



CONSULTATIVE DOCUMENT

Document Reference: 2011/001/CD-02

DRAFT

GENERATION LICENCE

For

DOMINICA ELECTRICITY SERVICES LTD

December 2012

CONSULTATION PROCESS

Persons who wish to participate in this consultation and to express opinions on this Document are invited to submit comments in writing to the IRC. Responses/Comments should be sent to:

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Responses, clearly showing the Document Reference identification, may be sent by mail or fax to the address or fax number above or by e mail to: admin@ircdominica.org.

Confidential information provided with responses should be submitted as a separate document and clearly identified as such.

In order to stimulate debate, the IRC will place any responses received on its website at www.ircdominica.org immediately following the last date for receipt of responses. Comments on the responses will also be entertained by the IRC which should, likewise, be submitted by the date indicated.

The references and proposed time table for this consultation are:

Document Ref No: 2011/001/CD-02

Document Title: Generation Licence for Dominica Electricity Services Ltd (DOMLEC)

Event	Proposed Date
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Decision by Commission	September 13, 2013

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DRAFT GENERATION LICENCE FOR DOMINICA ELECTRICITY SERVICES LTD.

Introduction and Background

The Electricity Supply Act 10 of 2006 (ESA) establishes a regime of separate licensing for each of the business sectors of public electricity supply undertakings – generation, transmission distribution and supply. The Act provides a function for the Commission to issue, monitor and amend licences in the context of a general duty to promote competition. All of this however is set within an overarching duty to encourage the expansion of electricity supply and to ensure the security and efficiency of the supply of electricity in Dominica.

While the ESA effectively truncated the Licence issued to DOMLEC by 10 years (effectively to end it 2017), it simultaneously placed the utility under the regulatory jurisdiction of the IRC, thus providing the mechanism for a deliberative consideration of DOMLEC's licenses going forward and thus establishing regulatory certainty through the legislated independence of the Commission. The Commission in recognizing that the long term security and efficiency of the electricity system could be affected authorized discussions with DOMLEC towards securing a series of agreements on critical issues such as tariffs and other conditions that would lead to the development/conclusion of new licences for DOMMLEC which would be aligned with the principles enshrined in the ESA.

The generation sector

The Commission's Decision *Regulatory Policy and Procedure - Adding Capacity to the Public Electricity Supply System, Document Reference 2008/002/D*, sets out Commission's policy on the generation sector where it establishes that it will seek to promote competition for the market by seeking to add new capacity through a competitive process. The reality is that this will be difficult to realize with the governments intended/expected investment in the new 5 MW plant and the prospect of the development of the geothermal resources. The Commission will have to be careful in permitting the addition of new capacity from any source, unless of course economic growth takes off and demand for electricity multiplies significantly. The risk is that investors could be left with stranded assets which the consumer would be saddled with for the life of the asset. But nevertheless, the principle of allowing multiple participants in the generation sector, with DOMLEC being the single buyer through Power Purchase Agreements is an option which could be exercised as it does allow the greatest opportunity to secure competitive rates for consumers at the generation level (note that generation costs, depending on the system typically constitutes up to 75% of the cost structure in the retail tariff).

The Commission is also mindful that (i) if the Government's declared intent to invest directly in some 5 MW of new capacity materializes and (ii) the potential which the geothermal development brings in terms of new capacity can impact on the mix of generation plant to an extent that the expected benefits in reductions in retail prices may not materialise. The Commission, therefore, is of the view that addition of new capacity must be carefully managed until there is some certainty regarding these initiatives recognizing that the nature of the developments may not lend themselves to the competitive process envisaged. Nevertheless, the Commission believes that it should maintain its overarching policy to encourage competition for the market and the use of Power Purchase Agreements in the generation business.

The Commission commented in its deliberations that led to its decision *Regulatory Policy and Procedure - Licensing Procedures, Document Reference: 2009/001/D* that *"The emerging potential for Dominica to export energy derived from the development of its geothermal resources is of such national importance that the Commission has formed the view that the regulatory and industry arrangements must facilitate the exploitation of this potential to secure the maximum benefits for the country."* The initiatives being taken by the Government of Dominica to develop the country's geothermal resources enables the Commission to be proactive in ensuring that if and when these facilities become operational the full benefit will accrue to the country's economic development and to consumers generally.

The provision in the ESA which allows for self generation should not be discouraged. The fact that large users have the option to self generate will provide an incentive to DOMLEC and to investors who may be interested in entering into PPAs with DOMLEC, to provide a level of service at attractive prices to encourage these companies to connect to the public supply system and therefore this feature does provide an element of competition in the generation market.

The creation of a competitive market is not mandatory under the ESA as the Commission has to be satisfied that the introduction of competition would be efficient and, by inference, consumers would see the benefits through lower prices, improved service and customer experience.

