodic amount approximating the estimated incremental cost to the Servicer of billing and collecting the rate reduction bond fee, preparing servicing reports and performing other customary servicing services required in connection with securitised bonds.

8. Prohibition on merger and guarantee.

- (1) The Issuer shall not merge or consolidate, directly or indirectly, with any person or entity as long as rate reduction bonds issued by the Issuer remain outstanding.
- (2) The Issuer shall not, unless expressly permitted in the Rate Reduction Bond Financing Order, incur guarantee or otherwise become obligated to pay any debt or obligations other than —
 - (a) the rate reduction bonds; and
 - (b) financing costs in relation to the rate reduction bonds.
- (3) The Issuer shall engage in a business activity only as authorised in section 7.

9. Duration.

- (1) The Issuer shall not be dissolved until —
 - (a) the date one year after all rate reduction bonds and ongoing financing costs and other indebtedness of the Issuer have been fully paid; and
 - (b) all other liabilities and obligations of the Issuer have been fully paid, met or otherwise discharged.
- (2) Upon expiry of the period referred to in subsection (1), the Issuer shall be dissolved by voluntary liquidation in accordance with the Companies Act and all of its remaining property shall pass to and vest in the Corporation in accordance with the articles of association of the Issuer.

PART III – ISSUANCE OF RATE REDUCTION BONDS

10. Rate reduction bonds.

Rate reduction bonds are, in accordance with section 30, non-recourse financing instruments or evidences of indebtedness issued under and pursuant to this Act

- (a) by way of an indenture or other agreement of the Issuer;
- (b) the proceeds of which are solely to be used, directly or indirectly, to pay and satisfy the rate reduction bond financing liabilities; and
- (c) that are directly or indirectly secured by, or payable from, the rate reduction bond property.

11. The Rate Reduction Bond Financing Order.

- (1) The Issuer shall issue rate reduction bonds under this Act only in compliance with the provisions of the Rate Reduction Bond Financing Order, and after receipt of a notice of confirmation, made by the Minister.
- (2) The Minister shall make the Rate Reduction Bond Financing Order, which shall —
 - (a) approve the issuance of rate reduction bonds by the Issuer and the pledge of the rate reduction bond property to secure such bonds and their financing cost;
 - (b) include a description of the total aggregate sum of the rate reduction bond financing liabilities;
 - (c) state the specific components of the rate reduction bond financing liabilities the Minister proposes to pay through the issuance of the rate reduction bonds authorised by the Order;
 - (d) include an estimate of the date on which the rate reduction bonds will be issued and the expected scheduled term to maturity of the rate reduction bonds;
 - (e) approve the imposition and collection by BPL of the rate reduction bond fee and prescribe the parameters of the initial fee to be imposed and collected as a result of the issuance of the rate reduction bonds authorised by the Order;
 - (f) approve the deposit of all electricity charges inclusive of the rate reduction bond fee into the waterfall account and payment from the waterfall account of —
 - (i) the rate reduction bond fee to the Servicer for remittance, in accordance with the financing documents, to the Issuer and other financing entities;
 - (ii) residual revenues to BPL;

- (g) include a procedure for periodic adjustments to be made to the rate reduction bond fee, where necessary, to ensure that —
 - (i) the amount of such fee actually collected provides, together with the other electricity charges, adequate total revenues to ensure that the rate reduction bond fee can pay the debt service and ongoing financing costs on the bonds with adequate residual revenues for BPL to fund its operations;
 - (ii) the adjustment mechanism referred to in section 13 reconciles, at a minimum on a semi-annual basis, actual collections with the collections forecasted and supports a finding by the Minister that the adjustment mechanism is just and reasonable;
- (h) require the filing of periodic reports in accordance with section 12;
- (i) include a description of the anticipated benefits to customers in the service area as a result of the issuance of the rate reduction bonds as opposed to traditional alternative financing mechanisms;
- (j) specify whether BPL will contract with the Issuer as Servicer of the rate reduction bonds and the rate reduction bond property and, where applicable, any entity that will act as Servicer on its behalf and include the proposed remuneration and other relevant matters relating to the Servicer;
- (k) specify any entity or entities that will contract to provide administrative or other services to the Issuer;
- (l) address matters as may be necessary or desirable for the marketing or servicing of the rate reduction bonds or the servicing of the rate reduction bond property;
- (m) require that the amounts in the debt service reserve accounts or other accounts funded with the proceeds of the rate reduction bonds or the rate reduction bond fee be fully used, to the extent practicable, to make the final payments of principal and interest on the rate reduction bonds and other ongoing costs;
- (n) provide for the Issuer to file with the Minister and URCA in accordance with section 14 a notice of periodic adjustment of the rate reduction bond fee and to request the Minister, in prescribed circumstances, to approve an earlier effective date for an adjustment to take effect;
- (o) include a list of bond arrangers or purchasers approved by the Minister; and
- (p) include any restrictions and limitations on the amendment of the Rate Reduction Bond Financing Order.

