



The Utilities Regulation and Competition Authority Alternative Dispute Resolution (ADR) Scheme for Disputes between Licensees and Independent Power Producers for the Electricity Sector in The Bahamas

Consultation Document

ES 08/2021

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1. Introduction

The Utilities Regulation and Competition Authority (“URCA”) is the independent regulator for the electricity sector (“ES”) in The Bahamas. URCA is responsible for the licensing of all generation, transmission, distribution and supply of electricity within, into, from or through The Bahamas. URCA regulates the ES through the Electricity Act, 2015 (“EA”), which sets out, inter alia, URCA’s powers and obligations in relation to the regulation of the ES.

URCA is mandated under section 40(10) EA to establish “one or more alternative dispute resolution (“ADR”) schemes for disputes between [...] licensees and independent power producers.”

Independent Power Producers (“IPPs”) are individuals licensed by URCA pursuant to section 46 EA to generate additional energy to the grid pursuant to a negotiated power purchase and grid interconnection agreement with a Public Electricity Supplier licensee. Licensees include the holder of a licence issued by URCA under the EA.

Integration of various electricity service providers such as IPPs into The Bahamas’ electricity market structure as envisioned under the EA is intended to have the effect of fulfilling the electricity sector policy and objectives by assisting in the creation of a regime for the supply of safe, least cost, reliable and environmentally sustainable delivery of electricity throughout The Bahamas.

URCA considers that with the development and integration of various electricity service providers as envisioned by the EA, as in the normal course of business, it can be reasonably expected that disputes will arise. URCA further considers that it is widely recognized and accepted that benefits accrue to an industry that possesses a well-structured, robust and transparent set of schemes and procedures for the timely and effective resolution of disputes. As such, and in accordance with the requirements of section 40(10) of the EA, URCA proposes under this consultation process to develop its Alternative Dispute Resolution (“ADR”) Scheme for the ES which is encapsulated in the Scheme annexed to this consultation document (“the Draft Rules”).

The scheme contained in the ADR Guidelines will specifically address disputes escalated to URCA consequential to unresolved disputes between licensees and IPPs submitted to URCA by such parties. In line with URCA’s statutory mandate, URCA will implement the ADR schemes and procedures which are designed to comply with the legislation while at the same time provide a simple, timely and cost-effective process for the affected parties.

1.1 Background

Since the establishment of the new regulatory regime for the ES in January 2016, URCA has resolved disputes in the sector in an ad hoc manner, without formal procedures for affected parties to follow (that is, applications, submission of information, clear timelines for resolution of disputes, etc., have varied from case-to-case).

The EA, however, mandates that URCA establish one or more ADR schemes to resolve disputes between licensees and independent power producers. On 19th June 2019, URCA published the Utilities Regulation and Competition Authority Electricity Sector Alternative Dispute Resolution Guidelines Consultation Document – ES 04/2019¹ for public consultation that proposed an ADR scheme for the ES that included procedures for mediation, arbitration and regulatory measures for resolving disputes between consumers and licensees and between licensees. URCA invited written comments and submissions from members of the public, licensees and interested parties on the issues contained in that Consultation Document to be submitted to URCA by 19th July 2019.

URCA received comments from Bahamas Power and Light Company Limited (“BPL”) and pursuant to section 9(1)(b) of the URCA Act, URCA gave due consideration to comments made by members of the public, licensees and interested parties prior to introducing any regulatory measure of public significance. Having regard to the substantive comments received and objections raised in the responses provided and what URCA considers to be cogent reasoning in support of certain objections, and further having regard to the introduction of new licensees who did not have an opportunity to comment during URCA’s first consultation, URCA discontinued the Determination process in relation to the Electricity Sector Alternative Dispute Resolution Schemes.

Remaining cognizant of its obligation under the EA implement an ADR scheme for the ES, URCA indicated in its 2020 Annual Plan its commitment to commencing the process to implement ADR schemes in accordance with the requirements of section 40 of the EA². In accordance with URCA’s annual plan, it was anticipated that the ADR Scheme for the ES would be in effect by the close of T1, 2020 with the present circumstances in relation to the COVID-19 global pandemic having delayed this project.

URCA now issues this Consultation document on its proposed ADR scheme for the ES for public consultation.

¹ ES-ADR-Guidelines-Consultation-Document-19-June-2019-2.pdf (urcabahamas.bs)

² “URCA 02/2020 URCA Annual Report 2019 and 2020 Annual Plan.” *Utilities Regulation and Competition Authority*, 08 May 2020, pg. 31 <https://www.urcabahamas.bs/wp-content/uploads/2020/05/URCA-2019-Annual-Report-and-2020-Annual-Plan-.pdf>

1.2 URCA's consideration of the main goal and governing principles and objectives of the Energy Sector and Electricity Supply Regime

Section 7 of the Electricity Act mandates that, in creating regulatory and other measures that introduce or amend a significant government policy or regulatory measure, including but not limited to the national energy policy, URCA shall *“(i) specify the electricity sector policy objective that is advanced by the policy or measure; and (ii) demonstrate compliance with guidelines set out in paragraphs (a), (b) and (c)”*.

In evaluating the proposed ADR scheme against the requirements of section 7 of the EA, URCA considers the action proposed to be taken is made with a view to implementing the main goal and governing principles and objectives of the sector policy and the electricity supply regime.

Specifically, URCA considers that the objectives set out in section 6 (2)(e) and 6 (2)(l) of the EA are advanced by the introduction of ADR schemes. These objectives respectively relate to the introduction of a structure for the ES that is overseen by an independent regulator and a structure that balances the interest of and affords opportunities for input from all stakeholders and honours contractual commitments and encourages investment. In particular, URCA considers that benefits accrue to an industry that possesses a well-structured, robust and transparent set of schemes and procedures for the timely and effective extra-judicial alternative to the resolution of disputes.

Moreover, URCA considers that given the mandatory language as set out in section 40(10) of the EA, the introduction of ADR schemes is mandated by the EA and the process proposed in the consultation document is done so in a manner that is transparent, fair and non-discriminatory. Given the foregoing, URCA does not consider that market forces (i.e., the status quo) or the ad-hoc manner that has been employed to date is sufficient in itself to fulfil the requirements of the EA.

1.3 Objectives of this Consultation

URCA issues this consultation document on the draft ADR Scheme for the ES which is encapsulated in the Rules annexed to this consultation document (“the Draft Rules”). URCA proposes to apply the Draft Rules to licensees who have been issued a Public Electricity Supplier License (“PESL”), Authorised Public Electricity Supplier License (“APESL”) or Independent Power Producer License (“IPPL”).

The ADR scheme aims to provide practical guidance for the step-by-step handling of disputes between IPPs and licensees and should also inform the parties to a dispute of the level of response and action to be expected from URCA in the ADR process. In this consultation process,

URCA is focused on establishing a scheme that is objective, fair, timely, transparent, and suitable to the relevant dispute so that parties can be confident that their dispute will be effectively and efficiently resolved.

Accordingly, the objectives of the ADR scheme as contained in the Draft Rules include, but are not limited to the following: -

- to achieve the policy objectives of the Electricity Act to further the interest of consumers and sector participants;
- to fulfil URCA’s statutory mandate to establish ADR schemes to resolve disputes between licensees and independent power producers; and
- to ensure that parties to a dispute have access to an independent, timely, fair and cost-effective extra-judicial resolution to disputes between licensees and IPPs.

URCA considers the proposed regulatory measure to be of public significance with the potential to affect members of the public, licensees and other stakeholders throughout The Bahamas in different ways. Therefore, pursuant to section 41(2) EA, URCA issues this consultation document to afford persons with sufficient interest or who are likely to be affected by the outcome of to comment. URCA, therefore, encourages full participation in this consultation process by all stakeholders and interested parties.

1.4 Structure of the Document

The remainder of this consultation document is structured as follows:

- Section 1: Continues by outlining, *inter alia*, how persons may respond to and participate in this consultation process;
- Section 2: Outlines the legal basis and framework under which URCA is conducting this consultation process;
- Section 3: Broadly describes the ADR scheme URCA proposes to implement as fully set out in the Draft Rules;
- Section 4: Describes URCA’s “Next Steps” in the consultation process;

Electricity Sector Alternative Dispute Resolution (ADR) Scheme for Disputes between Licensees and Independent Power Producers

- Part 1: Outlines the procedure surrounding the commencement of disputes utilizing URCA's ADR Scheme
- Part 2: Outlines the procedure for progress of a dispute utilizing URCA's ADR Scheme
- Part 3: Provides Draft Mediation Rules under the ADR Scheme;
- Part 4: Provides Draft Arbitration Rules under the ADR Scheme;
- Annex A: Forms; and
- Annex B: Summarizes the questions raised under this consultation document.

1.5 Responding to this Consultation

URCA invites written comments and submissions from members of the public, licensees and interested parties on the issues raised in this consultation document. Comments and submissions can be shared on any aspect of this consultation document, and in so far as it is possible, each section has been numbered to facilitate easy reference. Persons may deliver their written comments or submissions to URCA's Director of Utilities and Energy either:

- by hand, to URCA's office at Frederick House, Frederick Street, Nassau, Bahamas; or
- by mail, to P. O. Box N-4860, Nassau, Bahamas; or
- by fax, to (242)-393-0237; or
- by email, to info@urcabahamas.bs

All comments and submissions to this consultation document should be **submitted on or before 9 August 2021**.

URCA's preferred format for written responses is as follows:

- Respondent's name;
- Name of organisation (or state whether the respondent is a consumer);
- Email address or other address of respondent;
- Response to Question 1;
- Response to Question 2, etc.; and
- Any other matters that you believe URCA should consider under the instant Consultation process.

The questions asked in this consultation document have also been listed at Annex B for ease of reference. Full explanation to the answers submitted or views held by respondents on any of the issues raised or proposals made in this Consultation would also be helpful.

1.6 Confidentiality

URCA believes that, as a matter of transparency and good regulatory practice, it is important for the public and interested parties to this Consultation process to have sight of the views and positions expressed by all respondents. As such, as soon as reasonably practicable after the close of the response date for this Consultation, URCA intends to publish all responses on the URCA website.

However, URCA may treat as confidential responses that are clearly marked (in part or full) as “Confidential”. Explanations should be provided to justify any information that is submitted on a confidential basis. In such circumstances, a redacted version should also be submitted to URCA. URCA has the sole discretion to determine whether to publish any submission marked “Confidential”.

