



BERMUDA

ELECTRICITY AMENDMENT ACT 2024

2024 : 28

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WHEREAS it is expedient to amend the Electricity Act 2016 to introduce a new type of licence, and to prescribe the fees relating to the new licence;

Be it enacted by The King's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act may be cited as the Electricity Amendment Act 2024.

Inserts sections 32C to 32F

2 After section 32B of the Electricity Act 2016 ("the principal Act") insert—

**“Chapter 3
BGSUI Licences**

Bulk Generation Sole Use Installation Licences

32C (1) The Authority may, by administrative determination, and in accordance with this section, section 32D and regulations, grant to an applicant a Bulk Generation Sole Use Installation Licence (a “BGSUI Licence”).

(2) The Authority may, in accordance with regulations, require an applicant for a BGSUI Licence to provide a consultancy deposit in respect of the application.

(3) A BGSUI Licence authorizes the Licence holder to generate electricity above the licence threshold from a renewable energy system, provided that the Licence holder uses or stores the electricity generated at its principal location.

(4) A BGSUI Licence holder shall enter into an Intermediate Contract under section 49A for the distribution to the TD&R Licensee of surplus electricity generated, up to a maximum of the permitted amount.

(5) “Permitted amount” means 30% of electricity generated each month, or such lesser amount as specified by the Authority in the BGSUI Licence.

(6) A new application will be required if the BGSUI Licence holder does not commence bulk generation within two years of the date of grant of the BGSUI Licence; and subsection (2) applies accordingly.

(7) Section 21 (application for licence) applies with respect to an application for a BGSUI Licence, except that in subsection (1), for the words “information and documents required by general determination” there are substituted “information and documents required by regulations or administrative determination”.

(8) Sections 20, 22 to 30 and 32 (general provisions of Chapter 1 of this Part relating to licences), and section 33 (appeal) apply, with any necessary modifications, with respect to BGSUI Licences.

(9) The Authority may, in accordance with section 48(2) of the Regulatory Authority Act 2011, grant different classes of BGSUI Licence.

Criteria for grant of BGSUI Licence

32D (1) The criteria for grant of a BGSUI Licence are those listed in section 23(2) with the following modifications—

- (a) the applicant must be a company registered in Bermuda, a Government department or a statutory authority;

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- (b) obtaining planning permission in principle satisfies the condition in section 23(1)(a) that the applicant has obtained such permission as required under the Development and Planning Act 1974, if the proposed installation has not been constructed;
 - (c) the grant of a building permit satisfies the condition in section 23(1)(a) that the applicant has obtained such permission as required under the Building Act 1988, if the proposed installation has not been constructed;
 - (d) if the applicant is a Government department or statutory authority, the requirement of section 23(1)(c) (necessary financial capacity) is satisfied if the department or authority has obtained the requisite budgetary approval and funding to build, maintain and operate the facility;
 - (e) if the applicant is a Government department or statutory authority, the requirement of section 23(1)(d) (fit and proper person etc) applies to the head of the public authority (as defined by the Schedule to the Public Access to Information Act 2010);
 - (f) that the applicant will enter into an Intermediate Contract with the TD&R Licensee in accordance with section 49A.
- (2) In considering whether to grant a BGSUI Licence to an applicant, the Authority shall have regard to—
- (a) whether the applicant's energy needs at its principal location justify the authorization of generation of electricity above the licence threshold;
 - (b) whether the applicant has satisfactorily demonstrated to the Authority—
 - (i) that the development is consistent with the purposes listed in section 6;
 - (ii) that the applicant will be able to conform with the Grid Code;
 - (iii) that the applicant will be able to comply with any relevant technical specifications that are approved by the Authority including with respect to generation technology and means of interconnection with the grid; and
 - (c) such other matters as may be prescribed by regulations.

Suspension or revocation of BGSUI Licence

32E (1) A BGSUI Licence may be suspended by the Authority in whole or in part, on the basis that the Licence holder is in breach of its obligations under this Act or its Licence and the breach is such that suspension is justified, if—

- (a) the suspension is confirmed on appeal under section 33; or
- (b) the time limited by law for filing a notice of appeal has expired and the Licence holder has not filed a notice of appeal.

