



Regulating Electricity, Promoting Our Energy

CONSULTATIVE DOCUMENT

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DRAFT

GENERATION LICENCE

For

DOMINICA ELECTRICITY SERVICES LTD

December 2012

**Independent
Regulatory
Commission**

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Contents

PART I: GRANT OF THE LICENCE.....	4
PART II: TERMS AND CONDITIONS	5
Condition 1: Interpretation.....	5
Condition 2: Authorisations	9
Condition 3: Term of Licence	9
Condition 4: Assignment or Transfer of Licence.....	9
Condition 5: Transfer of Shares of the Licensee	10
Condition 6: Obligations of the Licensee	11
Condition 7: Reporting Obligations.....	11
Condition 8: Audit Rights of the Commission	12
Condition 9: Licence fees and Regulatory fees.....	12
Condition 10: Early Retirement of Assets	12
Condition 11: Regulatory Accounts to be kept by the Licensee	13
Condition 12: Economic Purchasing of Goods and Services.....	13
Condition 13: <i>Related Party</i> Transactions.....	13
Condition 14: Amendment of Licence.....	13
Condition 15: Obligation to Comply with Licence	13
Condition 16: Revocation of Licence	14
Condition 17: Force Majeure	15
Condition 18: Reconsideration and Appeal of Commission Decisions ...	15
Condition 19: Notices and Communication	17
PART III: GENERATION STANDARDS	17
Condition 20: Generation Performance Standards	17
Condition 21: Generation Code.....	19
SCHEDULES.....	20

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DOMINICA ELECTRICITY SERVICES LTD
ELECTRICITY GENERATION LICENCE

PART I: GRANT OF THE LICENCE

1. The **Independent Regulatory Commission** in exercise of the powers conferred by Section 30 of the Electricity Supply Act 10 of 2006 (The *ESA*) **HEREBY GRANTS** to Dominica Electricity Services Limited (the Licensee) a Licence (the Licence) authorising the Licensee to generate electricity for supply to the *System* in the *Service Territory* for the period specified herein subject to the conditions set out in Part II and III hereof ("the Conditions") and as noted herein.
2. This Licence shall be cited as the DOMLEC Generation Licence 2016.
3. This Licence shall come into effect on the 1st day of January 2016 (the **Commencement Date**) and shall continue in full force and effect until termination or expiry unless amended, revoked or terminated pursuant to the Conditions set out herein.
4. The licence shall be governed by and construed, enforced and performed in accordance with the laws of the Commonwealth of Dominica.

Comment [JPM1]: This will be subject to the commencement date - subject to agreements on the term. See condition 3

Comment [JPM2]: This will be subject to the commencement date - subject to agreements on the term. See condition 3

Sealed and executed for and on behalf of the Independent Regulatory Commission on
XXXX day of YYYY, 20xxxx

PART II: TERMS AND CONDITIONS

Condition 1: Interpretation

1. Unless the contrary intention appears, words and expressions used in this Licence shall be construed as if they were in an Act of Parliament and the Interpretation and General Clauses Act applied to them. Any reference in this Licence to an Act shall include that Act, as from time to time amended, extended, re-enacted, revised or consolidated whether before or after the date of this licence and all statutory instruments, regulations or orders made there under.
2. Any word or expression defined for the purposes of any provision of the Electricity Supply Act 10 of 2006 (the ESA) shall, unless the contrary intention appears, have the same meaning when used in this Licence.
3. This Licence may be cited as the DOMLEC Generation Licence 2016.
4. In this Licence unless the context otherwise requires:

"*Affiliate*" in relation to any person means any holding company or subsidiary of that person or any subsidiary of a holding company of that person in each case within the meaning of Section 149 of the Companies Act.

"*Assets*" mean the material assets and facilities owned, operated or leased by the Licensee, including the Real Estate.

"*Authorised*" in relation to any business or activity means authorised by licence granted under Section 30 of the ESA.

"*Authorised electricity operator*" means any holder of an Electricity Licence granted under Section 30 of the ESA.

"*Catastrophic failure*" means a sudden and unexpected failure of one or more generating units that form part of the *generating facilities* which renders that or those units economically or technically unfit to generate.