The Commission reaffirms its Decisions where:

- The generation market should be developed along the lines of the Single Buyer Model - competition for the market and contractual arrangements for purchased power (PPAs) with DOMLEC. The opportunity for self generation should remain as an important feature of the market.

- Transmission, Distribution and Supply should be the exclusive purview of DOMLEC except that generators can secure licences for cross border transmission interconnection and under certain circumstances interconnection to the DOMLEC system.[The Transmission Distribution and Supply Licenses are discussed in a separate proceeding]

It is against this background that the Commission drafted for public consultation, two new licenses for DOMLEC, a proposed Generation Licence and a proposed Transmission Distribution and Supply Licence. The Commission also consulted on and amended its established procedure set out in its *Regulatory Policy and Procedure – Licensing Procedures, Document Reference: 2009/001/9* in order to establish a specific process for the issuance of new licences to replace the current licence which will come to an end on December 31, 2015. This procedure establishes the process as summarized at Table 1.

Table 1
Time table for managing negotiations with DOMLEC for renewal or issuance of new Licences

Months before end of Term	Target objective (1)	Target objective (2)
42	Licencee to advise the Commission, in writing, as to its intention to renegotiate the licence or surrender it. This will be acknowledged by the Commission within seven (7) working days of receipt.	
39	If Licencee demonstrates its intention to renegotiate the Licence, the Commission to respond to the Licencee providing broad frame work and draft of proposed new Licence and setting out a proposed time table for meeting the objective contained herein	If Licencee demonstrates its intention to surrender the licence, the Commission to respond to the Licencee proposing the broad framework and procedure for managing the Investor’s disengagement from the business of the Licencee
39 - 36	Preliminary negotiation of new licence terms	New investors identified and new Licence negotiated concomitantly with sale/disposal of the asset by the investor
36 - 33	Public consultation on proposed new Licence	
33 - 30	Final round of negotiations	
27	Commission issues new Licence	
24	If the Commission and the Licensee fail to reach agreement on a new Licence or if the Investor fails to	

	<p>identify a purchaser satisfactory to the Commission, the Commission will recommend to the Minister that the Government embarks on the process of “acquisition” of the assets of the investor at the Fair Market Value* - payment of which will be effected on the expiration date of the Term or such other date as the parties may mutually agree.</p> <p><u>New Licence to become effective on the date of acquisition of the asset.</u></p>
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Having completed the first round of public consultations on the draft licences, the Commission and DOMLEC have been engaged in and completed “good faith” negotiations as required for the period described as “Months 39 – 36” towards Target Objective 1.

The process is now at the stage of “Month 36 – 33” where a second round of public consultation is to be conducted.

This document address discusses the proposed Draft Generation Licence and after establishing the Policy and Legal framework in the next section, it discusses issues which the Commission deems to be critical to its considerations of this licence. The draft licence is appended as Attachment 1.

Policy and Legal framework

Despite the provisions that the electricity market is open to the issuance of multiple licences in the four subsectors of electricity generation, transmission distribution and supply, The ESA provides guidance as to the actions that the Commission may take with regard to the development and operation of these sectors.

The ESA provides at Section 18

The Commission shall be independent in the performance of its functions and duties under this Act and shall not be subject to the direction and control of the Government or of any person, corporation or authority, except that the Commission shall have due regard to the public interest and overall Government policy, as embodied in legislation.

At Section 19

The Commission shall have sole and exclusive authority to regulate all electricity entities that are subject to this Act and shall have full powers to regulate all licensee with regard to all economic and technical aspects of regulation in accordance with this Act especially with regard to the determination of tariff or electricity charges.

At Section 20

(1) The Commission shall, without limiting the generality of this section, have a duty to perform and exercise its functions and powers under this Act in the manner which it considers best calculated to:

- (a) encourage the expansion of electricity supply in Dominica where this is economic and cost effective and in the public interest;*
- (b) encourage the operation and development of a safe, efficient and economic electricity sector in Dominica;*
- (d) facilitate the promotion of sustainable and fair competition in the electricity sector where it is efficient to do so;*
- (e) protect the interests of all classes of consumers of electricity as to the terms and conditions and price of supply;*
- (g) ensure that the financial viability of efficient regulated electricity undertakings is not undermined;*

Firstly the Act gives the Commission full authority to act independently in the performance of its duties under the Act – specifically having regard to public interest considerations and government policy, as embodied in legislation. In providing for its functions the ESA (S20) mandates the Commission to act in a manner which it considers best calculated to achieve a number of policy objectives and in this regard clauses (a), (b), (d), (e) and (g) of S 20 reproduced above are instructive.

