



# **GUIDELINES FOR THE ELECTRICITY SECTOR ON THE ASSESSMENT OF FINES FOR BREACHES**

Statement of Results and Final Decision

ES 05/2022

Issue Date: 07 March 2023

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## 1. Introduction

The Utilities Regulation and Competition Authority (“URCA”) issues this Statement of Results and Final Decision (“SoR”) further to its Consultation Document on Guidelines for the Electricity Sector on the Assessment of Fines for Breaches, ES 02/2022, (“the Consultation Document”), published on the 22 August 2022.

URCA is the independent regulator and competition authority for the Electricity Sector (“ES”) in The Bahamas. URCA is responsible for the regulation of the ES in accordance with the Electricity Act, 2015 (“EA”) while also giving appropriate consideration to the goals, objectives and principles underpinning the National Energy and Electricity Sector policies.<sup>1</sup>

URCA has undertaken this consultation process to bring clarity and promote consistency with respect to how URCA will exercise its power to impose a fine<sup>2</sup> on a licensee who breaches a provision of the EA, a licence condition, regulatory and or other measures.

This consultation process provided an opportunity for stakeholders to share their views before URCA implemented its proposed Guidelines for the Electricity Sector on the Assessment of Fines for Breaches (“the Guidelines”). Employing this process allowed URCA to gather valuable information for consideration in finalizing the Guidelines.

### 1.1. Background

URCA exercised its power to impose a financial penalty on a licensee for breach of the EA or license condition in 2019. A concern from the ES regarding URCA’s approach to imposing a fine was that, at the time, there were no clear guidelines setting out URCA’s approach to determining the quantum of the fine in the Electricity Sector.

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<sup>1</sup> Electricity Act 2015, section 37(1)

<sup>2</sup> Electricity Act 2015, section 72 (1)

Having regard to URCA’s statutory power to impose financial penalties, URCA considers Guidelines for the Assessment of Fines for Breaches to be of public significance, as the Guidelines can lead, *inter alia*, to a significant impact on persons carrying on activities in areas regulated by URCA under the EA<sup>3</sup>.

## 1.2 Responses to the Consultation

The Consultation Document (ES 02/2022) was published on 22 August 2022 seeking comments from interested parties on the proposed Guidelines. The period for submission of written responses and comments to the Consultation Document was initially 30 September 2022. In response to a request from the sector to extend the consultation period, the deadline was extended to 30 October 2022 to ensure all interested parties had sufficient time to make representations.

URCA is cognizant of the importance of an open and robust consultation process. URCA was disappointed that, even with the extension to the deadline, only one comment was received. Notwithstanding, URCA is satisfied that it has discharged its statutory duty under the EA 2015 by permitting all stakeholders with interest in the subject matter of the Consultation Document a reasonable opportunity to make submissions.

During the consultation period, URCA received a written response from Gekabi Chub Cay Utilities Ltd (“Gekabi” or “the Respondent”). URCA extends thanks to the respondent for its participation in this public consultation process and its submission. In this Statement of Results, URCA has summarized the response, discussed the same, and now issues its Final Decision.

The lack of a direct response to a comment or any issue raised by the Respondent does not signify URCA’s agreement in whole or in part with the comment, nor should it be taken to mean that URCA has not considered the comment or that the comment was considered and dismissed.

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<sup>3</sup> Electricity Act, 2015, section 42(1)(b).

### 1.3 Structure of the Remainder of this Document

Section 2: Outlines URCA's authority to establish Guidelines for the Electricity Sector on the Assessment of Fines for Breaches.

Section 3: Provides an Overview of the Guidelines on the Assessment for Fines for Breaches.

Section 4: Summarizes the general comments received to the Consultation Document and outlines URCA's responses.

Section 5: Outlines URCA's Final Decisions and next steps.

## 2 Legal Framework

This section outlines the regulatory and legal framework under which URCA has exercised its power to establish Guidelines for the Electricity Sector on the Assessment of Fines for Breaches.

In proposing these Guidelines (URCA) has exercised the powers conferred by section 38 (3) of the EA.

URCA has also taken note of Section 72 (1) of the EA which provides that "...a licensee who contravenes a provision of this Act, or a licence condition, or regulatory and other measures is liable to a regulatory fine or other penalty determined by URCA, not exceeding ten percent of the licensee's relevant turnover."

URCA has also taken note of the Licence Conditions and general obligations to comply with laws, regulation and licence conditions in all its license classes namely, Public Electricity Licence, Authorised Public Electricity Licence ('APESL') and Independent Power Producer Licence ('IPPL'). A standard Public Electricity Licence, APESL, and IPPL will include the following obligations:

*"General Obligations: 12.1 The Licensee shall comply with the Act and any other Act of The Commonwealth of The Bahamas that has application to it in the discharge of its performance under this licence.*

*12.2 The Licensee shall comply with regulatory and other measures including any directive, order rule, decision, or approval issued, made or granted by URCA in accordance with its duties and functions under the Act of this Licence.*

*13.1 Where URCA has reason to believe the Licensee has failed to comply with any relevant law, regulation or condition of this licence, URCA may exercise all such powers and duties as are afforded to or required of it under the Act or any other relevant and may take all such actions as is permitted to it thereunder against either the Licensee or its Subsidiary Undertaking”.*

The cumulative effect of the foregoing provides URCA with a statutory, as well license-based, basis to take appropriate regulatory action inclusive of the issuance of fines where there has been a breach of the EA or a license condition by a Licensee.