"*Commission*" means the Independent Regulatory Commission as established pursuant to S. 4 of the ESA.

"*Company*" means Dominica Electricity Services Limited.

Comment [JPM3]: This will be subject to the commencement date – subject to agreements on the term. See condition 3

"Companies Act" means the Companies Act No. 21 of 1994 and any amendments thereto.

"Distribution Line" means any electric power line operating below 33,000 volts.

"Distribution System" means that part of the System that operates below 33,000 volts.

"ESA" means the Electric Supply Act 10 of 2006 and any amendments thereto.

"Electricity Generation Licence" means a licence granted under Section 30 of the ESA authorising the Licensee to carry out the generation of electricity.

"Fair Market Value" Fair Market Value means the market value of the Licensee when evaluated as an ongoing business concern including this Licence and all lands, buildings, works, materials, plant and property of all kinds whatsoever suitable to or intended for the purposes of the undertaking and shall be determined in a manner that complies with the term Fair Market Value as defined by the American Society of Appraisers, that is the price, expressed in cash equivalents, at which Shares would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arm's length in an open unrestricted market when neither is under any compulsion to buy or sell and when both have reasonable knowledge of the relevant facts. Fair Market Value shall be the average value as determined by a panel of three (3) independent valuation experts, one to be selected by the Commission, one by the Licensee and one, who shall be Chairman of the panel, to be selected by the two other members. In the event that the nominees cannot agree on the selection, the Chairman shall be appointed in accordance with the provisions of Part II of the Arbitration Act of the Commonwealth of Dominica.

"Financial Year" means the twelve month period at the end of which the Licensee's annual accounts are completed and independently audited.

"Force Majeure" means an event or circumstance which prevents the Licensee from performing its obligations under this Licence, which event or circumstance is not within the reasonable control of, or the result of the negligence of, the Licensee, and which the Licensee is unable to overcome or avoid or cause to be avoided through the exercise of due diligence. Events of Force Majeure may include, but are not limited to acts of God, fire including fire resulting from an earthquake; flood including flood caused by an earthquake; volcanic eruption, earthquake; hurricane, cyclone, tornado, windstorm, overflow of the sea caused by the elements listed above, war; riots, acts of terrorism, strikes, walkouts, lockouts and other labour disputes, requirements, actions or failure to act on the part of governmental authorities, adoption or change in any law, regulation, statute, rule or regulation imposed by governmental bodies, including, without limitation, a

Comment [JPM4]: This still has to be settled: "nominated by the President of the Caribbean Development Bank" CDB or "nominated by the President of the American Society of Appraisers"?

change in the interpretation thereof; or any lawful order by any court or administrative agency (so long as the Licensee has not applied for or assisted in the application for such court or governmental action).

"*Generation Code*" means the Generation Code as prepared by the Licensee, and approved by the Commission pursuant to Condition 21.

"*Generating Facility/Facilities*" means any power plant(s) and associated equipment owned or controlled by the Licensee pursuant to this Licence.

"*Generation Performance Standards*" mean the standards of performance approved by the Commission in accordance with Condition 20.

"*Generation Set*" means any plant or apparatus used for the production of electricity.

"*Government*" means the Government of the Commonwealth of Dominica.

"*Governmental Authority*" means any (a) national, municipal, central or local government, department, central bank, court, council, commission, board, bureau, tribunal, agency or instrumentality of the Commonwealth of Dominica or (b) any subdivision, agent, commission, board or authority of any of the foregoing.

"*Governmental Requirement*" means all Acts, statutes, orders, ordinances, injunctions, constitutional provisions, treaties, licences, notices, rules, rulings, regulations, concessions, decisions, authorizations, consents, decrees, permits, proclamations, instructions, certifications, judgments, verdicts, confirmations, approvals, filings or similar items of, or granted by, any *Governmental Authority* which are applicable to the Licensee.

"*Licence Processing Fees*" means fees prescribed by the Commission for the processing of an application for the grant of a licence pursuant to Section 30 of the ESA.

"*Minister*" means the Minister with portfolio responsibility for electricity.

"*Outside person*" means any *person* who is not an *Affiliate* of the Licensee.