With this mandate, Commission is of the view that it must act in a manner which, firstly satisfies the public interest considerations by securing economic and cost effective expansion of the system and secondly does so in line with the policy objectives that provides a safe, efficient and economic operation, protects prices to consumers while ensuring financial viability of the investor and in doing so promote fair competition where it is efficient.

Part VI of the Act (Sections 28 - 35) sets out general and specific provisions for the Licensing regime. With regards to the Commissions functions and duties in the grant of Licences the Act makes general and specific provisions regarding the requirements to be licensed and the grant of licences by the Commission. Section 29 provides:

29. (1) Subject to section 30, no person, unless authorized to do so by licence under this Act, shall engage in the operation of facilities or systems in order to carry out any of the functions of :-

- (a) generating electricity, except in cases where such licencing requirement has been excluded or exempted pursuant to Section 31 (4) of this Act;*
- (b) transmitting electricity;*
- (c) distributing and supplying electricity.*

(2).....

Section 30 sets out the general procedures for the grant of licence while section 31 addresses the general conditions specifically related to the grant of a generation licence.

S 31. (1) Generation Licences shall be required for all generation facilities that are interconnected to the national grid, and are issued for the purpose of promoting, safe reliable and economically efficient operation of the national electricity system and shall expressly state:

- (a) the nature of the service to which the licence applies;*
- (b) the location of the generation facilities or group of generation facilities;*
- (c) the duration of the licence, which shall be related to the useful life of the generation facilities; and*
- (d) the conditions applicable to licence as are prescribed under this Act or Regulations made under the Act or prescribed by the Commission.*

(2) All applications for generation licences shall be considered by the Commission.

(3) A generation licence shall be required for all generation sets of 20 kW or greater that are not connected to the national grid, and are issued for the purpose of promoting safe operation of the system.

(4) Subject to subsection (3) generation licences shall not be required for generation facilities utilized for domestic self generation and which are not connected to the national grid.

(5) For generation facilities connecting directly or indirectly to the national transmission grid, the generation licensee shall make its generating facilities available to the transmission system operator for the safe and reliable dispatch and operation of the transmission system and connected facilities; and shall provide and receive compensation for such services as are directed by the transmission system operator.

(6) The Commission may establish standards based on minimum generation capacity, or such other criteria as it determines, for the exemption of generation facilities under this section.

As indicated earlier, the Commission's Decision ***Regulatory Policy and Procedure - Adding Capacity to the Public Electricity Supply System Document Reference 2008/002/D***, sets out Commission's policy on the generation sector where it establishes that it will promote competition for the market by seeking to add new capacity through a competitive process. This along with the expectation that significant capacity could be added to the system through the development of geothermal resources has prompted the Commission to insist that (from a licensing perspective) DOMLEC will be granted two licences - a generation licence and a transmission licence; and that, as far as is practicable and cost effective, from a regulatory perspective, they will be treated as separate businesses.

Issues - the Draft Generation Licence

The attached Draft Generation Licence which is now the subject for public consultation sets out the terms and conditions which the Commission is considering and reflects the impact of responses received from the previous release as well as those issues arising out of detailed discussions that ensued with DOMLEC.

Term

The current licence ends on December 31, 2015. The Commission's motivation for initiating the licensing discussions for the issuance of a new licence as early as 42 months in advance is to preserve the environment for continuity such that the investor has a fair degree of certainty in making investment decisions, particularly as the end of the term of the licence approaches. This is not usually as critical for generation licences as these are generally linked to the life of the plant associated with the licence (in green field cases there are no existing preconditions and the licence is issued to reflect the life for the specific development which satisfies equity and debt investors). DOMLEC's situation is not however as clear cut, as there are preexisting conditions that ought to be taken into consideration to establish the "initial" term. The Act provides some guidance where at Section 31 (1) (c) it states that the duration of the licence "*shall be related to the useful life of the generation facilities*". The Commission has been of the view therefore that the initial term must therefore reflect the remaining useful life of the existing plant and that some mechanism should be used to establish this. DOMLEC has, however, been of the view that the terms of the generation and the transmission, distribution and supply licences should be tied and concurrent (perhaps because of DOMLEC's peculiar situation as a vertically integrated utility).

The Commission has however persisted with the view that if Parliament had intended for such linkages the Act would not have explicitly made the provision for the term of the licence to "*be related to the useful life of the generation facilities*" and interprets this to mean, in the current context, the remaining useful life of the existing generating plant. The challenge therefore is to determine a reasonable basis to establish the remaining useful life.