- (3) The Minister shall, where any change or periodic adjustment to the rate reduction bond fee is required or contemplated pursuant to subsection (2) (e) and (g), include in the Rate Reduction Bond Financing Order a methodology for estimating the rate at which to charge customers the fee on a volumetric (kWh) and demand (kW) basis such that the total revenues collected in electricity charges are sufficient, after payment of the rate reduction bond fee, to meet the investment and operating needs of BPL.
- (4) The Minister may at any time make the Rate Reduction Bond Financing Order for the purpose of paying and satisfying the rate reduction bond financing liabilities.

12. Periodic reports to be filed.

- (1) The Rate Reduction Bond Financing Order shall require the Servicer to prepare and the Issuer to approve and file with BPL and the appropriate financing entity quarterly unaudited, and annual audited, reports showing —
 - (a) the billing and collection of the rate reduction bond fee;
 - (b) the debt service on the rate reduction bonds and other ongoing costs; and
 - (c) the balance in any debt service reserve accounts, or other accounts, required by the the Rate Reduction Bond Financing Order.
- (2) The Issuer shall —
 - (a) forward the quarterly reports and annual audited accounts to each holder of record of the rate reduction bonds; and
 - (b) make the quarterly reports and annual audited accounts available and accessible to bondholders and the public through a website.

13. Adjustment mechanism.

- (1) The Rate Reduction Bond Financing Order shall include a mathematical formula to be followed by the Issuer in making adjustments to the rate reduction bond fee and the principles to be applied by the Issuer in the mathematical formulation of the adjustment mechanism are that —
 - (a) the rate reduction bond fee will be adjusted at a minimum semi-annually to ensure that the collection of such fee, inclusive of the top portion of other electricity charges, is adequate to fund the payment of the debt service, the required levels of funding on all debt service reserve accounts, and payment when due of all ongoing financing costs;
 - (b) the adjustments to the rate reduction bond fee will take into account historical and reasonably foreseeable differences between amounts billed and amounts collected due to —

- (i) applicable taxes;
 - (ii) customer defaults and delays;
 - (iii) billing lags;
 - (iv) write-offs;
 - (v) other factors;
- (c) the adjustments to the rate reduction bond fee will take into account historical and reasonably foreseeable variations in billings due to variations in electricity consumption associated with —
- (i) the seasons, storms and other weather conditions;
 - (ii) outages;
 - (iii) gain or loss of customers;
 - (iv) efficiencies;
 - (v) electric vehicles;
 - (vi) economic conditions;
 - (vii) other factors;
- (d) the adjustments to the rate reduction bond fee will take into account circumstances that positively or negatively impact the fee and both an increase and a decrease in the fee will be applied pro rata for each customer service classification; and
- (e) the adjustments to the rate reduction bond fee will take into account surplus funds of the Issuer calculated on a semi-annual basis and repaid to BPL to effect a pro rata reduction in the fee commensurate with the absorption of such funds.
- (2) The adjustment mechanism shall be applied semi-annually, or more frequently, as provided in the Rate Reduction Bond Financing Order.

14. Effective date of rate reduction bond fee adjustment.

- (1) The Issuer shall, on behalf of the owners of the rate reduction bond property, file on the same day with the Minister and URCA a notice of each periodic adjustment of the rate reduction bond fee.
- (2) Subject to subsection (3), the Issuer shall submit a copy of the notice of periodic adjustment to BPL a minimum of sixty days before the adjustment is to take effect unless the Issuer in the notice requests the Minister to approve an earlier effective date.
- (3) Except where the Minister approves an earlier effective date requested by the Issuer, each adjustment shall take effect sixty days following the date on which the notice of periodic adjustment is filed with the Minister and URCA.

- (4) The Issuer shall file with URCA, a minimum of thirty days before the adjustment is due to take effect, the calculation for the revised rate reduction bond fee.
- (5) Subsequent to the issuance of the rate reduction bonds in accordance with the Rate Reduction Bond Financing Order, the Issuer shall be the sole authority in the setting or calculation of the rate reduction bond fee.

15. Rate reduction bond fee adjustment is not a new charge, fee or rate.

An adjustment of the rate reduction bond fee shall not —

- (a) affect the irrevocable nature of the Rate Reduction Bond Financing Order under this Act;
- (b) require approval or action under any other law; or
- (c) constitute a new charge, fee or rate under any law.