"*Person*" means any individual, partnership, joint venture, association, trust, company or corporation.

"*Regulatory Accounts*" means the reports on the financial and operating performance of the Licensee in such detail and format as designated by the Commission.

"Regulatory Fees" mean the fees prescribed by the Commission, from time to time, pursuant to Section 17 of the ESA.

"Related Party" shall have the meaning defined under the International Financial Reporting Standards (IFRS).

"Service Territory" means, for the purpose of this Licence, the Commonwealth of Dominica.

"Shares" means the issued and outstanding shares of the Company.

"Subsidiary" shall have the meaning specified in the Companies Act.

"System" means the transmission and distribution network consisting wholly or mainly of electric lines owned or operated by the transmission and distribution Licensee and used to transmit electricity and includes any electrical plant and meters owned or operated by that Licensee in connection with the transmission and distribution of electricity.

"Transmission Line" means any electric power line operating at 33, 000 volts or higher.

"Transmission, Distribution and Supply Business" means the business of the Licensee in the planning, development, construction and maintenance of the System and the operation of such System for the transmission, distribution and supply of electricity pursuant to the Transmission Distribution and Supply Licence.

"Transmission, Distribution or Supply Licence" means a licence issued under the ESA to carry out a Transmission, Distribution or Supply business.

"Transmission System" means that part of the System that operates at 33,000 volts or higher.

5. The Schedules attached to this Licence form part of the Conditions.
6. Any reference in a Condition of this Licence to a numbered paragraph is a reference to the paragraph bearing that number in the Condition in which the reference occurs.
7. In interpreting this Licence, headings shall be disregarded.
8. Where in this Licence the Licensee is required to comply with any obligation within a specified time limit, that obligation shall be deemed to continue even after that time limit if the Licensee fails to comply with that obligation within that time limit.

9. The provisions of the Interpretation and General Clauses Act shall apply for the purposes of the service of any document pursuant to this Licence.

Condition 2: Authorisations

1. This Licence authorizes and gives the Licensee the non-exclusive right and privilege within the *Service Territory* to generate electricity from all sources for supply to the *System* only, subject to the conditions of this Licence and the *ESA*.

Condition 3: Term of Licence

1. Pursuant to Section 31 (1) (c) of the *ESA* the initial term of the *Licence* shall be related to the useful life of the *Generating facilities* which shall be [fifteen years or that period which shall be fixed after completion of a study to be carried out by an independent consultant to determine the useful life].
2. If the Licensee is awarded the right to install any additional (new) *generating set* pursuant to the competitive or any other process approved by the *Commission* then, upon such award, the term of this Licence will be amended pursuant to Condition 14 of this Licence to correspond with useful life of the relevant new *Generating set*.
3. If the Licensee believes that it is economic to extend the life of an existing *Generating set* beyond its estimated economic life, it may apply to the *Commission*, at least two years (unless the *Commission* otherwise agrees to a shorter period) before the *generating set* would have been retired, for an extension of the estimated useful life and provide such economic and technical justification to support its application. Such application shall be subject to the *Commission's* approval and once approved, provided that the extension of life will extend beyond the term of the Licence, this Licence will be amended pursuant to Condition 14
4. The impact of the life extension shall be taken into account and factored into the generation planning for new capacity to minimize any possibility of stranded or under-utilised assets becoming a factor in the *system*.
5. Notwithstanding the foregoing, in the event of catastrophic failure the licensee may temporarily replace the failed *generation set* or sets comprising the *generating facility* with the approval of the *Commission*.

Comment [JPM5]: Under consideration – That if the licence commences on January 2014, the Term would be extended by two years to account for the early start i.e the term would be 17 years from January 1 2014

Condition 4: Assignment or Transfer of Licence

1. This Licence shall not be assigned or transferred without the prior consent of the *Commission* which shall be given in writing. Such consent shall not be unreasonably withheld.

