



# **PRELIMINARY DETERMINATION ON FEES FOR THE ELECTRICITY SECTOR IN THE BAHAMAS**

**Issue Date: July 20, 2016**

**Response Date: August 19, 2016**

**ES 01/2016**

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## **1. Introduction**

The Utilities Regulation and Competition Authority (URCA) is the regulator and competition authority for the Electricity Sector (ES) in The Bahamas. URCA has regulatory remit for all persons who generate, transmit, distribute or supply electricity within, into, from or through The Bahamas. URCA's powers and functions are set out in the Electricity Act, 2015 (EA) and includes the power to issue regulatory and other measures for the purpose of giving effect to the electricity sector policy objectives established thereunder.

The main goal and objective of the ES policy is the creation of a regime for the supply of safe, least cost, reliable and environmentally sustainable electricity throughout The Bahamas. The primary role of URCA is the regulation of the ES in accordance with the goals, policy objectives and principles underpinning the national energy and electricity sector policies. In this regard, URCA shall, inter alia, determine and assess fees on licensed entities as necessary to cover the costs allocable to the regulation of the ES.

URCA considers it important to emphasize that this Preliminary Determination is specific to the types of fees and charges URCA may levy in relations to the ES. It does not set out the level of fees to be charged or the methodology used by URCA to calculate such fees. URCA therefore signals its intent to publish the level of fees to be charged and the methodology used to calculate such fees in the URCA Fee Schedule.

In accordance with sections 54(2) and 64(1)(b) of the EA, URCA now sets out in this Preliminary Determination the types of fees and charges it proposes to levy upon licensees in the ES.

### **1.1 How to Respond**

URCA invites and welcomes representations from licensees, members of the public and interested parties on the matters set out in this Preliminary Determination.

Consistent with the procedure set out in section 64 of the EA, licensees, members of the public and interested parties may make representations on any matter contained in this Preliminary Determination and may do so in writing to URCA. Such representations must be received by URCA within thirty (30) calendar days from the publication of this Preliminary Determination.

**The deadline for receiving written submissions and comments is 5:00 p.m. on August 19, 2016.**

Such written submissions and comments should be submitted to URCA either:

- (i) by hand to: the Chief Executive Officer, Utilities Regulation and Competition Authority, Frederick House, Frederick Street, Nassau, Bahamas; or
- (ii) by email to: [info@urcabahamas.bs](mailto:info@urcabahamas.bs); or
- (iii) by mail to: P.O. Box N-4860, Nassau, Bahamas or
- (iv) by facsimile to: (242) 393-0237.

After the period for representations closes, URCA will carefully consider such representations made and shall make its Final Determination setting out the finalised text of the types of fees to be levied by URCA.

The Final Determination will be published within 30 calendar days from the deadline for submission of representations.

## **1.2 Structure of the Remainder of this Document**

The remainder of this document is set out as follows:

Section 2: Background – sets out the background to the issuance of this Preliminary Determination;

Section 3: Regulatory Framework – sets out the framework under which URCA has exercised its powers to issue this Preliminary Determination;

Section 4: Types of Fees and Charges – sets out the types of fees and charges URCA proposes to levy; and

Section 5: URCA’s Preliminary Determination.

## **2. Background**

In this Section, URCA sets out the background to the issuance of this Preliminary Determination.

On January 28, 2016, the EA came into operation which conferred on URCA the regulatory and competition authority functions for the ES in The Bahamas. URCA may by determination impose fees or charges for, inter alia, services it renders in the performance and exercise of its powers and functions under the EA. In this regard, the EA also prescribes the types of fees and charges that URCA may impose.

URCA is required to adhere to the high level principles of transparency, fairness and non-discrimination when introducing a regulatory or other measure. URCA considers the imposition of types of fees and charges applicable to the ES to be a regulatory measure. Subject to this Preliminary Determination process, URCA will impose certain types of fees and charges by determination which requires URCA to firstly consult persons with sufficient interest in the subject matter of the determination.

In light of the foregoing, URCA now issues this Preliminary Determination in order to receive representations from licensees, members of the public and interested parties prior to making a Final Determination.

### **3. Regulatory Framework**

This Section sets out the regulatory framework under which URCA has exercised its powers to issue this Preliminary Determination.

Section 22 of the EA establishes URCA as the independent regulator of the ES and empowers it to exercise and perform its functions and powers in accordance with the provisions of the EA.

Section 37(1) of the EA provides that the primary role of URCA is the regulation of the electricity sector in accordance with the goals, objectives and principles underpinning the national energy and electricity sector policies.

Section 37(2)(l) of the EA provides that URCA, in the regulation of the sector shall determine and assess fees on licensed entities as necessary to cover the costs allocable to the regulation of the electricity sector.

Section 38(3)(a) of the EA provides that URCA may, for the purpose of carrying into effect the sector policy objectives, issue regulatory and other measures, including making determinations in accordance with section 64 of the EA.