Based on information provided by DOMLEC, the status of the generating plant that are scheduled to be retired after 2015 is summarized at Table 1 below and which indicate that the retirement dates range from 2016 to 2041

Table 1
Status of DOMLEC's Generating Plant

A. Fond Cole Power Station						
Unit No.	Unit Make and Model	Type of Plant	Unit Size - MW	Date of Installation	Proposed Retirement Date	Net Output Rating
No 5	Cat 3612	Medium Speed	2.84	1996	2016	2.10
No 10	Man 7L28/32H	Medium Speed	1.46	2009	2029	1.46
No 11	Man 7L28/32H	Medium Speed	1.46	2009	2029	1.46
No 12	Man 7L28/32H	Medium Speed	1.46	2009	2029	1.46
B. Sugar Loaf Power Station						
Unit No.	Unit Make and Model	Type of Plant	Unit Size - MW	Date of Installation	Proposed Retirement Date	Net Output Rating
No 6	Cat 3516B	High Speed	1.4	2005	2017	1.2
C. Hydro Stations						
1. Laudat						
Unit No.	Unit Make and Model	Type of Plant	Unit Size - MW	Date of Installation	Proposed Retirement Date	Net Output Rating
LD1	Noell Pelton	Hydro	1.24	1990	2040	
2. New Trafalgar						
Unit No.	Unit Make and Model	Type of Plant	Unit Size - MW	Date of Installation	Proposed Retirement Date	Net Output Rating
NT1	Noell Pelton	Hydro	1.76	1991	2041	
NT2	Noell Pelton	Hydro	1.76	1991	2041	
3. Padu						
Unit No.	Unit Make and Model	Type of Plant	Unit Size - MW	Date of Installation	Proposed Retirement Date	Net Output Rating
PD1	Gilkes	Hydro	0.94	1967	2022	0.7
PD2	Gilkes	Hydro	0.94	1967	2022	0.94
D. Other plant at Sugar Loaf to be considered for refurbishing so as to maintain capacity						
Unit No.	Unit Make and Model	Type of Plant	Unit Size - MW	Date of Installation	Proposed Retirement Date	Net Output Rating
No 3	Cat 3516		1000		2012	
No 4	Cat 3516B		1400		2013	
No 5	Cat 3516		1400		2015	
No 7	Cat 3516		1400		2015	

Table 2 shows the retirement dates based on the type of generating plant.

Table 2
Plant retirement by type

Plant type	Remaining years (range) based on Retirement range
Thermal (Fond Cole & Sugar Loaf)	2016 - 2029
Hydro electric (Laudat, New Trafalgar, & Padu)	2022 - 2041

While the treatment of the facilities at (A) Fond Cole Power Station and (B) Sugar Loaf Power Station would appear to be straight forward, the Commission has some concerns about the hydro plant which, because of the infrastructure works involved, has a longer “book” life (up to 50 years) than say the thermal stations. The consideration is whether the projected “useful” life of the plant in their current state can reasonably be adopted based on the retirements dates proposed by DOMLEC. In order to bring some objectivity to the assessment, the Commission has proposed that an independent consultant be retained to make an evaluation of the facilities and to advice on the remaining useful life. This advice would form the basis on which the term is determined to satisfy Section 31 (1) (c) of the Act. In any event the Commission holds the view that the term must bear some relationship to the useful life, and should not be considered in terms of an explicit or implicit relation to any Transmission Distribution or Supply Licence.

Since the completion of the initial negotiations DOMLEC has proffered the following view:

“Domlec considers that the proposed initial period indicated under this condition does not properly take into account the need of Domlec to source funding for the required ongoing capital investments, whether raised by way of debt or equity financing. Generation resources require substantial initial and ongoing investment and experience in utility financing has shown that investors wish to be adequately assured of recovering their investment over a realistic period of years. Domlec has therefore asked that the initial duration of the Generation Licence be a minimum of twenty-five years.”

Consultation Question No 1

The Commission would be interested to hear views on and reactions to:

- (i) its view that the Act provides clear guidance as to the factors that influence the term of a generation licence.

- (ii) its approach to rely on the advice of an independent consultant to be given after an assessment of the plant is conducted, and
- (iii) If respondents believe the approach is not appropriate, what alternative is recommended and why?

Commencement date

The current licence expires on December 31, 2015. It is proposed that the new licence would commence on January 1, 2016. It has been proposed that, assuming the current proceedings are completed within the expected time frame that the commencement date of the new Licence could be advanced to January 1, 2014; provided that the term is extended by the two years “lost”.

Although the Commission appreciates the value and practicality of the proposal and, in principle, subscribes to the view that there should be no loss to DOMLEC as far as the term of the current licence is concerned, it could argue that the commencement date of the generation licence is not as critical as the defined term because, for consistency with the Act, the term is linked to the useful life of the facility and not to a notional period to be determined by negotiation.

Consultation Question No 2

The Commission would be interested to hear views on and reactions to the proposal to define the commencement date as January 1, 2014 with the proviso that the term of the Licence be extended by two (2) years.

Attachment 1 - Draft Generation Licence