2. The *Commission* shall consent to an application for the assignment or transfer of a licence where the *Commission* is satisfied that the proposed assignee or transferee satisfies the criteria set out in section 30 (7) of the *ESA* and any other criteria established by the *Commission* pursuant to Section 28 of the *ESA*.
3. A licensee who may wish to assign or transfer a licence shall request in writing the consent of the *Commission*. The *Commission* shall reply in writing within 60 days of the receipt of such request, informing of its decision on the application.
4. The *Commission* shall publish its decision regarding a request to assign or transfer a licence in the Official Gazette.
5. Where the *Commission* refuses to give its consent it shall give reasons in writing for such refusal to the licensee that requested the consent.
6. The Licensee may apply to the *Commission* for a reconsideration of its decision not to assign or transfer its Licence and may appeal any decision made by the *Commission* following any such reconsideration in accordance with Condition 18.

Condition 5: Transfer of Shares of the Licensee

1. The Licensee shall advise the *Commission* in writing of any proposal to transfer shares in the ownership of the licensed business which will have the effect of changing the controlling interest in the Licensee.
2. The Licensee shall, as soon as is reasonably practical, provide such information to the *Commission* as may be required by the *Commission* to satisfy itself, pursuant to Section 28 of the *ESA*, that the persons acquiring control or ownership in the circumstances set out above are fit and proper persons.
3. Where the *Commission* has been notified by the Licensee or otherwise becomes aware of any of the circumstances set out in Clause 1 of this Condition 5 and the *Commission* has determined that such a person or group of persons are not fit and proper persons, the *Commission* may :
 - a. impose such conditions as it deems necessary; **or**
 - b. after consultation and with the consent of the Government revoke the Licence where it determines, that such revocation is necessary for reasons of the national security or the public interest of the Commonwealth of Dominica.

Condition 6: Obligations of the Licensee

1. The Licensee shall be a company incorporated in the Commonwealth of Dominica.
2. The Licensee shall generate and deliver or cause to be delivered energy and/or capacity from the *Generating facilities* to the *System*.
3. The Licensee shall comply with the provisions of the *Generation Code* or any other codes developed to assure the safety and integrity of the *System*, the safety and well being of the public and the protection of the environment.
4. The Licensee shall comply with the *Generation Performance Standards*.
5. The Licensee shall comply with the *ESA* and any other Act of the Commonwealth of Dominica that has application to it in the discharge of its performance under this Licence.
6. Subject to Condition 18, the Licensee shall comply with any directive, order, rule, decision or approval issued, made or granted by the *Commission* in accordance with its duties and functions under the *ESA*.
7. The Licensee shall pay the *Licence Processing Fees* to the *Commission*
8. The Licensee shall not take or omit to take any action or otherwise conduct itself in a manner which is intended to have, has or is likely to have the effect of restricting, distorting or preventing competition in the procurement of generation capacity.

Condition 7: Reporting Obligations

1. The Licensee shall submit to the *Commission* the reports detailed at Schedule A within the time specified.
2. The Licensee shall submit to the *Commission* (within fifteen days of the end of each quarter taken on a calendar year basis) such reports as the Commission may require relevant to monitoring the Licensee's compliance with this Licence and environmental and statutory requirements.
3. The Licensee shall provide such other specified reports to the *Commission* as may be reasonably required from time to time.

4. The Licensee shall, in accordance with good industry practice, maintain and keep all appropriate books, records and accounts in respect of the activities to which this Licence relates.

Condition 8: Audit Rights of the Commission

1. Pursuant to its powers under Sections 19 and 39 of the *ESA*, the *Commission* or its authorized agents may during the normal business hours and subject to prior reasonable notice attend at any premises from time to time owned or occupied by or in the possession of the Licensee for the purpose of undertaking audits, inspecting any books, records and accounts of the Licensee to which this Licence relates and may require any employee or agent of the Licensee to give to the Commission such reasonable assistance in connection with the audit and examination as may be necessary. Notwithstanding this obligation, the Licensee shall not be compelled to provide information which it could not be required to reveal in a civil action. The Licensee shall at the request of the *Commission* furnish the *Commission*, at the Licensee's expense, with a copy (in such format as the *Commission* may specify) of any book, record or accounts as the *Commission* may reasonably require.

Condition 9: Licence fees and Regulatory fees

The Licensee shall be liable for the payment of such Licence or other fees as may be imposed by the *Commission* pursuant to Section 17 of the *ESA*.