(2) A BGSUI Licence may be revoked by the Authority, on the basis that the Licence holder is in breach of its obligations under this Act or its Licence and the breach is such that revocation is justified, if—

- (a) the revocation is confirmed on appeal under section 33; or
- (b) the time limited by law for filing a notice of appeal has expired and the Licence holder has not filed a notice of appeal.

(3) For the purposes of this section, a BGSUI Licence holder is in breach of its obligations under this Act or its Licence if it has—

- (a) made false statements of material facts, committed fraud or made a misrepresentation in the application for the Licence, permit or other authorization or in any subsequent statement to the Authority;
- (b) failed to comply with any requirements of this Act, the regulations or an administrative determination of the Authority;
- (c) failed to comply with the terms or conditions of its BGSUI Licence, or any permit or other authorization;
- (d) failed to pay to the Authority any authorization fees, regulatory fees or any other required payment.

Suspension or revocation: procedure

32F (1) If the Authority proposes to suspend or revoke a BGSUI Licence, the Authority shall issue a written warning notice to the Licence holder stating—

- (a) the action that the Authority proposes to take;
- (b) the basis on which the Authority proposes to take the action;
- (c) the time frame within which the Licence holder may submit written representations regarding the proposed action; and

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(d) the actions that the Licence holder must take to avoid suspension or revocation, and the time frame in which such actions must be taken.

(2) Time frames under subsections (1)(c) or (d) shall be at least 14 days, and may be extended for a further 14 days if the Authority considers it reasonable in the circumstances.

(3) In deciding whether to give a decision notice, the Authority shall take into account any written representations made under subsection (1)(c) and any actions taken under subsection (1)(d).

(4) The Authority shall give a written decision notice to the Licence holder within 90 days beginning with the day on which a warning notice was given ("the decision period"), stating—

- (a) the reasons for the Authority's decision to suspend or revoke the Licence;
- (b) the date on which the suspension or revocation is to take effect; and
- (c) the right to appeal to the Supreme Court.

(5) If no decision notice is given within the decision period, the Authority shall be treated as having given a notice of discontinuance at the end of the decision period.

(6) If the Authority decides not to suspend or revoke the Licence in accordance with the warning notice, the Authority must give a notice of discontinuance to the person to whom the warning notice was given, identifying the default alleged to have been committed and the proposed action which is being discontinued."

Amends section 36

3 The provisions of section 36 of the principal Act (feed-in tariff-setting principles) become subsection (1), and after that subsection insert—

"(2) Subsection (1) applies with the necessary modifications to empower the Authority to determine feed-in tariffs applicable to BGSUI Licences."

Inserts section 49A

4 After section 49 of the principal Act (Standard Contract) insert—

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“Intermediate Contract

49A (1) A BGSUI Licence holder shall apply for an Intermediate Contract with the TD&R Licensee in the manner, and accompanied by the information and documents, as set out by administrative determination of the Authority, for interconnection of the renewable energy system to enable distributed generation of electricity generated beyond the needs of the applicant, up to the permitted amount (see section 32C(5)).

(2) The TD&R Licensee shall execute an Intermediate Contract with the BGSUI Licence holder if—

- (a) entry by the TD&R Licensee into the contract would not put the TD&R Licensee beyond the limit of the distributed generation capacity agreed by the TD&R Licensee under the approved Integrated Resource Plan;
- (b) the contract—
 - (i) conforms to the Intermediate Contract template set by administrative determination;
 - (ii) authorises the purchase of power up to the permitted amount (see section 32C(5)) at a feed-in tariff approved by the Authority pursuant to section 36;
- (c) any permission required under the Development and Planning Act 1974, the Building Act 1988 and any other relevant legislation has been obtained; and
- (d) the equipment that the applicant intends to use for generation complies with the Grid Code.

(3) During any period in which there is no Integrated Resource Plan approved by the Authority under section 44(2), subsection (2)(a) shall not apply.”

Inserts section 50A

5 After section 50 of the principal Act (effect of Standard Contract), insert—

“Effect of Intermediate Contract

50A The Intermediate Contract authorises a BGSUI Licence holder to generate electricity for a term stated in the Contract—

- (a) in accordance with the terms and conditions of the Intermediate Contract; and

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- (b) subject to compliance with this Act and regulations, the Building Act 1988 and any codes establishing standards for electrical systems, and any other relevant legislation.”