1.7 Intellectual Property

Copyright and all other intellectual property that form any part of a response to this Consultation will be assumed to be licensed to URCA for its use during this Consultation process.

2. Legal Framework

The EA empowers URCA with the function as the Regulator for the ES in The Bahamas, with implementing the ES regulatory framework and enforcing provisions of the EA and/or licensee's licence. As a public body, URCA must exercise this regulatory function within the remit of and consistent with its statutory authority.

This section of the consultation document, therefore, sets out in detail the legislative provisions under which URCA proposes to establish and implement the proposed ADR schemes.

Section 6(1) of the Electricity Act establishes that *"the main goal and objective of the electricity sector policy shall be the creation of a regime for the supply of safe, least cost, reliable and environmentally sustainable electricity throughout The Bahamas"*.

Section 38 of the Electricity Act empowers URCA to give effect to the electricity sector policy objectives; Section 38(3) provides, inter alia:

"...For the purposes of carrying into effect the sector policy objectives, URCA may issue regulatory and other measures, including without limitation –

- (c) issuing regulations, directions, decisions, statements, instructions and notifications; and*
- (k) exercising any other power granted to URCA by this Act or any other law".*

Section 40(10) of the Electricity Act states that, *"URCA shall ... establish one or more alternative dispute resolution (ADR) schemes for disputes between licensees and consumers and between licensees and independent power producer or approve in accordance with subsection (12) a scheme or schemes proposed by licensees..."*

Under section 40(11) of the Electricity Act, ADR Schemes may consist of the following:

- (a) mediation, conducted by URCA, or persons appointed by URCA or persons appointed by the parties to a dispute, or by a third party;
- (b) arbitration by an expert, of specific identified matters having limited scope, appointed by URCA, or the parties to the dispute, or by a third party; or
- (c) such other methods of ADR as URCA may determine.

An ADR scheme established under section 40(11)(b) of the Electricity Act (i.e. arbitration of specific identified matters) may provide for binding decisions, including interim and conservatory measures.

Under section 40(12) of the Electricity Act, in establishing alternative dispute resolution schemes, URCA shall request and take into account proposals from licensees.

Under section 40(16) of the Electricity Act, an ADR scheme established by URCA shall not prejudice rights existing under any other provision of the Electricity Act or any other law.

The cumulative effect of the foregoing provides the legislative framework by which URCA may ensure its statutory mandate to establish ADR schemes and the relevant procedures to resolve disputes between licensees and independent power producers is realized and be able to take the appropriate regulatory action to resolve such disputes where efforts between the parties to satisfactorily and amicably resolve their disputes are not successful.

3. Summary of Comments and URCA’s Responses to URCA’s Initial Consultation in Relation to Proposed ADR Guidelines for the Electricity Sector

On 19th June 2019, URCA published the Utilities Regulation and Competition Authority Electricity Sector Alternative Dispute Resolution Guidelines Consultation Document – ES 04/2019³ for public consultation that proposed an ADR scheme for the ES that included procedures for mediation, arbitration, and regulatory measures for resolving disputes between consumers and licensees and between licensees.

URCA sought the views from members of the public, licensees and interested parties in relation to establishing an ADR Scheme for the Electricity Sector. URCA hereby publishes a summary of the responses to that Consultation document, its analysis and comments on the responses. URCA has duly considered all written submissions proffered; however, URCA has not included every consideration in this section. The absence of a response by URCA to any comment raised by a Respondent does not indicate URCA’s agreement in part or in whole with the comment, nor does it suggest URCA’s lack of consideration or finding that the comment was without merit.

GENERAL COMMENTS RECEIVED ON THE CONSULTATION		
RESPONDENT	SUMMARY OF RESPONSE	URCA’S ANALYSIS AND COMMENT
BPL	<p>BPL raised its concern that URCA’s consultation document did not comply with the requirements of section 7 of the EA in that:</p> <ul style="list-style-type: none"> a) URCA would be obligated to explain in the consultation document whether market forces (i.e. the status quo) could have been relied upon as the means for achieving the statutory principles and objectives on ADR; b) URCA would be required to carry out a regulatory impact assessment specifying what it 	<p>URCA notes BPL’s comments regarding the requirements of section 7 of the EA. URCA considers that in implementing this regulatory measure, the requirements set out in section 7 of the EA have been satisfied, however, for ease of reference, URCA has in the current consultation document set out a fulsome analysis of its consideration of the requirements of section 7 of the EA in section 1.2 of this consultation document.</p>

³ ES-ADR-Guidelines-Consultation-Document-19-June-2019-2.pdf (urcabahamas.bs)

	<p>considers to be the costs and implications to URCA, licensees and consumers;</p>	
	<p>BPL raised its concern as to whether URCA's original consultation document achieved its stated objective and whether it introduces a comprehensive ADR scheme and method into the electricity sector in that:</p> <ul style="list-style-type: none"> a) URCA's consultation document is for "guidelines" rather than schemes as set out in section 40 of the EA; b) URCA's consultation document incorrectly proposes an ADR scheme to cover licensee to licensee disputes which are not provided for under section 40(11)(b) of the EA without going through a determination process in accordance with section 40(11)(c) of the EA; c) URCA's consultation document incorrectly proposes an ADR scheme to allow for Arbitration to be referred to an arbitration panel without going through a determination process in accordance with section 40(11)(c) of the EA. 	<p>URCA notes BPL's comments and concerns. URCA has substantively amended the format of its current consultation document to respectively address the concerns raised as follows:-</p> <ul style="list-style-type: none"> a) URCA's current consultation document has been amended to clearly outline URCA's ADR scheme which is comprised of rules that address (i) rules to set out URCA's handling of disputes made; (ii) rules to govern mediation; and (iii) rules to govern arbitration; b) URCA's current consultation document no longer proposes to address disputes between licenses and licensees; c) URCA's current consultation document no longer proposes to refer disputes to an arbitration panel.

QUESTION 1: Do you agree that a definition for the term “dispute” is necessary? If so, do you believe that the proposed working definition is adequate? Should you disagree with the adequacy of the proposed definition, kindly give a detailed explanation for your views and suggest an alternative.

BPL	BPL agreed that it was necessary to define the term “dispute”, however, proposed that URCA adopt different definitions as it relates to consumer and commercial disputes and proposed alternatives.	URCA notes BPL’s comments. URCA’s definition of “dispute” has been simplified. Additionally, URCA notes that the current ADR scheme does not address disputes between consumers and licensees as these have already been addressed in URCA’s Consumer complaints handling procedures – URCA 05/2018.
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QUESTION 2: Do you agree with the general status and effect of the proposed Dispute Resolution Guidelines? Should you disagree, kindly give a detailed explanation.

BPL	BPL again raised a concern in relation to the ADR to URCA’s proposed implementation of ADR guidelines. BPL also took issue with the fact that URCA reserved a discretion under the initial consultation document to depart from the guidelines in warranted circumstances, provided that URCA proposed to give full reasons for doing so.	URCA notes BPL’s comments. The current consultation document has been amended from being described as “guidelines”. Furthermore, all exceptions in relation to the schemes are set out in full in the scheme documentation.
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QUESTION 3: Do you agree with the scope of the proposed Dispute Resolution Guidelines? Should you disagree, kindly give a detailed explanation of your view.

BPL	BPL repeated its concern that the document proposed by URCA presented guidelines contrary to section 40(11) of the EA.	URCA repeats its comment that URCA’s current consultation document has been amended to clearly outline URCA’s ADR scheme which is comprised of rules that address (i) rules to set out URCA’s handling of disputes made; (ii) rules to govern mediation; and (iii) rules to govern arbitration;
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QUESTION 4: Do you believe that the ADR Guidelines should have clear timeframes? Do you agree with the proposed timelines for the resolution of disputes? Should you disagree, kindly give a detailed explanation for your views and suggest alternative timeframes.

<p>BPL</p>	<p>BPL repeated its concern that the document proposed by URCA presented guidelines contrary to section 40(11) of the EA, however, BPL accepted in principle that any proposed ADR scheme ought to have clear timeframes.</p> <p>BPL further raised an objection that section 7.1 of the consultation document proposed to, for the purpose of transparency, to publish the scope or summary of any dispute, the outcome of a dispute and URCA’s final decision.</p> <p>Finally, BPL repeated its objection that URCA did not properly comply with the requirements of section 7 of the EA.</p>	<p>URCA repeats its comment that URCA’s current consultation document has been amended to clearly outline URCA’s ADR scheme which is comprised of rules that address (i) rules to set out URCA’s.</p> <p>Additionally, URCA has considered BPL’s objection to the publication of information regarding disputes and has made appropriate changes.</p> <p>Finally, URCA repeats its response that URCA considers that in implementing this regulatory measure, the requirements set out in section 7 of the EA have been satisfied, however, for ease of reference, URCA has in the current consultation document set out a fulsome analysis of its consideration of the requirements of section 7 of the EA in section 1.2 of this consultation document.</p>
<p>QUESTION 5: Do you agree with the basis on which URCA proposes to decline or dismiss a dispute? Kindly give a detailed explanation for your views.</p>		
<p>BPL</p>	<p>BPL disagreed with the basis on which URCA proposes to decline or dismiss a dispute on the basis that (i) it suggested that there be a right reserved in the scheme to hear parties in person; and (ii) it suggested a definition that includes that disputes would only be declined where it is readily apparent that the dispute complaint was “...made with the intention of harassing or creating unnecessary burden for the other party”.</p>	<p>URCA has considered BPLs concerns. URCA has adjusted the provision in relation to declining or dismissing a dispute. URCA does not however agree with BPL’s definition to only dismiss a dispute where it was readily apparent that it was “...made with the intention of harassing or creating unnecessary burden for the other party.” In this regard, URCA considers that there is readily available jurisprudence on the definition of frivolous and vexatious claims which URCA intends to have regard to.</p>

QUESTION 6: Kindly provide your views on URCA’s proposal to allow an Applicant to withdraw a dispute at any time before regulatory or other measure is issued.

BPL	BPL disagreed to the extent that any order that URCA would make on withdrawal of a dispute may include, but not limited to, costs.	URCA has considered BPL’s concern and included a definition for “costs” in the consultation document.
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QUESTION 7: Do you believe that URCA should use oral hearings as a part of its approach to determining a dispute between licensees? If not, provide a full explanation for your position.