16. Bond arranger agreement.

- (1) The Issuer shall, after the Minister has made the Rate Reduction Bond Financing Order, enter into an agreement with one or more bond arrangers or purchasers approved by the Minister to sell the rate reduction bonds in accordance with the Rate Reduction Bond Financing Order.
- (2) The Servicer shall on the same day as the pricing of the rate reduction bonds in accordance with the bond arranger agreement —
 - (a) determine the required amount of the initial rate reduction bond fee;
 - (b) certify that the structuring and pricing of the rate reduction bonds attract and reflect the most favourable charges consistent with market conditions and the terms of the Rate Reduction Bond Financing Order; and
 - (c) file an issuance advice letter with the Minister and the Issuer setting forth the principal amount of rate reduction bonds to be issued, their pricing, net proceeds and all other information in relation to the bonds required by the Rate Reduction Bond Financing Order, including the rate reduction bond fee and the expected savings to customers.
- (3) The Minister shall on the same day as the Minister receives the issuance advice letter, issue to the Issuer —
 - (a) a notice of confirmation that the contents of the issuance advice letter comply with the Rate Reduction Bond Financing Order; or
 - (b) a notice of non-compliance stating the manner in which the contents of the issuance advice letter do not comply with the Rate Reduction Bond Financing Order.

17. Time of issuance of rate reduction bonds.

- (1) Notwithstanding any defect in the transfer by the Corporation of the rate reduction bond property to the Issuer pursuant to section 22(3), the Issuer becomes vested with the rate reduction bond property upon receipt of the notice of confirmation from the Minister.
- (2) The Issuer shall, within eighteen months after receipt of the notice of confirmation from the Minister, issue the rate reduction bonds in accordance with the bond arranger agreement.

18. Rate Reduction Bond Financing Order is irrevocable.

- (1) Subject to subsection 2, the Rate Reduction Bond Financing Order and all the provisions thereof become irrevocable upon the issuance by the Minister of a notice of confirmation in accordance with section 16(3) and remains final and effective requiring no further action by the Minister or any other entity.
- (2) Notwithstanding subsection (1), the Rate Reduction Bond Financing Order may be amended on or after the issuance of a notice of confirmation by the Minister or of the rate reduction bonds under the Order —
 - (a) at the request of URCA, where URCA identifies mathematical inaccuracies; or
 - (b) in accordance with any restrictions and limitations on amendment contained in the Rate Reduction Bond Financing Order.
- (3) Nothing in this Act, or the Rate Reduction Bond Financing Order made pursuant to this Act, shall be interpreted to alter or limit the functions and duties of BPL under the Electricity Act to establish rates, approved by URCA, adequate to pay and perform all of its obligations and contracts.

19. Duration of Rate Reduction Bond Financing Order.

- (1) The Rate Reduction Bond Financing Order remains in effect and unabated —
 - (a) until all rate reduction bonds issued pursuant to such Order have been paid in full;
 - (b) until all ongoing financing costs and amounts to be paid pursuant to such Order to an assignee or financing party under an ancillary agreement are paid or performed in full;
 - (c) notwithstanding the bankruptcy, reorganisation or insolvency of BPL or the Issuer, or any successor or affiliate of BPL or the Issuer; and
 - (d) notwithstanding the commencement of any judicial or non-judicial proceeding in relation to the bankruptcy, reorganisation or

insolvency of BPL or the Issuer, or any successor or affiliate of BPL or the Issuer.

- (2) As long as rate reduction bonds issued pursuant to the Rate Reduction Bond Financing Order remain outstanding, the rate reduction bond fee authorised in such Order shall not be by-passed and shall apply to revenues from all customers connected to the grid whether or not —
 - (a) customers generate their own electricity;
 - (b) customers purchase electric generation services from a provider of electric generation services other than BPL; or
 - (c) the electricity supply system assets continue to be owned by the Corporation or BPL.
- (3) The Minister shall, by order published in the Gazette, notify the public of —
 - (a) the date of redemption of all rate reduction bonds issued under this Act; and
 - (b) the cessation of the collection of the rate reduction bond fee upon the date referred to in paragraph (a).

20. Financing cost.

- (1) The financing cost in relation to rate reduction bonds shall be set out and approved in the Rate Reduction Bond Financing Order.
- (2) The financing cost approved in the Rate Reduction Bond Financing Order shall comprise both upfront financing costs and ongoing financing costs in relation to the rate reduction bonds authorised by the Order.
- (3) For the purposes of this section —
 - (a) upfront financing costs are the fees and expenses incurred to issue rate reduction bonds and include —
 - (i) expenses related to efforts to prepare or obtain approval of the Rate Reduction Bond Financing Order;
 - (ii) fees and expenses related to the structuring, marketing, and issuance of rate reduction bonds, including —
 - (A) legal fees;
 - (B) structural advisory fees;
 - (C) bond arranger fees and expenses, including legal fees;
 - (D) fees, including legal fees, of trustees, Servicer and collateral agent;
 - (E) accounting, advisory and auditing fees;
 - (F) printing and marketing expenses;
 - (G) stock exchange listing fees;