Section 54(2) of the EA provides that URCA may by determination impose fees or charges upon licensees.

Section 64(1)(b) of the EA provides that URCA may upon its own motion where it has reason to believe that a determination is necessary, make a determination in relation to any matter in respect of which the EA provides for URCA to “determine” or to make a “determination”.

Section 64(3) of the EA provide that URCA shall in making a determination consult persons with sufficient interest in the subject matter of the determination and provide reasons in writing for the determination.

#### **4. Types of Fees and Charges**

This Section sets out the types of fees and charges that can be levied by URCA in pursuance of its functions under the EA.

The fees and charges determined and levied by URCA must be set on an objective, non-discriminatory, transparent and proportionate basis. The URCA related fees and charges that URCA proposes to levy are the statutory fees as contained in section 54(2) of the EA and are listed below:

- (i) charges for services rendered by URCA in the performance and exercise of its functions and powers under the EA;
- (ii) fees for the processing of any application to URCA required under the EA;
- (iii) fees for providing copies of documents;
- (iv) annual URCA fees, based on the licensee's relevant turnover for the year in question;
- (v) fees for the processing of merger applications under section 57 of the EA and related adjudications and orders under section 65 of the EA;
- (vi) fees and charges for administration services rendered by URCA in the performance and exercise of URCA functions and powers under the EA.

Under the Third Schedule of the Utilities Appeal Tribunal Act, 2009 (UAT Act), URCA is also required to levy and collect the Tribunal Fee from all licensees or regulated persons in the regulated sector. While URCA is responsible for billing and collecting this type of fee, this is a "pass-through" fee to be paid to the Registrar of the Utilities Appeal Tribunal in order to fund the activities of the Tribunal in the discharge of its functions and powers.

Therefore, in addition to the URCA related fees as set out above, the Tribunal Fee, which will be developed by the Tribunal, will also be levied by URCA as a type of fee for licensees in the ES.

## 5. Preliminary Determination

This Preliminary Determination is issued by the Utilities Regulation and Competition Authority (“URCA”) pursuant to section 64 of the Electricity Act, 2015 and hereby gives notice that URCA proposes to issue a Final Determination in the terms set out herein.

**WHEREAS** on January 28, 2016, the Electricity Act, 2015 (EA) came into operation;

**WHEREAS** section 22 of the EA established URCA as the independent regulator of the electricity sector (ES) and empowers it to exercise and perform its functions and power in accordance with the provisions of the EA;

**WHEREAS** section 37(1) of the EA provides that the primary goal of URCA is the regulation of the electricity sector in accordance with the goals, objectives and principles underpinning the national energy and electricity sector policies;

**WHEREAS** section 37(2)(l) of the EA provides that URCA, in the regulation of the sector shall determine and assess fees on licensed entities as necessary to cover the costs allocable to the regulation of the electricity sector.

**WHEREAS** section 38(3)(a) of the EA provides that URCA may, for the purpose of carrying into effect the sector policy objectives, issue regulatory and other measures, including making determinations in accordance with section 64 of the EA;

**WHEREAS** section 54(2) of the EA provides that URCA may by determination impose fees or charges upon licensees;

**WHEREAS** paragraph 3 of the Third Schedule of the Utilities Appeal Tribunal Act, 2009 (UAT Act) the Registrar of the Tribunal shall, at the direction of the Tribunal, develop and subsequently publish an estimate of the anticipated relevant expenditure for the Tribunal for the relevant period of twelve months ending December 31 so that URCA may levy and collect the Tribunal Fee; and

**WHEREAS** paragraph 5 of the Third Schedule of the UAT Act requires URCA to demand and collect a Tribunal Fee from all licensees or regulated persons in the regulated sector.

### **URCA HEREBY DETERMINES AS FOLLOWS:**

1. URCA shall levy the following types of fees and charges pursuant to the provisions of the Electricity Act:

- (i) charges for services rendered by URCA in the performance and exercise of its functions and powers under the EA;
  - (ii) fees for the processing of any application to URCA required under the EA;
  - (iii) fees for providing copies of documents;
  - (iv) annual URCA fees which shall be adequate to cover URCA's costs of regulating the electricity sector in the relevant year, allocated to licensees in the sector in proportion to each licensee's relevant turnover, as determined in accordance with section 2 of the EA, for the year in question;
  - (v) fees for the processing of merger applications under section 57 of the EA and related adjudications and orders under section 65 of the EA; and
  - (vi) fees and charges for administration services rendered by URCA in the performance and exercise of URCA functions and powers under the EA.
2. URCA shall levy, demand and collect a Tribunal Fee pursuant to the provisions of the Utilities Appeal Tribunal Act.
3. The amount of each type of fee stated above shall be as notified by URCA by publication in URCA's Fee Schedule published annually on its website, and otherwise as required from time to time.

**IT IS HEREBY NOTIFIED** that licensees, members of the public and interested parties may make representations on any matter contained in this Preliminary Determination by **5:00 p.m. on August 19, 2016.**