BPL	BPL agreed that URCA should use oral hearings as a part of its approach to determining disputes between licensees but not in the manner or on the basis proposed by URCA in section 7.11 of the Consultation document.	URCA has made proposed changes to its ADR Scheme with the effect that disputes will be resolved by mediation or arbitration in accordance with section 40(11) EA.
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QUESTION 8: Do you agree with URCA regarding reconsideration of its regulatory measure? If you disagree, kindly provide your views on URCA’s regulatory measure being reconsidered by URCA.

BPL	BPL agreed in principle to section 7.12 of the consultation document but disagreed with the way that URCA has formulated such proposals and the way URCA intends to exercise this power.	URCA has made proposed changes to its ADR Scheme with the effect that disputes will be resolved by mediation or arbitration in accordance with section 40(11) EA.
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QUESTION 9: Do you believe that URCA should require a party to a dispute to set out a desired remedy or should URCA determine what remedy is appropriate? Kindly provide a full explanation for your views.

BPL	BPL agreed that URCA should require a party to a dispute to set out a desired remedy and further suggested that both parties be required “pleadings”.	URCA thanks BPL for its suggestion. URCA has made provision as it relates to written statements akin to pleadings in the event that a matter resorts to arbitration.
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QUESTION 10: Do you agree with URCA’s proposal to award costs in the circumstances as described by section 7.5 above? If you disagree, kindly provide full reasoning for your position.

BPL	BPL disagreed and repeated its concern raised in question 6.	URCA has considered BPL’s concern and included a definition for “costs” in the consultation document.
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QUESTION 11: What are your views on “Offers of Settlement” and URCA’s role and intervention in the settlement process.

BPL	BPL suggested that URCA should omit section 7.16 which contained URCA’s	URCA has considered BPL’s suggestion and not included a section as it relates
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	proposal as it relates to offers of settlement be deleted.	to offers of settlement in its revised ADR Scheme consultation document.
QUESTION 12: Do you agree with the circumstances under which URCA proposes to close a dispute? If not, kindly provide an explanation for your position.		
BPL	BPL submitted that the circumstances under which URCA proposes to close a dispute ought to be updated to make provision for continuous failure to act by a party.	BPL's suggestion was accepted and implemented.
QUESTION 13: Do you agree with how URCA proposes to treat with confidential information submitted to it in the ADR process? If not, kindly provide an explanation for your position.		
BPL	BPL did not agree and suggested that amendments be made automatically treat as confidential documents and information submitted.	BPL's suggestion was accepted and implemented.
QUESTION 14: Do you agree with the criteria URCA proposes to establish for referral to it of disputes between consumer and licensee. If not kindly provide an explanation for your position.		
BPL	BPL agreed with the criteria in principle, however repeated its concern raised in its general comments that URCA would be required to utilize a determination process to implement this.	BPL's suggestion was accepted and implemented. URCA further considers that disputes between licensees and consumers are covered in its consumer protection regulation.
QUESTION 15: Do you agree with the proposed approach by URCA to assessing a Dispute? If not, kindly explain and suggest an alternative approach.		
BPL	BPL disagreed with the approach suggested in section 8.5 of the consultation document as it would result in URCA deciding the dispute in a manner which BPL suggested was arbitrary.	URCA has made proposed changes to its ADR Scheme with the effect that disputes will be resolved by mediation or arbitration in accordance with section 40(11) EA.
QUESTION 16: Do you agree with the proposed approach by URCA to facilitate mediation between a consumer and a licensee through the appointment of an URCA officer as a mediator? If not, kindly explain and suggest an alternative approach.		
BPL	BPL agreed in principle, however expressed concern as there was no definition of what mediation was. BPL further submitted that it was not apparent how the regulatory	URCA has made proposed changes to its ADR Scheme with the effect that disputes will be resolved by mediation or arbitration in accordance with section 40(11) EA.

	<p>determination process set out in section 8.8.2 qualifies as a valid alternative dispute resolution scheme as envisioned by section 40 of the EA.</p>	<p>URCA has also removed the regulatory determination process as an ADR scheme, however reserves the right to take regulatory or other measures where inter alia URCA's ADR scheme will not be used as set out in the consultation document.</p>
<p>QUESTION 17: Do you agree with mediation by URCA as an alternative mechanism to resolving a dispute? If not, kindly suggest any additional approach and reasons for any other approach. Please also provide comments to the draft Mediation Rules as contained in Annex B.</p>		
<p>BPL</p>	<p>BPL agreed with the concept that mediation by URCA can be a viable option however did not agree with the mediation scheme proposed by URCA in section 9.7 of the consultation document.</p> <p>BPL expressed concern that the parties ought to elect whether they wished for the dispute to be resolved by mediation rather than URCA and further that there was no criteria set out to explain why which method of ADR was selected by URCA.</p> <p>BPL restated its concern in relation to the definition of "costs".</p> <p>BPL finally submitted that the Annex B Mediation scheme differed from the proposals in the consultation document and expressed that it generally agreed with the format of the Annexure B as an ADR scheme over the consultation guidelines.</p>	<p>URCA has made proposed changes to its ADR Scheme with the effect that disputes will be resolved by mediation or arbitration in accordance with section 40(11) EA.</p> <p>URCA's scheme allows for mediation and where unsuccessful, Arbitration will occur.</p> <p>A definition for costs has been included in the revised consultation document.</p>
<p>QUESTION 18: Do you believe the referral of disputes to a dispute resolution panel allow for the timely and effective resolution of potentially complex disputes? Please provide a full explanation for your position.</p>		
<p>BPL</p>	<p>BPL raised a concern that proposal for referral to a panel does not satisfy the</p>	<p>BPL's suggestion was accepted and implemented.</p>

	provisions of section 40(1)(b) of the EA which provides for a specific form of arbitration by a specific person limited to deal with a specific matter.	
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4. Overview of the ADR Process

4.1 Status and Effect of this ADR Scheme

URCA's proposed ADR Scheme sets out the form and manner in which dispute referrals should be made and the approach URCA expects to take when resolving any Dispute it accepts, taking into account that each Dispute will be assessed on its merits.

The overview should be read as a brief guide as it relates to the ADR process and schemes proposed by URCA. This overview is not to be considered binding or of any legal effect as it relates to the ADR process. The detailed rules and procedure regulations that follow will be determinative of the procedure to be followed in the resolution of the Dispute.

Notwithstanding anything contained in this ADR Scheme, nothing herein operates so as to limit or exclude any legal rights or remedies of any person to which they apply. Particularly, nothing herein derogates from or substitutes for any right or remedy such person may have under the EA or any other law.

The ADR Scheme and Draft Rules will be reviewed and amended periodically as appropriate in light of further industry experiences, developing law and best practice, and any changes to URCA's powers and responsibilities. Although this ADR Scheme sets out the procedures and approach URCA expects to take, it will not have a binding effect on URCA to the extent that it fetters URCA's discretion in advance. Should URCA decide to depart from the procedures under this ADR Scheme in warranted circumstances, URCA will notify the parties and give full reasons for doing so.

4.2 Scope of this ADR Scheme

Broadly, the proposed ADR Scheme as outlined in the Draft Rules sets out a procedure of how URCA would receive and resolve disputes referred to it by licensees and/or IPPs. The proposed ADR Scheme therefore sets out the following:-

- (a) the form and manner in which a Dispute should be referred to URCA;
- (b) the information and/or evidence URCA requires in order to determine whether there are grounds for URCA to exercise its statutory powers to resolve a Dispute;
- (c) the information URCA expects parties to a Dispute to submit URCA during the course of the ADR process to enable URCA to properly determine the issues under Dispute;
- (d) the procedure URCA intends to adopt when resolving a Dispute;
- (e) timelines parties to a Dispute can expect URCA to take when resolving a Dispute; and

- (f) the regulatory and/or other measures available to URCA consequential to determining a Dispute.

The procedures under the proposed ADR Scheme constitute only one approach to how URCA deals with issues raised by the industry. This ADR Scheme does not cover URCA's regulatory intervention in respect of complaints, which are the subject to a separate procedure. This ADR Scheme therefore does not provide for the following:

- (a) disputes between licensees and licensees (other than IPPS and licensees, URCA intends to introduce this scheme through the process of a regulatory determination as set out in the EA); and
- (b) complaints from consumers which is covered in the Utilities Regulation and Competition Authority Consumer Complaints Handling Procedures⁴ – URCA 05/2018.

4.3 The ADR Cycle

The proposed ADR scheme will serve as an extra-judicial avenue for licensees and IPPs to seek resolution in relation to unresolved matters in contention between licensees and IPPs where parties have failed to reach an amicable resolution after a good faith effort has been made to resolve the matter in contention.

URCA's ADR process is voluntary and requires either an agreement in place mandating the use of URCA's ADR scheme or in the alternative the consent of all parties. If the parties do not consent to URCA's ADR scheme, URCA is open to considering whether to exercise regulatory intervention. It will also be open to parties to seek judicial and/or other resolution to their dispute.

In summary, it is proposed that disputes will first go through a mediation process, and then, if there remains an unresolved issue, then binding arbitration.

It is proposed that a dispute is raised by sending a completed Notice of Dispute form to URCA. URCA will log the existence of the dispute and arrange for mediation of the dispute, and where unsuccessful, arbitration.

Appeals in relation to Arbitration decisions will be binding and subject to Appeal to the Supreme Court of the Commonwealth of The Bahamas.

URCA proposes to endeavour to complete its ADR process within a maximum of six (6) months.

⁴ [Microsoft Word - Consumer Complaints Handling Procedures Final.docx \(urcabahamas.bs\)](#)

4.4 High Level Principles

All regulatory and other measures taken by URCA in resolving disputes between licensees and IPPs shall be proportionate to their purpose and issues in a manner that is transparent, fair and non-discriminatory in accordance with section 7(c) of the EA and section 8 of the URCA Act.

URCA proposes that there should be clear rules and procedures set for the handling of disputes referred to its Scheme and that it should be done in accordance with existing laws in the Commonwealth of The Bahamas which covers Alternative Dispute Resolution such as the Arbitration Act.

5. Next Steps

URCA will carefully consider all comments and submissions received within the prescribed timeline for responding to this Consultation document. URCA intends to issue a Statement of Results and Final Determination (with accompanying ADR Guidelines) to this Consultation within thirty (30) calendar days following the end of the consultation period unless extenuating circumstances dictate otherwise (in which case URCA will notify the public via its website). URCA will give full reasons for its decisions.