- (H) compliance fees and filing fees;
 - (I) taxes, if any, and payments in lieu of taxes;
 - (J) rating agency fees;
 - (K) the amount required to fund a debt service reserve account or other account established under an indenture, ancillary agreement, or other financing document, relating to the rate reduction bonds;
 - (L) fees and expenses of the Minister's advisers and outside counsel, if any;
 - (M) original issue discount, if any;
 - (N) costs to market bonds to potential investors;
 - (O) miscellaneous expenses;
- (iii) reimbursement to persons of amounts advanced for payment of upfront costs;
- (b) ongoing financing costs are costs that are not upfront financing costs and include —
- (i) principal, interest and redemption premiums payable on rate reduction bonds;
 - (ii) payment required under an ancillary agreement including an amount required to replenish a debt service reserve account or other account established under an indenture, ancillary agreement, or other financing document, relating to the rate reduction bonds;
 - (iii) taxes, payment in lieu of taxes, franchise fees, or licence fees, imposed on rate reduction bond fee revenues;
 - (iv) costs related to administering the Issuer, servicing rate reduction bond property and the rate reduction bonds including costs of calculating —
 - (A) adjustments to the rate reduction bond fee;
 - (B) servicing fees and expenses;
 - (C) administrative fees and expenses;
 - (D) trustee and collateral agent fees and expenses;
 - (E) legal fees and expenses;
 - (F) accounting fees and expenses;
 - (G) rating agency fees; and
 - (H) adjustments to the debt service reserve account, to the extent applicable.
- (3) Notwithstanding any provision of the Rate Reduction Bond Financing Order —

- (a) a qualitative or quantitative limitation by the Minister on the financing cost that is approved for payment in the Rate Reduction Bond Financing Order shall not impair the ability of the Issuer to pay and service the rate reduction bonds in accordance with their terms;
- (b) ongoing financing costs shall include any excess of actual upfront financing costs over the estimate of upfront financing costs included in the principal amount of the rate reduction bonds and approved in the Rate Reduction Bond Financing Order;
- (c) for the purposes of paragraph (b), where any upfront financing costs cannot be reasonably determined before the principal amount of rate reduction bonds is fixed, such financing costs shall be estimated and —
 - (a) the aggregate of such estimates shall be included as an upfront financing cost for the purpose of determining the principal amount of rate reduction bonds to be issued;
 - (b) where the actual upfront financing costs are greater than the estimated upfront financing costs, the difference shall be deemed to be an ongoing financing cost; and
 - (c) where the actual upfront financing costs are less than the estimated upfront financing costs, the proceeds corresponding to such difference shall be used to pay ongoing financing costs.

21. Application of bond proceeds.

- (1) The Issuer shall cause the net proceeds from its issuance of rate reduction bonds to be placed in one or more trust accounts in the name of the Corporation and such proceeds shall be used only for the purposes of —
 - (a) paying or funding upfront financing costs and ongoing financing costs;
 - (b) payment and satisfaction of the rate reduction bond financing liabilities as is provided for in the Rate Reduction Bond Financing Order; and
 - (c) prepaying such part of the rate reduction bonds as may be allowed under the bond agreements.
- (2) The Issuer may, where surplus funds remain in the accounts after payments have been made in accordance with subsection (1), repay such funds to BPL in accordance with section 13 to effect a pro rata reduction of the rate reduction bond fee to grid customers.

PART IV – RATE REDUCTION BOND PROPERTY

22. Creation of rate reduction bond property.

- (1) A vested and presently existing property right, title and interest in and to the rate reduction bond fee shall arise upon the making by the Minister of the Rate Reduction Bond Financing Order and such property right, title and interest shall reside in the Corporation.
- (2) The property right, title and interest referred to in subsection (1) constitutes the rate reduction bond property which shall subsist —
 - (a) notwithstanding that the value or amount of the property is dependent on future acts, including but not limited to —
 - (i) BPL or any successor owner of the electricity supply system assets delivering electric energy or energy services to customers who remain or become connected to the grid;
 - (ii) the imposition and billing of the rate reduction bond fee;
 - (iii) a Servicer performing servicing functions related to the collection of the rate reduction bond fee;
 - (iv) the remittance of all revenues from the collection of electricity charges, inclusive of the rate reduction bond fee, to the waterfall account;
 - (v) the level of future consumption of electric energy; and
 - (b) whether or not the rate reduction bond fee has been imposed, billed, accrued or collected.
- (3) The Corporation shall, upon the issuance by the Minister of a notice of confirmation pursuant to section 16(3), transfer by way of sale, conveyance, assignment or otherwise, the rate reduction bond property to the Issuer.
- (4) The Issuer may, upon the making of and in accordance with the Rate Reduction Bond Financing Order, pledge all or any portion of the rate reduction bond property to secure the payment of —
 - (a) rate reduction bonds and ongoing financing costs; and
 - (b) amounts payable to financing parties, holders of rate reduction bonds, and under any ancillary agreement.
- (5) Upon the issuance and sale by the Issuer of the rate reduction bonds, the rate reduction bond property vests in the owners of the bonds.
- (6) The rate reduction bond property continues to exist until the rate reduction bonds issued pursuant to the Rate Reduction Bond Financing Order are paid in full together with all related and ongoing financing costs.

