



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

STATEMENT OF RESULTS

ES 09/2021

Publication Date: 1 October 2021

Table of Contents

1. Introduction.....	3
1.1 Background.....	3
1.2 Structure of the remainder of this Document.....	4
2. Legal Framework	5
3. Overview of the ADR Process	7
3.1 Status and Effect of this ADR Scheme	7
3.2 Scope of this ADR Scheme.....	7
3.3 The ADR Cycle	8
3.4 High Level Principles.....	9
5. Conclusion and Next Steps	10

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.”

On 9th July 2021, URCA issued a Consultation Document (ES 08/2021) in respect to its proposed ADR Scheme. The closing date for responses was 9th August 2021.

This Statement of Results document sets out a background of URCA’s previous consultation in relation to the establishment of an ADR Scheme for the ES in addition to providing the legal and regulatory framework for the ADR Scheme for the ES which is annexed to this document.

The ADR scheme contained herein indicates URCA’s current thinking and URCA will therefore update its ADR scheme from time to time to take in account best practice and to reflect developments in ADR.

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

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

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.

Accordingly, on 9th July 2021, URCA issued a Consultation Document (ES 08/2021) in respect to its proposed ADR Scheme. This consultation document also substantive addressed the comments and concerns raised by stakeholders during URCA’s 2019 consultation. Persons were invited to return any comments concerning ES 08/2021 on or before 9th August 2021. No comments were received.

1.2 Structure of the remainder of this Document

The remainder of this document is structured as follows:

- Section 2: Sets out the legal framework under which URCA has exercised its power to implement this ADR scheme;
- Section 3: Broadly describes the ADR scheme URCA proposes to implement as fully set out in the Draft Rules;

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>

2. Legal Framework

This section outlines the regulatory and legal framework under which URCA has exercised its power to establish an ADR Scheme for the ES.

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.

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. Overview of the ADR Process

This section sets out an overview of URCA's ADR Scheme.

3.1 Status and Effect of this ADR Scheme

URCA's 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 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 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.

3.2 Scope of this ADR Scheme

Broadly, the 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 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 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 Procedures³ – URCA 05/2018.

3.3 The ADR Cycle

The 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, disputes will first go through a mediation process, and then, if there remains an unresolved issue, then binding arbitration.

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.

³ [Microsoft Word - Consumer Complaints Handling Procedures Final.docx \(urcabahamas.bs\)](#)

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

3.4 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.

5. Conclusion and Next Steps

URCA has published its Alternative Dispute Resolution Scheme for the ES (ES 10/2021), which establishes the framework for URCA's handling of disputes referred to it between licensees and IPPs.

URCA anticipates that the scheme will be reviewed as needed based on monitoring the effectiveness and compliance with the principles and standards herein. Where in URCA's view amendment to its ADR scheme is necessary, URCA may seek comments from consumers, licensees and relevant stakeholders prior to publishing the proposed amendments.