The Utilities Regulation and Competition Authority Alternative Dispute Resolution (ADR) Scheme for Disputes between Licensees and Independent Power Producers for the Electricity Sector in The Bahamas

ES XX/2021

Publication Date: XXX 2021

Electricity Sector Alternative Dispute Resolution (ADR) Scheme for Disputes between Licensees and Independent Power Producers

Citation

This document may be cited as the Electricity Sector Alternative Dispute Resolution Scheme, 2021.

Part 1 – Commencement of Dispute

1. Introduction

- (a) The Utilities Regulation and Competition Authority (“URCA”) introduces and issues the Electricity Sector Alternative Dispute Resolution Scheme, 2021 in accordance with section 40 (10) of the Electricity Act, 2015. Under this provision, URCA has an obligation to establish one or more alternative dispute resolution (“ADR”) schemes for disputes between licensees and independent power producers (“IPP”s).
- (b) Where such disputes are referred to URCA, the dispute shall be evaluated and processed by URCA in accordance with the Electricity Sector Alternative Dispute Resolution Scheme, 2021.

2. Application

- (a) This Scheme shall apply to all Licensees who have been issued by URCA any of the following Licenses in accordance with the Electricity Act –
 - i Public Electricity Supplier License (“PESL”);
 - ii Authorized Public Electricity Suppliers License (“APESL”); or
 - iii Independent Power Producer License (“IPPL”).

3. Definitions

- (a) The following terms will have the following meanings:
 - i **Applicant** – means a licensee or an IPP who is entitled to raise a dispute, and who in fact raised a dispute and thereby requests dispute resolution.

- ii **Costs** – includes fees, charges, disbursements, expenses and remuneration.
- iii **Day** – means every day other than a Saturday, Sunday or Public Holiday; where these rules establish a timescale for doing a required act or taking any action or any step in the ADR process, the affected party shall take such action or step by 4:30 pm on that day, unless URCA determines otherwise.
- iv **Dispute** – means any unresolved matter in contention between a licensee and independent power producer where one or both parties is aggrieved by the decision or conduct of the other and the parties have failed to reach an amicable resolution after good faith effort has been made to resolve the matter in contention.
- v **Respondent** – means a licensee or an IPP who has been given notice either by URCA and/or the Applicant that a Dispute has been raised.

4. Interpretation

In this Scheme, unless the contrary appears:

- (a) headings are for convenience only and do not affect interpretations;
- (b) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) words in the singular include the plural and vice versa;
- (d) words importing persons include a body whether corporate, political or otherwise;
- (e) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (f) mentioning anything after include, includes, or including does not limit what else might be included;
- (g) words and expressions which are not defined have the meanings given to them in the Electricity Act and otherwise the Interpretation and General Clauses Act;

- (h) reference to a person shall include firms, companies, a person's executors, administrators, successors, agents, assignees and novates;
- (i) unless the context otherwise, any reference in this Scheme to a specified section is a reference to that section in this Scheme and any reference to a specified paragraph or subparagraph is a reference to that section, that paragraph of the section, or that subparagraph of the paragraph, in which the reference occurs, and any reference to an Appendix is a reference to the appropriate Appendix to this Scheme.

5. Effect

- (a) This Scheme shall have effect subject to anything to the contrary in a contract between a Licensee and an IPP.
- (b) Notwithstanding anything contained in this Scheme, nothing herein contained shall operate so as to limit or exclude, or is intended to operate as to limit or exclude any legal rights or remedies of any Licensee or IPP or their respective access to the Courts or to any other appropriate dispute resolution forum.

6. Notice of Dispute

- (a) A dispute may be referred to URCA by a Licensee or Independent Power Producer ("IPP") where the dispute is between the Licensee and Independent Power Producer (whether alone or jointly with other Licensees or IPPs) either –
 - i Jointly by mutual agreement of the parties; or
 - ii Ex parte by one party or by more than one party jointly to a Dispute.
- (b) A dispute shall be made in writing in accordance with the form annexed as Schedule 1 hereto and shall specify, at a minimum, in support of a Dispute –
 - i The parties to the dispute;
 - ii The authority to act on behalf of the person desiring the dispute to be reported which the party reporting the dispute claims to have;
 - iii Whether or not the parties have consented to the use of URCA's ADR scheme or in the alternative whether there exists a binding agreement between the parties mandating the use of URCA's ADR scheme;
 - iv Every issue relevant to the dispute;

- v Where there is a relevant agreement in being, what action has been taken for dealing with the dispute under that agreement;
 - vi A concise statement of the nature of the claim made and the remedy and/or relief required;
 - vii What efforts have been made to resolve the dispute between the parties.
- (c) The Applicant shall attach to the Notice of Dispute Form all supporting documents/materials necessary for URCA to properly assess the application, inclusive of:
- i Relevant contracts and/or agreements;
 - ii Correspondence between the parties; and
 - iii Evidence of attempts to resolve the dispute before its referral to URCA.
- (d) The Notice of Dispute shall include all information and documents as are necessary to support the Dispute and shall be binding on the Applicant. The Applicant shall not be allowed to make any subsequent submission during any proceedings under this scheme which:
- i Raises any new issue not previously disclosed in the initial submission;
 - ii Or contains information which should have been submitted in the initial submission; or
 - iii Takes any position that is inconsistent with the party's initial submission.
- (e) All notices for ADR (with accompanying documentation) shall be sent to the Director of Utilities and Energy of URCA either:
- by hand, to URCA's office at Frederick House, Frederick Street, Nassau, Bahamas; or
 - by mail, to P. O. Box N-4860, Nassau, Bahamas; or
 - by fax, to (242)-393-0237; or
 - by email, to info@urcabahamas.bs
- (f) Every party reporting a dispute to URCA shall, without delay, furnish by hand, by courier or by email a copy of such report to the other party or parties to the dispute.

7. Timescales for Referral of Dispute to URCA

- (a) A dispute may not be referred to URCA if a period of more than one (1) year elapsed from the date on which the cause of action on which the dispute is based accrued.

Provided always that URCA may on an application made to it in any case extend such period if it considers it just to do so.

- (b) In acting under section 7(a), URCA shall have regard to all the circumstances of the case and in particular shall consider:
 - i The length of the delay;
 - ii The reason for the delay; and
 - iii The extent to which, having regard to the delay, relevant evidence is likely to be unavailable and/or less cogent than if the dispute had been brought within the period mentioned under section 7(a).

- (c) Where URCA decides to extend the time limit for the resolution of a Dispute, URCA shall set out:
 - i The reasons for extending any time limit and the new time limit;
 - ii The actions to be taken during any extended time limit so as to encourage efficiency; and
 - iii The steps to be taken where an agreement is not reached between the parties within the extended time limit by means of an alternative mechanism in the ADR process.

8. Recording the Dispute

- (a) Once a Dispute is received, URCA will assign the dispute a unique reference number.

- (b) Any subsequent correspondence or filings in relation to the Dispute filed with URCA, by the parties to the dispute shall include a reference to the unique reference number.

- (c) URCA shall acknowledge receipt of every dispute referral in writing within five (5) days of receiving the Notice of Dispute. URCA's acknowledgment of receipt of a Notice of Dispute shall inform the Applicant of the unique reference number assigned to the dispute and shall indicate that a review of the information in support of the Dispute would be conducted.

9. Notification of Dispute to the Respondent

- (a) Subject to the provisions of any Act of Parliament and this Scheme, a Notice of Dispute along with a copy of the material submitted by the Applicant to URCA must be served personally on each respondent by the applicant or his agent.
- (b) For the purpose of service, a Notice of Dispute is valid in the first instance for one (1) month beginning with the date of its filing with URCA.
 - i Where a Notice of Dispute has not been served on a Respondent, URCA may extend the validity of the Notice of Dispute from time to time for such period, not exceeding one (1) month at any one time, beginning with the day next following that on which it would otherwise expire, as may be specified in URCA's decision, if an application for extension is made to URCA before that day or such later day (if any) as URCA may allow.
 - ii Before a Notice of Dispute, the validity of which has been extended under section 9(b)(i), is served, it must be marked with an endorsement by URCA showing the period for which the validity of the Notice of Dispute has been so extended.
- (c) The Applicant shall within five (5) days of Service of the Notice of Dispute and accompanying documents, provide URCA with an Affidavit of Service as evidence of service of the Dispute on the Respondents. The Affidavit of service shall state by whom the document was served, the day of the week and date on which it was served, where it was served and how.
- (d) Service on a Respondent will be deemed to have occurred in the following circumstances:
 - i Where the respondent and/or their attorney indorses on the Notice of Dispute that a statement that he accepts service of the Notice of Dispute on behalf of the respondent, the Notice of Dispute shall be deemed to have been duly served on that respondent and to have been so served on the date on which the indorsement was made.
 - ii Where a Notice of Dispute is not duly served on a respondent, but they issue comments in writing to URCA in accordance with section 10(b), the Notice of Dispute shall be deemed to have been served on him and to have been so served on the date on which the comments in writing are issued.

10. Response by the Respondent

- (a) A respondent shall within five (5) days of Service of a Notice of Dispute on it, notify URCA in writing, confirming whether the Respondent consents to the use of URCA's ADR scheme or in the alternative whether there exists a binding agreement between the parties mandating the use of URCA's ADR scheme.
- (b) Where a respondent fails to respond within five (5) days in accordance with section 10(a), it shall be deemed to have submitted to the jurisdiction and use of URCA's ADR scheme.
- (c) A respondent shall within fourteen (14) days of Service of a Notice of Dispute on it complete and submit to URCA, also delivering a copy to the Applicant, a Response to Dispute Form (URCADR2) (copy found in Annex herein).
- (d) The comments from the Respondent shall include the following information:
 - i Whether the Respondent admits or denies the issues in the Dispute;
 - ii A response to each of the issues arising in the Dispute; and
 - iii Information and copies of any documents the Respondent intends to rely on in defending against the issues raised in the Dispute.