23. Default.

- (1) Where an event of default occurs with respect to the rate reduction bonds, the owners of the bonds may transfer, sell, convey or assign to any person or entity all or any portion of the rate reduction bond property.
- (2) Where there is a default in any required remittance of the rate reduction bond fee under this Act, a court of competent jurisdiction shall, on application by an interested party and without limiting other remedies available to the applicant, order the sequestration and payment of the revenue components comprising the rate reduction bond fee for the benefit of the owners or pledgees of the rate reduction bonds.
- (3) An order referred to in subsection (2) shall remain in full force and *effective notwithstanding any bankruptcy, re-organisation, or other insolvency proceedings in relation to BPL, URCA, a Servicer or any affiliate thereof or of any other person or entity.*
- (4) The rate reduction bond property, rate reduction bond fee, and the interests of an assignee, bondholder, financing party or any other person in such property or the fee, are not subject to set-off, counter-claim, surcharge or defence —
 - (a) by a Servicer, customer, URCA, BPL or any other person or entity; or
 - (b) *in connection with any default, bankruptcy, re-organisation, or other insolvency proceedings in relation to a person or entity referred to in paragraph (a).*

24. Security interests.

- (1) A pledge of rate reduction bond property, or of a revenue producing contract forming part of a rate reduction bond property, is perfected, valid and binding from the time such pledge is made by the owner of the rate reduction bond property.
- (2) An instrument creating a pledge or pledge lien under this section is perfected on creation and —
 - (a) the instrument need not be submitted for recording with the Registrar of Records; and
 - (b) a notice of pledge or pledge lien may be recorded with the Registrar of Records and on recording of the notice such pledge or pledge lien has priority over any pledge or pledge lien referred to in a notice subsequently recorded with the Registrar of Records.
- (3) The proceeds of rate reduction bond property which are pledged and thereafter received by the owner of the property are, upon such receipt, subject to a pledge lien which is perfected without the requirement of a physical delivery or further act.

- (4) A pledge lien shall be —
 - (a) effective, valid and binding against all parties having claims of any kind in tort, contract or otherwise against the owner of the rate reduction bond property, whether or not a party has notice of the pledge lien; and
 - (b) superior to a judicial lien or any other lien obtained by a party referred to in paragraph (a).
- (5) The description of rate reduction bond property in a pledge, security agreement, or any financing statement, is sufficient only where the description refers to this Act and the Rate Reduction Bond Financing Order creating the rate reduction bond property.
- (6) A pledge of rate reduction bond property is a continuously perfected security interest and a pledge lien has priority over any other lien, created by operation of law or otherwise, that may subsequently attach to such property or the proceeds thereof except where the holder of the pledge lien otherwise agrees in writing.
- (7) A pledgee of rate reduction bond property shall have a perfected security interest in the amount of all rate reduction bond property revenues or other proceeds deposited in any deposit or other account of the Servicer or any other entity where such revenues or proceeds have been commingled with other funds.
- (8) A security interest, other than an interest referred to in subsection (7), that may apply to rate reduction bond revenues or other proceeds that have been commingled shall be terminated when such revenues or proceeds are transferred to a segregated account for an assignee or a financing entity.
- (9) An application of the adjustment mechanism shall not affect the validity, perfection or priority of a pledge, security interest in, or sale or transfer, of rate reduction bond property.

25. Sale of rate reduction bond property.

- (1) A transfer of all or any portion of or interest in rate reduction bond property shall be treated as a true sale, and not as a pledge or other financing, where —
 - (a) the parties in the governing documentation have expressly stated the transfer to be a sale or absolute transfer of the transferor's right, title and interest; and
 - (b) the transaction is approved in the Rate Reduction Bond Financing Order.
- (2) A transfer referred to in subsection (1) shall be perfected, vested, valid and binding, and superior to a judicial or any other lien, from the time when the transfer is made as against —