### 3 Overview of the Guidelines on the Assessment of Fines for Breaches

This section sets out an overview of the Guidelines for the Electricity Sector on the Assessment of Fines for Breaches.

#### 3.1 Status and Effect of the Guidelines

The Guidelines sets out the approach URCA will take when imposing a financial penalty for breach of an obligation stemming from the EA, the license, or any other regulatory measure. Each investigation and any resulting fine(s) will be assessed on the merits of the case.

This review should be read as a brief overview of the Guidelines. This overview is not to be considered binding or of any legal effect as it relates to any fining exercise. Notwithstanding anything contained in the Guidelines, 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 Guidelines will be reviewed and amended periodically as appropriate considering lessons learnt in the industry, developing law and best practice, and any changes to URCA's powers and responsibilities.

### 3.2 Scope of the Guidelines

These Guidelines apply to all classes of licences issued by URCA pursuant to the EA. The Guidelines establishes a general five-step methodology for the setting of a financial penalty:

Step 1 – Calculate the Maximum penalty;

Step 2- Determine the basic amount of the fine;

Step 3- Calculation of penal element;

Step 4-Adjustments for aggravating and/or mitigating circumstances; and

Step 5- Apply settlement adjustment.

The Guidelines are intended to remove ambiguity as to how URCA treats with setting fines in the ES.

### 3.3 High Level Principles

All regulatory and other measures taken by URCA in determining appropriate financial penalties for breaches shall be proportionate to their purpose and issued 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.

## 4 Comments and Responses

### Comments by Gekabi

In providing its general comments Gekabi espoused the view that defining fines by level of severity would result in endless debates with Licensees. What is severe to one group may be minor to another.

Additionally, Gekabi offered that Licensees have a de facto contract with their customers. If a customer is damaged by the acts of a Licensee it seems that there are already mechanisms in the courts to deal with it. Perhaps this section would be better served with an alternative resolution program. An arbitrator could hear both sides and quickly render some relief, if appropriate.

### Response by URCA

URCA notes Gekabi's comments relating to possible dissenting and diverging opinions on severity/seriousness and submits that the Guidelines serve to provide Licensees with the considerations URCA will have regard to when determining the quantum of a fine. In so doing, the Licensee will have a step-by-step guidance that provides the methodology URCA will apply during fine setting exercises. The Guidelines propose a five (5) step approach to fine setting. Each case will be evaluated on its merits and relevant circumstances.

It is URCA's intention to be transparent throughout this process and establish a framework that supports consistency. URCA appreciates that opinions may vary on degree of severity, however it is worth noting that fine setting is not an exact science. The Guidelines primarily provide the framework to produce reasonable and proportionate financial penalties for breaches. In the event a Licensee is of the view that a fine is unreasonable, pursuant section 67 (1) of the EA, that Licensee may appeal against it to the Utilities Appeal Tribunal (the Tribunal).

URCA also notes that Licensees do have contracts of service with their consumers and further that the Consumer Protection Regulations for the Electricity Sector in The Bahamas (ES 13/2020) provides for a complaints handling process and finally that recourse exists through the local court



system. The Guidelines are not intended to replace any existing remedy of an aggrieved consumer. URCA is empowered to impose financial penalties and its ability to do so is a vital part of the regulatory process. URCA is of the view that financial penalties are an effective regulatory tool for deterring and, if necessary, punishing breaches of obligations on the part of a Licensee. If consumers avail themselves of any of any alternative remedy and the Licensee informs URCA that redress has been made, then, URCA will give due consideration to these efforts during the fine setting exercise.

URCA further notes the suggestion that an Alternative Dispute Resolution scheme maybe preferred to the Guidelines. URCA considers that its statutory remit to impose financial penalties is nondelegable. In the circumstances, URCA is of the opinion that stakeholders and all interested parties are best served by having clear guidelines that establishes URCA's approach to fine setting.

Based on the general comments received from Gekabi, URCA is of the view that no substantive amendments to the Guidelines are required.

## 5 Conclusion and Next Steps

This Statement of Results and Final Decision concludes URCA's consultation process on the Guidelines for the Electricity Sector on the Assessment of Fines for Breaches (ES 02/2022). URCA anticipates that the Guidelines will be reviewed as needed based on the evolution of the Electricity Sector in The Bahamas. Where in URCA's view amendments to the Guidelines are necessary, URCA may seek comments from consumers, Licensees and relevant stakeholders prior to publishing the proposed amendments.

URCA has published the Guidelines for The Electricity Sector on the Assessment of Fines for Breaches (ES 04/2022) as a standalone document. The Guidelines for The Electricity Sector on the Assessment of Fines for Breaches (ES 04/2022) takes effect on the date of publication.