11. Declining or Dismissal of Dispute

- (a) URCA shall decline or dismiss any Dispute referred to it on its own motion or on application by a party to the dispute where after an assessment of the information submitted in support thereof in addition to the Respondent's comments, demonstrates that:
 - i The matter is a complaint not subject to or appropriately resolved under this ADR scheme;
 - ii The Dispute is not within the regulatory jurisdiction of URCA;
 - iii The Dispute is frivolous, vexatious or an abuse of process;
 - iv The issue(s) for resolution form the subject of current litigation between the same parties;
 - v The Dispute does not raise any issue under the Electricity Act, licence condition or obligation of the parties;
 - vi The Dispute is presented otherwise than in accordance with URCA's ADR Scheme or directions from URCA;

- vii All relevant parties to the dispute have not consented to the use of URCA's ADR Scheme for the resolution of the dispute; or
 - viii The Dispute is not in the public interest for URCA to determine.
- (b) URCA may not reject or dismiss a Dispute for defects in the information or its presentation without giving an opportunity for the Applicant to rectify the defects within such time as it may give for that particular purpose.
 - (c) URCA shall in declining or dismissing an application for Dispute resolution under section 11 shall notify the parties in writing, giving reasons for such dismissal.
 - (d) URCA shall not decline or dismiss a dispute without first giving all parties an opportunity to make written representations in relation to criteria set out under section 12.

12. URCA's Response to the Dispute Referral

- (a) Where there does not exist a binding agreement between the parties to the dispute mandating the use of URCA's ADR scheme, and a Respondent does not consent to the use of URCA's ADR scheme, then URCA shall close the Dispute and notify all parties. After closing the Dispute, URCA may consider whether it is appropriate to take a regulatory or other measure in relation to the Dispute based on the information in its possession at that time.
- (b) Where a Respondent refuses or fails to respond to a Notice of Dispute with its comments within the required timeframe, then URCA shall consider whether it is appropriate to take a regulatory or other measure in relation to the Dispute based on the information in its possession at that time.
- (c) URCA shall consider any dispute reported to it and the respondent's comments, and if in its opinion:
 - i suitable machinery for settling the dispute already exists by virtue of the provisions of any agreement between the parties to the dispute; or
 - ii the parties have not made reasonable efforts to resolve the Dispute;

URCA may as soon as is practicable, refer the matter for settlement in accordance with those provisions; and, where there is a failure to reach a settlement within ten (10) days after such a referral, the party reporting the dispute shall notify URCA of such failure.

- (d) Where, on receipt of a Notice of Dispute under section 6(a):
- i it appears to URCA that no suitable machinery binding on the parties exists for the settlement of the dispute; or
 - ii URCA does not choose to refer the dispute for settlement under subsection 4(c); or
 - iii URCA has referred the dispute for settlement under section 4(c) and the party reporting the dispute has notified URCA pursuant to that subsection of a failure to reach a settlement.

URCA shall process the dispute in accordance with Part 2 of the Electricity Sector ADR Scheme, 2021.

Part 2 – Progress of Dispute

13. Resolution of Dispute

- (a) A Dispute shall be resolved by:
 - i Mediation, conducted by URCA, or persons appointed by URCA; and/or
 - ii Arbitration by an expert, of specific identified matters having limited scope, appointed by URCA;
- (b) In the first instance, the parties to the dispute shall enter mediation in good faith, and where URCA serves a notice on the parties concerned requiring them to attend a meeting for that purpose, the parties concerned shall so attend.
- (c) Any party to a dispute who fails or refuses –
 - i To enter mediation in good faith under section 13(b); or
 - ii To attend a meeting when required to do so by URCA under section 13(b).

Shall act contrary to a regulatory and other measure [section 73(1) of the EA] punishable by penalties imposed under section 72(1) of the EA.
- (d) The mediation shall be governed by the procedure set out in Part 3 of the of the Electricity Sector ADR Scheme, 2021.
- (e) Where a settlement by mediation has not been reached within the period of sixteen (16) days or any longer period agreed upon by the parties, then URCA shall certify that mediation has been unsuccessful and issue a Notice to the Parties that the dispute will be referred to arbitration governed by Part 4 of the Electricity Sector ADR Scheme, 2021 and subject to the Arbitration Act, 2009 (No. 42 of 2009).
- (f) Any decision or award as a result of any such arbitration proceeding shall include the assessment of costs, expenses, and reasonable attorney fees and shall include a written record of the proceedings and a written determination of the arbitrators.
- (g) The decision of the Arbitrator shall be binding on the parties subject only to an Appeal to the Supreme Court of the Commonwealth of The Bahamas in accordance with the Arbitration Act, 2009 (No. 42 to 2009).

14. Withdrawal of Dispute

- (a) An applicant to a Dispute may withdraw a Dispute submitted to URCA for resolution as of right at any time before the dispute is referred for arbitration.
- (b) Where a Dispute is withdrawn, URCA may make such orders within its power under the Electricity Act as it deems appropriate. Such orders may include, but are not limited to, costs.

15. Closing of Dispute

- (a) Where the parties to a dispute have settled the dispute after the filing of a Notice of Dispute, the parties to the dispute shall, without delay, transmit to URCA a copy of the settlement signed by or on behalf of the said parties.
- (b) Any such settlement as aforesaid shall be binding on the persons agreeing to the settlement until varied by a valid agreement concluded by or on behalf of those persons.
- (c) Where: -
 - i the parties to a dispute have indicated explicitly, or it can be reasonably inferred by URCA, that they no longer wish to pursue the dispute;
 - ii the parties to a dispute have agreed to a course of action which, if taken, would resolve the dispute to the satisfaction of URCA and have notified URCA in accordance with section 15(a);
 - iii the Applicant to a dispute has withdrawn the dispute; or
 - iv a final decision has been made in the dispute.

URCA shall notify the parties to the Dispute in writing of its decision to close the Dispute and the reasons for its decision.

Part 3 – Mediation Rules

1. Introduction

- (a) The Utilities Regulation and Competition Authority (“URCA”) issues these Mediation Rules (the Rules) pursuant to section 40(10) of the Electricity Act, 2015. Under this provision, URCA has a duty to establish one or more alternative dispute resolution (ADR) schemes for disputes between licensees and independent power producers that may consist of mediation, conducted by URCA, or persons appointed by URCA.
- (b) Where such disputes are lodged for resolution by mediation, the mediation shall take place in accordance with these Rules. The Rules include the Schedule of Mediation Fees (the Schedule) in effect at the commencement of the mediation.

2. Commencement of Mediation

- (a) Where URCA is satisfied in accordance with Part 1 of Electricity Sector ADR Scheme, 2021 that a dispute is ready to be referred for mediation, then URCA shall notify the parties of the commencement of the mediation as shall be determined by the Mediator appointed under these rules or as agreed in advance by the parties to the mediation process.

3. Appointment of Mediator

- (a) Unless the parties have agreed on the appointment of a Mediator, the Mediator shall be appointed by URCA after consultation with the parties.
- (b) Any Mediator agreed by the parties or appointed by URCA shall be neutral, independent and impartial. Additionally, the Mediator must have the following minimum qualifications:
 - a) previous mediator training by an accredited mediation or arbitration body;
 - b) certifications or membership on a mediator roster of an accredited mediation or arbitration body;
 - c) relevant experience as a mediator; and
 - d) a minimum of five (5) years’ experience in a utility regulatory or utility environment.
- (c) Before accepting appointment, the Mediator shall disclose to the parties and to URCA any circumstances that might give rise to justifiable doubt as to the Mediator’s impartiality or independence or confirm in writing that no such circumstances exist.

- (d) Where, at any stage during the mediation, new circumstances arise that might give rise to justifiable doubt as to the Mediator's impartiality or independence, the Mediator shall promptly disclose such circumstances to the parties and URCA.
- (e) Where the Mediator discloses such circumstances that may give rise to justifiable doubt as to the Mediator's impartiality or independence, or where a party independently knows of such circumstances, the party or parties may object to and URCA may reject the appointment of the Mediator. In such circumstances, URCA shall appoint another Mediator.
- (f) The parties to the mediation shall be equally responsible for the payment of the mediator's professional fees for conducting the mediation.

4. Role of Mediator

- (a) The Mediator shall act in an independent and impartial manner to assist the parties in reaching an amicable settlement of the Dispute but shall have no authority to impose a settlement on the parties.
- (b) The Mediator shall be guided by the principles of objectivity, fairness and transparency, giving equal consideration to the rights and obligations of the parties and the circumstances surrounding the Dispute, including any previous business practices between the parties
- (c) Where the Mediator has reason to believe that any issue in dispute between the parties is not susceptible to resolution through mediation, the Mediator may propose, for the consideration of the parties, procedures or means for resolving those issues which the Mediator considers are most likely, having regard to the circumstances of the Dispute and any business relationship between the parties, to lead to the most efficient, least costly and most productive settlement of those issues. In particular, the Mediator may so propose:
 - (i) an expert determination of one or more particular issues; or
 - (ii) arbitration.

5. Representation of Parties and Participation in Meetings

- (a) Any party to the mediation may represent itself in the mediation or may be represented or assisted by another person in meetings with the Mediator.

- (b) A party to the mediation process must have a representative present at all times during the mediation with the authority or delegated authority to discuss and negotiate a settlement.
- (c) The parties may seek counsel at any time during the mediation if they so choose.
- (d) Within five (5) business days of the appointment of the Mediator, the names and addresses of persons authorised to represent a party, and the names and positions of the persons who will be attending the meetings of the parties with the Mediator on behalf of that party, shall be communicated in writing by that party to the other party, the Mediator and to URCA.

6. Conduct of the Mediation

- (a) The mediation shall be conducted in the manner agreed by the parties. If, and to the extent that the parties have not made such an agreement, the Mediator shall, in accordance with these Rules, determine the manner in which the mediation shall be conducted; having in mind at all times the circumstances of the case and the wishes of the parties.
- (b) As soon as reasonably possible after being appointed, the Mediator shall, in consultation with the parties, establish a timeline for the submission by each party to the Mediator and to the other party of a report summarizing the Dispute, the party's interests and contentions in relation to the Dispute and the present status of the Dispute, together with such other information and materials as the party considers necessary for the purposes of the mediation and, in particular, to enable the issues in dispute to be identified.
- (c) The Mediator, after consultation with the parties, shall fix the time of each mediation session.
- (d) The mediation shall be held at the office of the Mediator or at any other convenient location agreeable to the Mediator and the parties as the Mediator shall determine.
- (e) The Mediator may meet with and communicate separately with each party or the party's representative.
- (f) The Mediator shall notify all other parties of any such separate meetings or other communications.
- (g) The Mediator shall not disclose any information given at such meetings to the other party without the written authorization of the party giving the information.

- (h) The parties and their representatives shall agree to co-operate in good faith with the Mediator in ensuring that the mediation is conducted expeditiously, to submit written materials and provide evidence as requested by the Mediator, to make all reasonable efforts to be available for mediation sessions, and to be represented at all scheduled mediation sessions either in person or through their authorised representatives.
- (i) The Mediator may at any time during the mediation suggest that a party provide such additional information or materials as the Mediator deems necessary to the mediation process.