- (a) the transferor;
 - (b) all parties having claims of any kind in tort, contract or otherwise against the transferor; and
 - (c) and all other transferees of the transferor,
whether or not a party or transferee has notice of the transfer.
- (3) The description of rate reduction bond property in a sale or transfer agreement, or any financing statement, is sufficient only where the description refers to this Act and the Rate Reduction Bond Financing Order creating the rate reduction bond property.
- (4) An instrument creating a transfer under this section is perfected on creation and the instrument need not be submitted for recording with the Registrar of Records.
- (5) The treatment of a transfer as a true sale or absolute transfer of rate reduction bond property to the purchaser shall not be adversely affected or impaired by —
- (a) commingling of revenues or other proceeds from the rate reduction bond fee with other amounts;
 - (b) retention by the seller of —
 - (i) a partial or residual interest in the rate reduction bond property, direct or indirect, subordinate or otherwise;
 - (ii) the right to recover costs associated with taxes, payments in lieu of taxes, franchise fees or licence fees imposed on the collection of the rate reduction bond fee;
 - (c) any recourse the purchaser may have against the seller;
 - (d) indemnification rights, obligations or re-purchase rights made or provided by the seller;
 - (e) the obligation to collect the rate reduction bond fee on behalf of an assignee including, but not limited to, retention by the seller of bare legal title for the purpose of collecting such fee;
 - (f) the treatment of the transfer for tax, financial reporting or other purposes; or
 - (g) any application of the adjustment mechanism.
- (6) An assignee or financing entity shall not, by virtue solely of the transactions referred to in this Act in relation to rate reduction bond property, be deemed to be a public utility or person providing electric service.

26. Filing of financing statement by Issuer.

The Issuer shall, for informational purposes only, cause a financing statement describing a pledge or transfer of rate reduction bond property, and referencing

the Rate Reduction Bond Financing Order and the rate reduction property described therein, to be filed in the Registry of Records.

PART V – FINANCIAL PROVISIONS

27. Funds of the Issuer.

- (1) The funds of the Issuer include —
 - (a) the rate reduction bond property;
 - (b) the rate reduction bond fee;
 - (c) required cash reserves;
 - (d) earnings from the investment and reinvestment of the revenues or assets referred to in (a), (b) and (c); and
 - (e) interest earned on reserve and other accounts.
- (2) The Issuer shall pay from its funds the upfront financing costs and ongoing financing costs in relation to the rate reduction bonds, including —
 - (a) salaries and allowances of employees, officers and agents of the Issuer and other payments for the recruitment and retention of staff; and
 - (b) any other expenses incurred by the Issuer in the performance of its functions under this Act.
- (3) The Issuer shall submit to the Minister an estimate of the expenses and administration costs in respect of the services to be provided by the Issuer in accordance with the Rate Reduction Bond Financing Order.
- (4) The Issuer may impose charges and fees for services of the Issuer only in accordance with the Rate Reduction Bond Financing Order.

28. Reports and audits.

- (1) The Issuer shall keep proper accounts and records of all transactions in relation to the rate reduction bonds issued under this Act, and rate reduction bond property, and prepare quarterly unaudited reports, and an annual report and statement of accounts, in respect of each financial year.
- (2) The Board shall —
 - (a) submit not later than one month after completion a copy of each quarterly report, certified by the Board, to the Minister, the Corporation, BPL, and the Servicer;
 - (b) cause the annual report and statement of accounts to be audited within three months of the end of the financial year —

- (i) by an accounting firm or chartered accountant licensed and registered in The Bahamas;
 - (ii) in accordance with International Financial Reporting Standards and other standards promulgated by the International Accountants Standards Board; and
 - (c) submit not later than four months after completion of the audit a copy of the annual report and audited statement, certified by the Board, to the Minister, the Corporation, BPL, and the Servicer.
- (3) The annual report shall contain for the relevant financial year information on the financial affairs of the Issuer and there shall be appended to the report —
- (i) an audited balance sheet; and
 - (ii) an audited statement of income and expenditure.
- (4) The Issuer shall, not later than four months after completion of the audit —
- (a) forward the quarterly reports and annual audited accounts to each holder of record of the rate reduction bonds; and
 - (b) make the quarterly reports and annual audited accounts available and accessible to bondholders and the public through a website.

PART VI – ROLE OF URCA

29. Functions and powers of URCA.

- (1) As the independent regulator of the electricity sector, URCA shall monitor and investigate compliance with this Act and the Rate Reduction Bond Financing Order.
- (2) The functions, powers and duties of URCA include, but are not limited to, the examination of the books and records of —
 - (a) BPL, the Issuer, the Servicer, a third party biller, a financing entity; or
 - (b) any other person or entity that owns rate reduction bond property or has the right to impose, bill or collect the rate reduction bond fee until all outstanding rate reduction bonds and their related and ongoing financing costs have been paid in full.
- (3) URCA, or a successor regulator, shall not in the exercise of their powers as regulator —
 - (a) consider or treat rate reduction bonds issued pursuant to the Rate Reduction Bond Financing Order as being the debt of any owner of the electricity supply system assets;