Condition 10: Early Retirement of Assets

1. The Licensee may retire assets, provided that any decision to retire assets early shall be subject to the approval of the *Commission* which approval shall not be unreasonably withheld. On any early retirement of assets, the Licensee shall be allowed to recover the net book value of all *Generating Facilities* whether those assets are on its books at the *Commencement Date* of this Licence or are additions to the Licensee's Rate Base during the term of the Licence. This financial recovery shall be independent of whether these assets are physically retired before the end of their book life based on economic evaluation or any change in Government policy or regulatory action. Such recovery shall take place through the continued depreciation of such assets until the end of their book life. The Licensee's accounting for any retirement will be in accordance with the relevant conditions of the Licensee's *Transmission, Distribution and Supply Licence* and the Licensee's rate base shall not be otherwise affected by such retirement.

Condition 11: Regulatory Accounts to be kept by the Licensee

1. The Licensee shall maintain regulatory accounts, as requested and specified by the *Commission*, which separates its generation activities from its transmission, distribution and supply activities.

Condition 12: Economic Purchasing of Goods and Services

1. The Licensee shall exercise prudence in the purchase or acquisition of goods and services having regard to the quantity, timing and nature of the goods or services required to enable it to discharge its obligations under this Licence.
2. The Licensee shall, if requested by the *Commission*, submit its procedures for procurement to the *Commission*.
3. Nothing in the foregoing shall preclude the Licensee from outsourcing for goods and services through or from a *related party* so long as the Licensee can demonstrate at all times that such procurement is on terms which would obtain if such goods and services were procured competitively.

Condition 13: Related Party Transactions

1. In the case of a *related party*, transactions shall be at arm's length and the Licensee shall apply the same tests for economic choice and financial probity as if the *related party* were an unrelated third party.

Condition 14: Amendment of Licence

1. The provisions of Section 35 of the ESA and any related orders and regulations issued by the *Commission*, as amended from time to time, shall determine the procedure for amendment of the Licence.
2. The Licensee may apply to the *Commission* for a reconsideration of its decision to regarding any amendment of this Licence and may appeal any decision made by the *Commission* following any such reconsideration in accordance with Condition 18.

Condition 15: Obligation to Comply with Licence

1. Where the Licensee fails to comply with any obligation imposed by the Licence or contravenes the Licence, the *Commission* shall first cause a notice to be served on the Licensee requiring the Licensee to comply with the obligation or rectify

the contravention within a reasonable period specified in the notice, before any further action is taken by the *Commission*.

2. The *Commission* may not exercise its powers to enforce obligations imposed by the Licence if the non-compliance by the Licensee –
 - (a) was discovered, or ought reasonably to have been discovered, more than 3 years before the exercise of the power; or
 - (b) occurred more than six years before the exercise of the power.
3. However, once the *Commission* has exercised a power in relation to the non-compliance, the limitations in Clause 2 of this Condition 15 do not apply.

Condition 16: Revocation of Licence

1. The *Commission* may initiate proceedings to revoke this licence, pursuant to Section 34 of the *ESA* and any regulations established by the *Commission*, as amended from time to time, where the Licensee:
 - a. is in material breach of this Licence in terms of the operation of the licence as a whole;-
 - b. persistently breaches any Condition attached to this Licence or repeatedly contravenes the *ESA* or any other relevant Act;
 - c. is dissolved;
 - d. is wound up or declared bankrupt;
 - e. compounds with its creditors to the detriment of the public interest;
 - f. is struck off the register of companies and fails to be reinstated in good standing within 90 days thereof.
 - g. obtained this licence by false, fraudulent or misleading representation or in some other illegal manner; or
 - h. having been notified by the *Commission* of the breaches of the Licence that would lead to revocation, fails to rectify such breaches within the period stipulated in the notice.
2. Notwithstanding the provisions above, the *Commission*, after consultation with and receiving the consent of the Government, may initiate revocation procedures for reasons of national security or the public interest of the Commonwealth of Dominica.
3. Notwithstanding Clause 1 of this Condition 16, the *Commission* may, in lieu of revocation, exercise its options pursuant to Section 34 (1) of the *ESA*, if it is in the public interest to do so.
4. The procedure to be followed for revocation shall be as set out in Section 34(2) of the *ESA*