Amends section 54

6 In section 54 of the principal Act (regulations), after subsection (1A) insert—

“(1B) Without prejudice to the generality of subsection (1), the Minister, after consultation with the Authority, may make regulations with respect to BGSUI Licences, and such regulations may—

- (a) further provide for applications and decisions related to applications;
- (b) provide for consultation, a consultancy deposit and notice before the Authority makes a decision on an application;
- (c) further provide for the suspension or revocation of BGSUI Licences or other authorizations, and the imposition or variation of conditions on a Licence that the Authority deems to be necessary;
- (d) provide for granting authorizations that are necessary, or ancillary, to BGSUI Licences;
- (e) make provision ensuring that the Authority establishes and adheres to a reasonably prompt timetable in carrying out its functions in relation to BGSUI Licences;
- (f) provide for designation of the area within which a BGSUI License holder is permitted to operate, and specify any prohibited and restricted activities therein;
- (g) provide for offences and prescribe penalties for such offences (including any defence, or if thought fit, imprisonment), but not exceeding the penalties fixed by section 55;
- (h) provide for objections, savings and transitional matters;
- (i) provide for the exercise of any of the Authority’s other functions set out in this Act or the Regulatory Authority Act 2011;
- (j) prescribe any other matters related to or connected with BGSUI Licences.”

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Minor and consequential amendments

7 (1) This section contains minor and consequential amendments to the principal Act.

(2) In section 2(1) (interpretation)—

(a) in the appropriate place in alphabetical order insert—

“Bulk Generation Sole Use Installation Licence” or “BGSUI Licence” means a licence granted under section 32C, and “BGSUI Licence holder” shall be construed accordingly”; “;

(b) in the definition of “feed-in tariff”, delete “the pre-determined rate” and substitute “a pre-determined rate”.

(3) Delete the heading to Part 5, and substitute—

“PART 5 LICENCES

Chapter 1

Licences - General”.

(4) In section 20 (licences: general), in subsection (1)(a) delete “and Innovative Licensees” and substitute “, Innovative Licensees and BGSUI Licence holders”.

(5) In section 23 (criteria for grant of licence), in subsection (1)(c) delete “build and maintain” and substitute “build, maintain and operate”.

(6) In section 26 (conditions), in subsection (2)(a) delete “or an Innovative Licensee” and substitute “, an Innovative Licensee or a BGSUI Licence holder”.

(7) In section 30 (transfer of licences), in subsection (5) delete “or a Bulk Generation Licence” and substitute “, a Bulk Generation Licence or a BGSUI Licence”.

(8) Delete the heading above section 32A, and substitute—

“Chapter 2 Innovative Licences”.

(9) Delete the heading above section 33, and substitute—

“Chapter 4 Appeals”.

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(10) In section 37 (tariff reviews)—

- (a) in subsection (1)(a) delete “approved retail tariff” and substitute “approved retail tariffs”;
- (b) in subsection (1)(b) delete “approved feed-in tariff” and substitute “approved feed-in tariffs”.

(11) In section 49 (Standard Contract), delete subsection (3).

(12) In section 50 (Effect of Standard Contract), in paragraph (b) delete “this Act and any other relevant legislation”, and substitute “this Act and regulations”.

Amends Electricity (Regulatory Authority Fees) Regulations 2021

8 (1) In Schedule 1 to the Electricity (Regulatory Authority Fees) Regulations 2021 (general regulatory fees payable), at the end insert—

- “ (8) Bulk Generation Sole Use Installation (BGSUI) Licence provider \$1,500 per megawatt per annum of installed electricity generation capacity (payable quarterly) ”.

(2) In paragraph (7) of that Schedule, delete “Innovative Provider” and substitute “Innovative Licence provider”.

(3) In Schedule 2 to those Regulations (service fees payable), after the last entry insert—

- “ Bulk Generation Sole Use Installation (BGSUI) Licence application fee \$1,000 ”.

Amends Government Fees Regulations 1976

9 In Head 24 of the Schedule to the Government Fees Regulations 1976 (Electricity Act 2016), after paragraph (8) insert—

- “ (9) Authorisation to a Bulk Generation Sole Use Installation (BGSUI) Licence holder under section 32C \$800 per megawatt per annum of installed electricity (payable quarterly) ”.

Commencement

10 This Act shall come into operation on such day as the Minister responsible for energy may appoint by notice in the Gazette.

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[Assent Date: 11 October 2024]