- (b) consider or treat the rate reduction bond fee payable under the Rate Reduction Bond Financing Order as being the revenues of any owner of the electricity supply system assets;
 - (c) consider or treat the rate reduction bond financing liabilities or ongoing financing costs specified in the Rate Reduction Bond Financing Order as being costs of any owner of the electricity supply system assets or of any affiliate of the owner;
 - (d) determine that any action, consistent with the Rate Reduction Bond Financing Order, taken by an owner of the electricity supply system assets is unjust or unreasonable from a regulatory or rate-making perspective; or
 - (e) have any power in relation to the setting or calculation of the rate reduction bond fee.
- (4) Subject to section 3 and the limitations contained in the Rate Reduction Bond Financing Order, nothing in this section shall prevent or preclude URCA or any successor regulator —
- (a) applying the adjustment mechanism in accordance with the mathematical formulation prescribed in section 13;
 - (b) investigating the compliance of any owner of the electricity supply system assets, or financing entity, with the terms and conditions of the Rate Reduction Bond Financing Order and requiring compliance upon a finding of default; or
 - (c) imposing regulatory sanctions on any owner of the electricity supply system assets for failure to comply with the terms and conditions of the Rate Reduction Bond Financing Order or the requirements of this Act.
- (5) Nothing in this Act shall prevent URCA or a successor regulator, in setting other rates for an owner of the electricity supply system assets, taking into account the collection by such owner of —
- (a) servicing fees in excess of incremental costs of providing servicing services; or
 - (b) administration fees in excess of incremental costs of providing administration services.

PART VII – MISCELLANEOUS

30. Rate reduction bonds are non-recourse financing instruments.

- (1) Rate Reduction bonds issued pursuant to the Rate Reduction Bond Financing Order under this Act are without recourse to the credit or any

assets of the Government, the Corporation, BPL or the Issuer other than —

- (a) the rate reduction bond property; and
 - (b) other assets and revenues of the Issuer as specified in the Rate Reduction Bond Financing Order.
- (2) Rate reduction bonds issued pursuant to the Rate Reduction Bond Financing Order under this Act do not in any manner constitute a debt, general obligation, or pledge of the faith and credit or the taxing power, of the Government or any entity or agency of the Government. All rate reduction bonds issued under this Act shall contain a statement stating that: **“Neither the full faith and credit nor the taxing power of the Government of the Commonwealth of The Bahamas is pledged to the payment of the principal of, or interest on, this bond.”**
- (3) No taxes shall be imposed by the Government or any entity or agency of Government for the purpose of the payment of the principal of, or interest on, rate reduction bonds issued under this Act.

31. Exemption from taxation of the Issuer and the rate reduction bonds.

- (1) Pursuant to section 5, the Issuer in issuing rate reduction bonds under this Act is deemed to perform an activity in promotion of the public benefit —
- (a) by providing for the eventual reduction of electricity charges to the public and the improvement of their welfare and prosperity; and
 - (b) through facilitation of a safe, least cost, efficient and modern electricity supply system in The Bahamas.
- (2) The Issuer in performing its activities under this Act shall be exempt from payment of taxes and assessments upon —
- (a) any property acquired or controlled by the Issuer;
 - (b) the activities of the Issuer in relation to the use of property referred to in paragraph (a); and
 - (c) any income derived from property referred to in paragraph (a).
- (3) Rate reduction bonds, their purchase, transfer, pledge, and all income derived from such bonds, shall at all times be exempt from taxation.

32. Duties of financing entities and owners of electricity supply system assets.

- (1) The failure of a financing entity to apply the proceeds of rate reduction bonds, or the proceeds from the sale of rate reduction bond property, in a reasonable, prudent and appropriate manner and in accordance with this Act shall not invalidate, impair or affect any —
- (a) Rate Reduction Bond Financing Order;

- (b) rate reduction bond property;
 - (c) rate reduction bond fee; or
 - (d) rate reduction bonds.
- (2) An owner of the electricity supply system assets, a Servicer, third-party biller and any other entity that bills or collects electricity revenues shall —
- (a) simultaneously impose, bill and collect any rate reduction bond fee applicable to customers in the area of supply who are connected to, and take electric delivery service from the electricity supply system assets, comprising the grid;
 - (b) remit all revenues, inclusive of the rate reduction bond fee, to the waterfall account;
 - (c) terminate service to customers for non-payment of the rate reduction bond fee on the same basis as termination of service is permitted for non-payment of electricity charges;
 - (d) exercise all enforcement rights of an owner or pledgee of the rate reduction bond property for the benefit of such owner or pledgee; and
 - (e) remit any rate reduction bond property revenues to the owners or pledgees of the rate reduction bond property.

33. Government undertaking.

- (1) The Government undertakes and agrees with the owners of rate reduction bonds, assignees, and all financing entities, that the Government will not in any way take or permit any action that —
- (a) limits, alters or impairs the value of rate reduction bond property;
 - (b) except as required by the adjustment mechanism, reduces, alters or impairs the rate reduction bond fee imposed, collected and remitted for the benefit of the owners of rate reduction bonds, assignees and financing entities;
 - (c) limits or impairs the right of the Servicer to the rate reduction bond fee until such time as all principal, interest and redemption premiums in respect of the rate reduction bonds, and all ongoing financing costs and amounts due to assignees or financing parties under any ancillary agreements, are fully paid and performed.
- (2) The Issuer or a person who, on behalf of the Issuer, issues rate reduction bonds in accordance with the Rate Reduction Bond Financing Order may include the pledge set out in subsection (1) in the rate reduction bonds so issued and in any ancillary agreement and documentation in relation to the issuance and marketing of such rate reduction bonds.