7. Confidentiality

- (a) Mediation is intended to be private and confidential. Persons not authorised as representatives of the parties may only attend mediation sessions with the permission of the parties and with the consent of the Mediator.
- (b) The parties and the Mediator agree not to disclose or transmit to any outside party, introduce or otherwise use any documents, information, opinions, suggestions, proposals, offers, or admissions obtained or disclosed during the mediation by any party or the Mediator as evidence in any action at law or other judicial or arbitration proceeding unless authorised in writing by the parties to the mediation or compelled by law.
- (c) Save and except as agreed between the parties and the Mediator, no formal recording of any kind or transcript shall be made of any meetings of the parties with the Mediator.
- (d) Subject to Clauses 7(a) and 7(b) above, the parties to the mediation may take written notes of matters discussed and agreed during the mediation with the Mediator.
- (e) Each person involved in the mediation process, including the Mediator, the parties and their representatives, and any other person present during the meetings of the parties with the Mediator, shall sign an appropriate confidentiality undertaking prior to taking part in the mediation.

8. Settlement Agreement

- (a) Each party may, on its own initiative or at the invitation of the Mediator, submit to the Mediator suggestions for the settlement of the Dispute.

- (b) Where it appears to the Mediator that there exist elements of a settlement which would be acceptable to the parties, the Mediator may formulate the terms of a possible settlement and submit them to the parties for their comments. The Mediator may reformulate the terms of a possible settlement after giving consideration to the views of the parties.
- (c) If terms are agreed in settlement of the Dispute, the parties shall draw up and sign a settlement agreement, setting out such terms.
- (d) A copy of the settlement agreement executed between the parties shall be submitted to the Mediator and URCA within ten (10) business days after such settlement has been so executed.

9. Termination of the Mediation

- (a) The mediation process shall be terminated:
 - (i) by the execution of a settlement agreement by the parties covering any or all of the issues in dispute between the parties;
 - (ii) by a decision of the Mediator if, in the Mediator's sole opinion, further efforts at mediation are unlikely to lead to a resolution of the Dispute; or
 - (iii) by a written declaration of a party at any time after attending the first meeting of the parties with the Mediator and before the signing of any settlement agreement.
- (b) Where a party determines to terminate the mediation process it shall give the other party and the Mediator ten (10) business days prior written notice of such determination.
- (c) Prior to the termination of mediation, where a settlement is not arrived at by the parties, and therefore the matter will be referred for arbitration in accordance with the ADR Scheme, the parties shall outline and shall promptly send to URCA an agreed and non-agreed list of specific identified matters for the expert arbitrator to resolve in accordance with section 40(11)(b) EA.
- (d) termination of the mediation, the Mediator shall promptly send to URCA a notice in writing that the mediation is terminated and shall include the date on which it terminated, whether or not the mediation resulted in a settlement of the Dispute and, if so, whether the settlement was full or partial. The Mediator shall send to the parties a copy of the notice addressed to URCA.

- (e) URCA shall keep the said notice of the Mediator confidential and shall not, without the written authorisation of the parties, disclose either the existence or the result of the mediation to any person.
- (f) URCA may, however, include information concerning the mediation in any aggregate statistical data that it publishes concerning its activities, provided that such information does not reveal the identity of the parties or enable the particular circumstances of the Dispute to be identified.
- (g) Unless required by a competent court or authorised in writing by the parties, the Mediator shall not act in any capacity whatsoever, otherwise than as a Mediator, in any pending or future proceedings, whether judicial, arbitral or otherwise, relating to the subject matter of the Dispute.

10. Mediation Fee

- (a) The Mediation shall be subject to the payment to URCA of an administration fee by each party to the mediation, the amount of which shall be fixed in accordance with the fees as described in the Schedule contained herein. Such fees become payable on the date of the submission of the Request for Mediation and shall not be refundable.
- (b) No action shall be taken by URCA on a Mediation until the administration fee has been paid.
- (c) If a party to the Request for Mediation fails within fifteen (15) business days after a second reminder in writing from URCA to pay the administration fee it shall be deemed to have withdrawn its Request for Mediation.

11. Exclusion of Liability

- (a) URCA shall not be liable to any party for any act or omission in connection with any mediation conducted under these Rules.

12. Waiver of Defamation

- (a) The parties and the Mediator agree that any statements or comments, whether written or oral, made or used by them or their representatives in preparation for or in the course of the mediation shall not be relied upon to found or maintain any action for defamation, libel, slander or any related complaint.

13. Schedule of Mediation Fees

Mediation Fee	
(per Licensee)	Assessed in equal parts

Part 4 – Arbitration Rules

1. Introduction

- (a) The Utilities Regulation and Competition Authority (“URCA”) issues these Arbitration Rules (the Rules) pursuant to section 40(10) of the Electricity Act, 2015. Under this provision, URCA has a duty to establish one or more alternative dispute resolution (ADR) schemes for disputes between licensees and independent power producers that may consist of arbitration by an expert appointed conducted by URCA.
- (b) Where such disputes are lodged for resolution by arbitration, the arbitration shall take place in accordance with these Rules, subject to whatever modifications the parties may adopt in writing (excluding modifications as it relates to fees).
- (c) These Rules govern the arbitration, except that, where any such rule is in conflict with any provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

2. Appointment of Arbitrator

- (a) Unless the parties have agreed on the appointment of an Arbitrator, the Arbitrator shall be appointed by URCA after consultation with the parties.
- (b) Any Arbitrator agreed by the parties or appointed by URCA shall be neutral, independent and impartial. Additionally, the Arbitrator must have the following minimum qualifications:
 - a. Previous arbitration training by an accredited arbitration body;
 - b. Certification or membership on an arbitration roster of an accredited arbitration body;
 - c. Relevant experience as an arbitrator;
 - d. A minimum of five (5) years’ experience in a utility regulatory or utility environment.
- (c) Before accepting appointment, the Arbitrator shall disclose to the parties and to URCA any circumstances that might give rise to justifiable doubt as to the Arbitrator’s impartiality or independence or confirm in writing that no such circumstances exist.

- (d) Where, at any stage during the arbitration, new circumstances arise that might give rise to justifiable doubt as to the Arbitrator's impartiality or independence, the Arbitrator shall promptly disclose such circumstances to the parties and URCA.
- (e) Where the Arbitrator discloses such circumstances that may give rise to justifiable doubt as to the Arbitrator's impartiality or independence, or where a party independently knows of such circumstances, the party or parties may object to and URCA may reject the appointment of the Arbitrator. In such circumstances, URCA shall appoint another Arbitrator.
- (f) The parties to the arbitration shall be equally responsible for the payment of the arbitrators upfront professional fees for conducting the arbitration. This does not affect the arbitrator's discretion as it relates to making an award of costs against any party.
- (g) No party or anyone acting on its behalf shall have any *ex parte* communication relating to the case with any arbitrator, or with any candidate for appointment as party-appointed arbitrator except to advise the candidate of the general nature of the controversy and of the anticipated proceedings and to discuss the candidate's qualifications, availability or independence in relation to the parties, or to discuss the suitability of candidates for selection as a third arbitrator where the parties or party designated arbitrators are to participate in that selection. No party or anyone acting on its behalf shall have any *ex parte* communication relating to the case with any candidate for presiding arbitrator.
- (h) A party may challenge any arbitrator whenever circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence. A party wishing to challenge an arbitrator shall send notice of the challenge to URCA within three (3) days after being notified of the appointment of the arbitrator or within three (3) days after the circumstances giving rise to the challenge become known to that party.
- (i) The challenge shall state in writing the reasons for the challenge.
- (j) Upon receipt of such a challenge, URCA shall notify the other parties of the challenge. When an arbitrator has been challenged by one party, the other party or parties may agree to the acceptance of the challenge and, if there is agreement,

he arbitrator shall withdraw. The challenged arbitrator may also withdraw from office in the absence of such agreement. In neither case does withdrawal imply acceptance of the validity of the grounds for the challenge.

- (k) If the other party or parties do not agree to the challenge, or the challenged arbitrator does not withdraw, URCA in its sole discretion shall make the decision on the challenge.
- (l) If an arbitrator withdraws after a challenge, or URCA sustains the challenge, or URCA determines that there are sufficient reasons to accept the resignation of an arbitrator, or an arbitrator dies, a substitute arbitrator shall be appointed pursuant to the provisions of Article 2 of these rules.

3. Commencing Arbitration – Notice of Arbitration and Statement of Claim

- (a) Where URCA is satisfied in accordance with Part 2 of the Electricity Act ADR Scheme, 2021 that mediation has been unsuccessful in relation to a dispute and has certified this fact in writing URCA shall at the same time give written Notice of Arbitration to the parties and the arbitrator.
- (b) Arbitral proceedings shall be deemed to commence on the date on which URCA issues Notice of Arbitration.
- (c) The notice of arbitration shall contain the following:
 - i. the Applicant’s Notice of Dispute;
 - ii. the Respondent’s comments;
 - iii. the outline of agreed and non-agreed list of specific identified matters having limited scope for the arbitrator to decide; and
 - iv. The name and address for service of the expert Arbitrator.

- (c) Upon receipt of the notice of arbitration, the arbitrator shall communicate with all parties with respect to the arbitration and shall acknowledge the commencement of the arbitration.

4. Representation

- (a) All parties shall be represented in the arbitration by a Counsel and Attorney at Law qualified to practice law in the Commonwealth of The Bahamas.
- (b) The names, addresses and telephone numbers of representatives shall be communicated in writing to the other parties, URCA and the Arbitrator.
- (c) Once the tribunal has been established, the parties or their representatives may communicate in writing directly with the tribunal.

5. Place of Arbitration

- (a) If the parties disagree as to the place of arbitration, URCA may initially determine the place of arbitration, subject to the power of the tribunal (Arbitrator) to determine finally the place of arbitration within 7 days after its constitution (appointment). All such determinations shall be made having regard for the contentions of the parties and the circumstances of the arbitration.
- (b) The tribunal (Arbitrator) may hold conferences or hear witnesses or inspect property or documents at any place it deems appropriate. The parties shall be given sufficient written notice to enable them to be present at any such proceedings.

