

IN THE MATTER of electricity concession contracts between UNION ELECTRIQUE DU VANUATU LIMITED and the GOVERNMENT OF THE REPUBLIC OF VANUATU for the provision of electricity services in Port Vila, Luganville, Tanna Island and Malekula

-and-

IN THE MATTER of arbitrations under the concession contracts

BETWEEN

UNION ELECTRIQUE DU VANUATU LIMITED

UNELCO

and

THE GOVERNMENT OF THE REPUBLIC OF VANUATU

the Government

Final Award of Panel comprised of Geoff Swier (Chairman), Luke Woodward and Robert Scott

28 April 2011

This Final Award is issued in respect of disputes referred to in Terms of Reference drawn by the Arbitration Panel and dated 20 December 2010.

The Arbitration Panel has received submissions from the Parties and published conclusions and reasons:

- (a) dated 11 February 2011 concerning the Reasonable Rate of Return Methodology Issue;
- (b) dated 14 April 2011 concerning:
 - (i) the CAPM Formula;
 - (ii) the Luganville Concession Contract;
 - (iii) the Wind Farm Benefits; and
 - (iv) the Price Adjustment Formula – Treatment of Coconut Oil,

as revised on 28 April 2011 correcting an error in its specification of the variable L_L in the calculation of the weighted average price of diesel oil in the price adjustment formula.

- (c) dated 8 April 2011 (published on 13 April 2011) concerning updating of Damodaran data;
- (d) dated 27 April 2011 concerning its conclusions on CAPM Parameters and its Final Statement of Reasons; and

The Arbitration Panel now Awards and Determines that:

- (a) the single based price P_0 that shall apply to each concession contract as referred to in paragraph 10 of the Terms of Reference shall be 47.65 Vatu; and
- (b) the single price adjustment formula that shall apply to each concession contract (as referred to in paragraph 10 of the Terms of Reference) shall be the following:

$$P = P_0 \times \left(\left[0.490 \times \frac{G}{G_0} \times \frac{N}{N_0} \right] + \left[0.107 \times \frac{M}{M_0} \right] + \left[0.086 \times \frac{IM}{IM_0} \right] \times \left[0.60 + \left(0.40 \times \frac{C}{C_0} \right) \right] + 0.316 \right)$$

Where

N is the average proportion of power generated by diesel, hydro and coconut oil and is calculated as follows:

$$N = \text{Average for previous twelve months of } \left(\frac{\text{Energy produced by diesel and copra}}{\text{Total energy produced}} \right)$$

M is the average of the daily wage for a single male not receiving board or lodging in port Vila at Ifira Wharf and Stevedoring, classified as an “inexperienced labourer” and the classification “P02” with the Public Service Commission of the Vanuatu Government for the previous month.

IM is the average of the indices “Matériel” (equipment) published by the “Journal Officiel” (Official Gazette) for the first of the two months preceding the tariff adjustment.

C is the average of the daily currency exchange rates for the month preceding the date of adjustment of tariffs, as published by the Banque d’Hawaii in the column “selling rate” for the Pacific Franc (XPF or CFP) to Vatu (expressed in Vatu/XPF)

G is the weighted average price of a litre of diesel in Port Vila, Luganville, Malekula and Tanna expressed in Vatu/litre and is calculated as follows: $G = \frac{G_v L_v + G_L L_L + G_M L_M + G_T L_T}{L_v + L_L + L_M + L_T}$

Where

G_v G_L G_M and G_T are the average prices per litre of diesel fuel delivered to the Port Vila (G_v), Luganville (G_L), Malekula (G_M) and Tanna (G_T) power stations net of any deductions, rebates or discounts whatsoever, calculated by dividing the total amount of invoices received by the Concessionaire by the corresponding amount of diesel delivered during the month preceding the date of adjustment of tariffs.

L_T is the number of litres of diesel fuel consumed by the Tanna power station during the month preceding the date of adjustment of tariffs.

L_v is the number of litres of diesel fuel which would have been consumed by the Port Vila diesel power station during the month preceding the date of adjustment of tariffs if the power generation had been entirely produced by diesel generators, calculated as follows: $L_v = L_{vD} + L_{vC} \times Kpci_v$

Where

L_{vD} is the number of litres of diesel fuel consumed by the Port Vila power station during the month preceding the date of adjustment of tariffs.

L_{VC} is the number of litres of coconut oil consumed by the Port Vila power station during the month preceding the date of adjustment of tariffs.

$Kpci_V$ represents the ratio of calorific value between diesel and coconut oil at the Port Vila power station and is used to convert the number of litres of coconut oil to equivalent litres of diesel oil.

L_M

is the number of litres of diesel fuel which would have been consumed by the Malekula diesel power station during the month preceding the date of adjustment of tariffs if the power generation had been entirely produced by diesel generators, calculated as follows: $L_M = L_{MD} + L_{MC} \times Kpci_M$

Where

L_{MD} is the number of litres of diesel fuel consumed by the Malekula power station during the month preceding the date of adjustment of tariffs.

L_{MC} is the number of litres of coconut oil consumed by the Malekula power station during the month preceding the date of adjustment of tariffs.

$Kpci_M$ represents the ratio of calorific value between diesel and coconut oil at the Malekula power station and is used to convert the number of litres of coconut oil to equivalent litres of diesel oil.

L_L

is the number of litres of diesel fuel which would have been consumed by Luganville diesel power station during the month preceding the date of adjustment of tariffs if the power generation had been entirely produced by diesel generators, calculated as follows: $L_L = \frac{Csg}{Mvg} \times Eh + Ed$

Where:

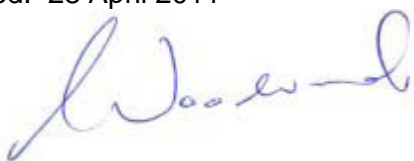
Csg and Mvg represent the specific consumption of diesel oil (in grams/kWh) and the density of diesel fuel (in grams/litre) respectively as defined in section 18 of the addendum date the 03rd March 1995 to the Concession Contract of Luganville.

Eh is the energy produced by the Sarakata hydroelectric power station (in kWh) as defined in the same section 18, during the month preceding the date of adjustment of tariffs.

Ed is the energy produced by the diesel power station in Luganville (in kWh) during the month preceding the date of adjustment of tariffs.

By an agreement recorded in emails of 28 March 2011 from the State Law Office on behalf of the Government and from Minter Ellison on behalf of UNELCO the parties have agreed that this award shall be published electronically and shall be deemed to have been made in Vanuatu.

Dated: 28 April 2011



Signed: Luke Woodward for the Arbitration Panel
Geoff Swier (Chair), Robert Scott, Luke Woodward