34. Regulations.

The Minister may make regulations solely to carry into effect the purposes of this Act.

35. Enactments amended.

The enactments specified in the first column of the *Second Schedule* are amended in the manner indicated in the second column of the said *Second Schedule*.

FIRST SCHEDULE (Section 6(3))

CONSTITUTION AND PROCEDURE OF THE BOARD OF THE ISSUER

1. Constitution of the Board.

- (1) The first Board of Directors shall comprise three members, each a qualified professional with expertise in financial matters, appointed by the Minister by instrument in writing as follows —
 - (a) one shall serve for a term ending three years from the first day of January next succeeding his appointment;
 - (b) one shall serve for a term ending four years from the first day of January next succeeding his appointment; and
 - (c) one shall serve for a term ending five years from the first day of January next succeeding his appointment.
- (2) The successors to the first directors shall each serve for a fixed term of four years.
- (3) A director shall continue in office until a successor has been appointed.
- (4) The Minister shall appoint the first chairman from among the Board members.

2. Meetings.

- (1) The Board of Directors shall meet at least once per quarter and additional meetings of the Board may be called by the chairman as necessary or expedient for the transaction of business.
- (2) The chairman shall preside at all meetings of the Board and —
 - (a) may call an emergency meeting of the Board at any time the chairman deems necessary; and
 - (b) shall call an emergency meeting within seven days of the receipt by the chairman of a written request to do so signed by a director.
- (3) The successor directors shall elect from among themselves a member to act as chairman.
- (4) Any one or more of the directors may participate in a meeting of the Board by means of a conference telephone call, or similar communications equipment, which —
 - (a) allows all participants in the meeting to hear each other at the same time; and
 - (b) shall be deemed to constitute presence in person at a meeting.

3. Quorum.

A majority of the directors shall constitute a quorum for the transaction of any business, or the exercise of any power or function, of the Issuer.

4. Delegation.

The Board may delegate in writing to one or more of its directors, or to an officer, employee or agent of the Issuer, such powers and duties as the Board may deem to be proper.

5. Vacancy.

The Minister/Corporation shall, in the event of a vacancy occurring in the office of a director by death, removal, resignation or otherwise, appoint a successor to serve for the balance of the unexpired term.

6. Resignation of directors.

A director may at any time, by instrument in writing addressed to the Minister, resign his directorship and from the date of receipt of such instrument by the Minister such director ceases to be a director.

7. Removal of director.

The Minister may revoke the membership on the Board of a director where such director —

- (a) has been absent from meetings of the Board for a period longer than three consecutive months without the permission of the Board;
- (b) has become bankrupt or made an arrangement with his or her creditors;
- (c) is incapacitated by physical or mental illness; or
- (d) is otherwise unable or unfit to discharge the functions of a member.

8. Notice in the Gazette.

The Minister shall cause to be published in the *Gazette* the appointment and cessation of appointment of each director.

9. Seal.

The seal of the Issuer —

- (a) shall be kept in the custody of the chairman or such other officer as the Board may approve; and
- (b) may be affixed to instruments pursuant to a resolution of the directors.

10. Minutes.

Minutes in proper form of each meeting of the Board shall be kept by the secretary or such officer as the Board appoints for the purpose and shall be *confirmed in writing at the next Board meeting.*

11. Fiduciary duties of directors.

The directors have —

- (a) a fiduciary duty to —
 - (i) act in the interests of the Issuer including its creditors, the owners of the rate reduction bonds;
 - (ii) ensure payment of the rate reduction bonds sufficient to maintain a reasonable coverage margin of scheduled debt service in accordance with the terms of the approved financing documents; and
- (b) such other duties as may be specified in the organisational documents, bond arranger agreement and other agreements of the Issuer.

12. Remuneration.

A director shall be compensated in accordance with market norms and is entitled to reimbursement for actual and necessary expenses occurred in the performance of the director's official duties.

SECOND SCHEDULE (Section 35)

ENACTMENTS AMENDED

Value Added Tax Act (<i>No. 32 of 2014</i>)	Insert in Part I of the Second Schedule immediately after item (14) a new item (15) as follows — “(15) any transaction or activity falling within the meaning of subsections 31(2) or (3) of the Electricity Rate Reduction Bond Act, 2015.”.
Stamp Act (<i>Ch. 370</i>)	Insert in the Second Schedule immediately after item number 22 a new item number 23 as follows — “23 instruments in relation to a transaction or activity falling within the meaning of subsections 31(2) or (3) of the Electricity Rate Reduction Bond Act, 2015.”.