6. Language

- (a) If the parties have not agreed otherwise, the language(s) of the arbitration shall be English, subject to the power of the tribunal to determine otherwise based upon the contentions of the parties and the circumstances of the arbitration.
- (b) The tribunal may order that any documents delivered in another language shall be accompanied by a translation into the language(s) of the arbitration.

7. Pleas as to Jurisdiction

- (a) The tribunal (Arbitrator) shall have the power to rule on its own jurisdiction, including any objections with respect to the existence, scope or validity of the

arbitration agreement.

- (b) The tribunal (Arbitrator) shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the tribunal (Arbitrator) that the contract is null and void shall not for that reason alone render invalid the arbitration clause.

8. Conduct of the Arbitration

- (a) Subject to these Rules, the tribunal (Arbitrator) may conduct the arbitration in whatever manner it considers appropriate, provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.
- (b) The tribunal (Arbitrator), exercising its discretion, shall conduct the proceedings with a view to expediting the resolution of the dispute. It may conduct a preparatory conference with the parties for the purpose of organizing, scheduling and agreeing to procedures to expedite the subsequent proceedings.
- (c) The tribunal (Arbitrator) may in its discretion direct the order of proof, bifurcate proceedings, exclude cumulative or irrelevant testimony or other evidence and direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the case.
- (d) Documents or information supplied to the tribunal (Arbitrator) by one party shall at the same time be communicated by that party to the other party or parties.

9. Further Written Statements

- (a) The tribunal may decide whether the parties shall present any written statements in addition to those included in the Notice of Arbitration, and it shall fix the periods of time for submitting any such statements.
- (b) The period of time fixed by the tribunal for the communication of such written statements should not exceed 7 days. However, the tribunal may extend such time limited if it considers such an extension justified.

10. Notices

- (a) Unless otherwise agreed by the parties or ordered by the tribunal (Arbitrator), all notices, statements and written communications may be served on a party by air mail, air courier, facsimile transmission, telex, telegram or other written forms of electronic communication addressed to the party or its representative at its last known address or by personal service.
- (b) For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, statement or written communication is received. If the last day of such period is an official holiday at the place received, the period is extended until the first business day which follows. Official holidays occurring during the running of the period of time are included in calculating the period.

11. Evidence

- (a) Each party shall have the burden of proving the facts relied on to support its claim or defense.
- (b) The tribunal (Arbitrator) may order a party to deliver to the tribunal (Arbitrator) and to the other parties a summary of the documents and other evidence which that party intends to present in support of its claim, counterclaim or defense.
- (c) At any time during the proceeding, the tribunal (Arbitrator) may order parties to produce other documents, exhibits or other evidence it deems necessary or appropriate.

12. Hearings

- (a) The tribunal (Arbitrator) shall give the parties at least 7 days advance notice of the date, time and place of the initial or preliminary hearing. The tribunal (Arbitrator) shall give reasonable notice of subsequent hearings.
- (b) At least 15 days before the actual hearing, each party shall give the tribunal (Arbitrator) and the other parties the names and addresses of any witnesses it intends to present, the subject of their testimony and the languages in which

such witnesses will give their testimony.

- (c) At the request of the tribunal (Arbitrator) or pursuant to mutual agreement of the parties, URCA shall make arrangements for the interpretation of oral testimony or for a record of the hearing.
- (d) Hearings are private unless the parties agree otherwise or the law provides the contrary. The tribunal (Arbitrator) may require any witness or witnesses to retire during the testimony of other witnesses. The tribunal (Arbitrator) may determine the manner in which witnesses are examined.
- (e) Evidence of witnesses may be presented in the form of written statements signed by them.
- (f) The tribunal (Arbitrator) shall determine the admissibility, relevance, materiality and weight of the evidence offered by any party. The tribunal (Arbitrator) shall take in account applicable principles of legal privilege, such as those involving the confidentiality of communications between a lawyer and client.

13. Interim Measures of Protection and Provision for Emergency

- (a) At the request of any party, the tribunal (Arbitrator) may take whatever interim measures it deems necessary, including injunctive relief and measures for the protection or conservation of property.
- (b) Such interim measures may take the form of an interim award, and the tribunal (Arbitrator) may require security for the costs of such measures.
- (c) A request for interim measures addressed by a party to a judicial authority shall be not deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.
- (d) The tribunal (Arbitrator) may in its discretion apportion costs associated with applications for interim relief in any interim award or in the final award.

14. Experts

- (a) The tribunal (Arbitrator) may appoint one or more independent experts to report

to it, in writing, on specific issues designated by the tribunal (Arbitrator) and communicated to the parties.

- (b) The parties shall provide such an expert with any relevant information or produce for inspection any relevant documents or goods that the expert may require. Any dispute between a party and the expert as to the relevance of the requested information or goods shall be referred to the tribunal (Arbitrator) for decision.
- (c) Upon receipt of an expert's report, the tribunal (Arbitrator) shall send a copy of the report to all parties and shall give the parties an opportunity to express, in writing, their opinion on the report. A party may examine any document on which the expert has relied in such a report.
- (d) At the request of any party, the tribunal (Arbitrator) shall give the parties an opportunity to question the expert at a hearing. At this hearing, parties may present expert witnesses to testify on the points at issue.

15. Default

- (a) If a party fails to file a statement of defence within the time established by the tribunal (Arbitrator) without showing sufficient cause for such failure, as determined by the tribunal, the tribunal (Arbitrator) may proceed with the arbitration.
- (b) If a party, duly notified under these Rules, fails to appear at a hearing without showing sufficient cause for such failure, as determined by the tribunal (Arbitrator), the tribunal (Arbitrator) may proceed with the arbitration.
- (c) If a party, duly invited to produce evidence or take any other steps in the proceedings, fails to do so within the time established by the tribunal (Arbitrator) without showing sufficient cause for such failure, as determined by the tribunal (Arbitrator), the tribunal (Arbitrator) may make the award on the evidence before it.

16. Closure of Hearing

- (a) After asking the parties if they have any further testimony or evidentiary submissions and upon receiving negative replies or if satisfied that the record is

complete, the tribunal (Arbitrator) may declare the hearings closed.

- (b) The tribunal (Arbitrator) in its discretion, on its own motion or upon application of a party, may reopen the hearings at any time before the award is made.

17. Waiver of Rules

- (a) A party who knows that any provision of the Rules or requirement under the Rules has not been complied with, but proceeds with the arbitration without promptly stating an objection in writing thereto, shall be deemed to have waived the right to object.

18. Awards, Decisions and Rulings

- (a) If any arbitrator fails to sign the award, it shall be accompanied by a statement of the reason for the absence of such signature.
- (b) When the parties or the tribunal so authorize, the presiding arbitrator may make decisions or rulings on questions of procedure, subject to revision by the tribunal.

19. Form and Effect of the Award

- (a) awards shall be made in writing, promptly by the tribunal (Arbitrator), and shall be final and binding on the parties. The parties undertake to carry out such award without delay.
- (b) The tribunal (Arbitrator) shall state the reasons upon which the award is based, unless the parties have agreed that no reasons need to be given.
- (c) The award shall contain the date and the place where the award was made, which shall be the place designated pursuant to Article 5.
- (d) An award may be public only with the consent of all parties or as required by law.
- (e) Copies of the award shall be communicated to the parties by URCA.

- (f) If the arbitration law of the country where the award is made requires the award to be filed or registered, the tribunal shall comply with such requirement.
- (g) In addition to making a final award, the tribunal (Arbitrator) may make interim, interlocutory or partial orders and awards.
- (h) Unless otherwise agreed by the parties, URCA may publish or otherwise make publicly available selected awards, decisions and rulings that have been edited to conceal the names of the parties and other identifying details or that have been made publicly available in the course of enforcement or otherwise.

20. Applicable Laws and Remedies

- (a) The tribunal (Arbitrator) shall apply the substantive law(s) or rules of law designated by the parties as applicable to the dispute. Failing such a designation by the parties, the tribunal (Arbitrator) shall apply such law(s) or rules of law as it determines to be appropriate.
- (b) In arbitrations involving the application of contracts, the tribunal (Arbitrator) shall decide in accordance with the terms of the contract and shall take into account usages of the trade applicable to the contract.
- (c) The tribunal (Arbitrator) shall not decide as *amiabile compositeur* or *ex aequo et bono* unless the parties have expressly authorized it to do so.
- (d) A monetary award shall be in the currency or currencies of the contract unless the tribunal (Arbitrator) considers another currency more appropriate and the tribunal (Arbitrator) may award such pre-award and post-award interest, simple or compound, as it considers appropriate, taking into consideration the contract and applicable law.
- (e) Unless the parties agree otherwise, the parties expressly waive and forego any right to punitive, exemplary or similar damages unless a statute requires that compensatory damages be increased in a specified manner. This provision shall not apply to any award of arbitration costs to a party to compensate for dilatory or bad faith conduct in the arbitration.

21. Settlement or Other Reasons for Termination

- (a) If the parties settle the dispute before an award is made, the tribunal (Arbitrator) shall terminate the arbitration and, if requested by all parties, may record the settlement in the form of an award on agreed terms. The tribunal (Arbitrator) is not obliged to give reasons for such an award.
- (b) If the continuation of the proceedings becomes unnecessary or impossible for any other reason, the tribunal (Arbitrator) shall inform the parties of its intention to terminate the proceedings. The tribunal (Arbitrator) shall thereafter issue an order terminating the arbitration, unless a party raises justifiable grounds for an objection.

22. Interpretation or Correction of the Award

- (a) Within seven (7) days after the receipt of an award, any party, with notice to the other parties, may request the tribunal (Arbitrator) to interpret the award or correct any clerical, typographical or computation errors or make an additional award as to claims presented but omitted from the award.
- (b) If the tribunal (Arbitrator) considers such a request justified after considering the contentions of the parties, it shall comply with such a request within seven (7) days after the request.

23. Costs

- (a) The tribunal shall fix the costs of the arbitration in its award. The tribunal may apportion such costs among the parties if it determines that such apportionment is reasonable, taking into account the circumstances of the case. The Schedule of Costs is adapted from the LCIA Rules and the ICDR Rules and is attached hereto.
- (b) Such costs may include:
 - i. the fees and expenses of the arbitrator;
 - ii. the costs of assistance required by the tribunal (Arbitrator), including its experts;

- iii. the fees and expenses for URCA;
- iv. the reasonable costs for legal representation of a successful party; and
- v. any such costs incurred in connection with an application for interim or emergency relief pursuant to Article 13.

24. Compensation of Arbitrators

- (a) Arbitrators shall be compensated based upon their amount of service taking into account their stated rate of compensation and the size and complexity of the case.
- (b) URCA shall arrange an appropriate daily or hourly rate, based on such considerations, with the parties and with each of the arbitrators as soon as practicable after the commencement of the arbitration.
- (c) If the parties fail to agree on the terms of compensation, URCA shall establish an appropriate rate and communicate it in writing to the parties.

25. Deposit of Costs

- (a) When a party files claims, the administrator may request the filing party to deposit appropriate amounts as an advance for the costs referred to in Article 23, paragraphs (a.), (b.) and (c.).
- (b) During the course of the arbitral proceedings, the tribunal may request supplementary deposits from the parties.
- (c) If the deposits requested are not paid in full within 14 days after the receipt of the request, URCA shall so inform the parties, in order that one or the other of them may make the required payment. If such payments are not made, the tribunal may order the suspension or termination of the proceedings.
- (d) Before the award has been made, the Arbitrator shall render an account to the parties of the deposits received and return any unexpended balance to the parties.

26. Confidentiality

- (a) Confidential information disclosed during the proceedings by the parties or by witnesses shall not be divulged by an arbitrator or by URCA.
- (b) Except as provided in Article 19, unless otherwise agreed by the parties, or required by applicable law, the members of the tribunal and URCA shall keep confidential all matters relating to the arbitration or the award.

27. Exclusion of Liability

- (a) The Arbitrator and URCA shall not be liable to any party for any act or omission in connection with any arbitration conducted under these Rules, except that they may be liable for the consequences of conscious and deliberate wrongdoing.

28. Interpretation of Rules

- (a) The tribunal (Arbitrator) shall interpret and apply these Rules insofar as they relate to its powers and duties. URCA shall interpret and apply all other Rules.

29. Emergency Measures Protection

- (a) Unless the parties agree otherwise, the provision of this Article 28 shall apply to all arbitrations conducted under these rules.
- (b) A party in need of emergency relief prior to the constitution of the tribunal shall notify URCA and all other parties in writing of the nature of the relief sought the reasons why such relief is required on an emergency basis. The application shall also set forth the reasons why the party is entitled to such relief. Such notice may be given by email, facsimile transmission or other reliable means, but must include a statement certifying that all other parties have been notified or an explanation of steps taken in good faith to notify other parties.
- (c) Within one business day of receipt of notice as provided in paragraph b, URCA shall appoint a single emergency arbitrator from a special panel of emergency arbitrators designated to rule on emergency applications. Prior to accepting

appointment, a prospective emergency arbitrator shall disclose to the administrator any circumstance likely to give rise to justifiable doubts to the arbitrator's impartiality or independence. Any challenge to the appointment of the emergency arbitrator must be made within one business day of the communication by URCA to the parties of the appointment of the emergency arbitrator and the circumstances disclosed.

- (d) The emergency arbitrator shall as soon as possible, but in any event within two business days of appointment, establish a schedule for consideration of the application for emergency relief.
- (e) The emergency arbitrator shall have the power to order or award any interim or conservancy measure the emergency arbitrator deems necessary, including injunctive relief and measures for the protection or conservation of the property. Any such measure may take the form of an interim award or of an order. The emergency arbitrator shall give reasons in either case. The emergency arbitrator may modify or vacate the interim award or order for good cause shown.
- (f) The emergency arbitrator shall have no further power to act after the tribunal is constituted or the arbitrator is appointed. Once the tribunal has been constituted, or the arbitrator is appointed, the tribunal may reconsider, modify or vacate the interim award or order of emergency relief issued by the emergency arbitrator. The emergency arbitrator may not serve as a member of the tribunal unless the parties agree otherwise.
- (g) Any interim award of emergency relief may be conditioned on provision by the party seeking such relief of appropriate security.
- (h) A request for the interim measures addressed by a party to a judicial authority shall not be deemed incompatible with this Article 28 or with the agreement to arbitrate or a waiver of the right to arbitrate. If URCA is directed by a judicial authority to nominate a special master to consider and report on an application for emergency relief, the administrator shall proceed as in Paragraph b of this article and the references to the emergency arbitrator shall be read to mean the special master, expect that the special master shall issue a report rather than an interim award.

- (i) The costs associated with applications for emergency relief shall initially be apportioned by the emergency arbitrator or special master, subject to the power of the tribunal to determine finally the apportionment of such costs.

Annex A – Dispute Resolution Procedures Forms

URCAEDR-1

UTILITIES REGULATION & COMPETITION AUTHORITY Notice of Dispute Form

1. Details of Applicant

Name of Applicant:	
Address (including Postal Address):	
Contact Person for this Application:	
Name:	Position:
Telephone:	
Facsimile:	
E-mail:	
Date dispute was submitted to Respondent:	

2. Details of Respondent

Name:	
Address (including Postal Address):	
Contact Person for Dispute:	
Position:	
Telephone:	
E-mail:	
Facsimile:	

3. Dispute Determination Request of the following issue(s):

I/We the above-named Applicant, having first made good faith and reasonable efforts to resolve the following dispute with the above-named Respondent and having failed to do so, now request the Utilities Regulation & Competition Authority to determine the matter. [Please continue on a separate page if necessary].

4. Details of Dispute

Please supply the specific details of your dispute [i.e. what it relates to; when it occurred; what steps you have taken to attempt to resolve the matter with the opposite side]. You should attach a copy of all relevant documentation to this application [e.g. letters, contracts, etc.]. (Continue this information on a separate page if necessary).

5. Interested Parties

Are there any other persons or organizations who or which may be directly affected by, or who has a sufficiently close interest in the outcome of this Dispute? If so please insert their contact details. [Continue this information on a separate page if necessary].

Name:	
Address (including Postal Address):	
Telephone:	
Facsimile:	
E-mail:	
Reason this person may be affected or have sufficient interest in the outcome:	

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6. Impact of Dispute

Please detail what impact this dispute is or is likely to have if unresolved.
(Continue this information on a separate page if necessary).

7. Remedy Requested

Please specify what action you require to resolve this dispute. (Continue this information on a separate page if necessary).

8. Signature on Behalf of Applicant

By signing this application on behalf of the Applicant, you undertake that you are duly authorized to commence these proceedings and to sign on behalf of the Applicant.

Signed:	Print Name:
Position:	Date:

IMPORTANT INSTRUCTIONS FOR FILING A DISPUTE DETERMINATION REQUEST

To file this application, you must: (a) complete and sign the Notice of Dispute Form; (b) attach a copy of any relevant correspondence, information, documents and exhibits and send all of the foregoing to the addressee below:

The Chief Executive Officer
The Utilities Regulation & Competition Authority
Frederick House
Frederick Street
P. O. Box N-4860
Nassau, Bahamas

Telephone: 242 393-0234
Fax: 242 393-0153
E-mail: info@urcabahamas.bs

**UTILITIES REGULATION & COMPETITION AUTHORITY
Response to Dispute Form**

1. Parties

Name of Applicant:
Name of Respondent:

2. Acknowledgement of receipt of Notice of Dispute

I/We, the above-named Respondent, acknowledge that I/We have received a Notice of Dispute dated the _____ day of _____, and _____ accompanying documents.

3. Response to Notice of Dispute

As the Respondent in this Dispute, I/We say that: [Please tick the appropriate box(es)]:

I/We *admit/deny [*strike out whichever does not apply] the Dispute as stated in the Notice of Dispute as submitted to me/us;

I/We *accept/do not accept [*strike out whichever does not apply] the outcome sought by the Applicant, and see my/our reasons specified below;

I/We respond to each of the allegations stated in the Dispute as set out below.

4. Response to Details of the Dispute

In response to the Application, I/We say that: (please continue on a separate page if necessary). Please set out in detail your response to the allegations contained in the Notice of Dispute, including the proposed remedy requested by the Applicant.

5. Signature of Respondent

The Respondent’s representative may sign on behalf of the Respondent, and in so doing undertakes that he or she has the authority to do so.

Signed:	Print Name:
Position:	Date:

IMPORTANT INSTRUCTIONS FOR SUBMITTING REPLY TO DISPUTE

The Respondent must complete and sign this form and send it with a copy of all documentation relevant to your response(s) to the allegations to the Utilities Regulation & Competition Authority (“URCA”) within 14 business days of the date of receiving the Notice of Dispute to the address below. Otherwise URCA will proceed with Determining this Dispute.

The Chief Executive Officer
The Utilities Regulation & Competition Authority
Frederick House
Frederick Street, P. O. Box N-4860, Nassau, Bahamas

Telephone: 242 393-0234

Fax: 242 393-0153

E-mail: info@urcabahamas.bs

E-mail: info@urcabahamas.bs

Annex B - Summary of Consultation Questions

Question 1: Do you agree that the definitions set out in the definition section are necessary? If so, do you believe that the proposed working definitions are adequate? Should you disagree with the adequacy of the propose definition, kindly give a detailed explanation for your views and suggest an alternative.

Question 2: Do you agree with the general status and effect of the proposed Dispute Resolution Scheme? Should you disagree, kindly give a detailed explanation for your views.

Question 3: Do you agree with the scope of the proposed Dispute Resolution Scheme? Should you disagree, kindly give a detailed explanation for your views.

Question 4: Do you believe that the ADR Scheme should have clear timeframes? Do you agree with the proposed timelines for the resolution of disputes? Should you disagree, kindly give a detailed explanation for your views and suggest alternative timeframes.

Question 5: Do you agree with the basis on which URCA proposes to decline or dismiss a dispute? Kindly give a detailed explanation for your views.

Question 6: Kindly provide your views on URCA's proposal to allow an Applicant to withdraw a dispute at any time before it is referred to binding arbitration?

Question 7: Do you believe that Mediators and Arbitrators should use oral hearings as part of its approach to determining a dispute between licensees? If not, provide a full explanation for your position.

Question 8: Do you agree with the circumstances under which URCA proposes to close a Dispute? If not, kindly provide explanation for your position.

Question 9: Do you agree with the criteria URCA proposes to establish for the referral to it of disputes between a licensee and an independent power producer? If not, kindly provide explanation for your position.

Question 10: Do you agree with the proposed approach by URCA to assessing a Dispute? If not, kindly explain and suggest an alternative approach.

Question 18: Do you agree with the Mediation and Arbitration Rules? If not, kindly provide explanation for your position and provide a comprehensive outline of an alternative proposal.