5. Upon revocation of this Licence, the *Commission* shall give notice, pursuant to Section 34 of the *ESA*; of its intention to compel compulsory divestiture of the Company. The price shall be at *Fair Market Value*.
6. Notwithstanding the issuance of the revocation notice, the Licensee shall, unless requested otherwise by the *Commission*, continue to operate the *Generating Facilities* in accordance with prudent utility practice or at the same standards that were used to operate the *Generating Facilities* prior to the date of the revocation notice, whichever is higher.
7. The *Commission* shall undertake to locate a successor licensee as expeditiously as possible and in any event within 24 months after compelling compulsory divestiture of the Company.
8. If no sale is satisfactorily concluded within the said period the *Minister* or his designee shall acquire the Company at *Fair Market Value*.
9. At any time after the revocation of the Licence but prior to the sale of the Licensee pursuant to this Condition 16, if the Licensee demonstrates to the reasonable satisfaction of the *Commission* that the failures which gave rise to the revocation (and any ensuing failures) have been cured and the Licensee is capable of fulfilling its obligations under the Licence, the *Commission* may, on the request of the Licensee or on its own authority at any time withdraw the revocation notice and notify the Licensee that *the Commission* is no longer seeking offers for the purchase of the Licensee.
10. The Licensee may apply to the *Commission* for a reconsideration of its decision to revoke this Licence and may appeal any decision made by the *Commission* following any such reconsideration in accordance with Condition 18.

Condition 17: Force Majeure

1. To the extent that the Licensee is prevented by *Force Majeure* from carrying out, in whole or in part, its obligations under this Licence and the Licensee gives notice and details of the *Force Majeure* to the *Commission*, as soon as practicable, then the Licensee shall be excused from the performance of its specific obligations, prevented by the *Force Majeure* conditions during the period for which the *Force Majeure* conditions apply. The Licensee shall take all reasonable and necessary steps to enable to perform such obligations with all reasonable dispatch after the period of the *Force Majeure*.

Condition 18: Reconsideration and Appeal of Commission Decisions

1. Where the licensee is aggrieved by a decision of the *Commission* (hereinafter called "The original decision") it shall, within twenty one days of the receipt of the original

decision and written reasons there for, apply in the prescribed manner to the *Commission* for reconsideration of that original decision and may present further relevant information to the *Commission* upon such reconsideration.

- a. On the making of an application under Clause 1 of this Condition 18 the original decision shall not take effect until a reconsideration is made.
- b. The *Commission* shall convene the proceedings constituting the reconsideration of the original decision within 14 days of the receipt of the application from the Licensee.
- c. After reconsidering its original decision, the *Commission* shall confirm, amend or reverse its original decision or any part thereof and render its determination within a reasonable period of time not to exceed twenty-eight days after conclusion of the proceedings.
- d. Where the original decision is confirmed, the confirmation shall be deemed to take effect from the date on which the original decision was first made notwithstanding the reconsideration proceedings.

2. An appeal from a reconsideration made by the *Commission* under Clause 1 of this Condition 18 may be made to the High Court on one or more of the following grounds namely -

- i. that the reconsideration is erroneous in law;
- ii. that the reconsideration is unreasonable;
- iii. that the reconsideration is against the weight of the evidence
- iv. that the reconsideration is contrary to the principles of natural justice;
- v. that the reconsideration is not proportionate; or
- vi. that the *Commission* lacks jurisdiction.

2.1. An appeal to the High Court from a reconsideration by the *Commission* shall be in accordance with the provisions of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000, as amended from time to time

2.2. The *Commission* may seek an order from the High Court directing the *Commission* to file under seal any information if it is considered that the public interest would suffer by disclosure of such information.

2.6. On appeal to the High Court against a reconsideration of the *Commission* the execution of the original decision shall not take effect until the hearing of the appeal.

3. Any party to an appeal before the High Court under this Condition who is dissatisfied with a decision or order of the High Court may appeal to the Court of

Appeal. The Eastern Caribbean Supreme Court (Dominica) Act Chap 4:02 and the Eastern Caribbean Supreme Court Civil Procedures Rules 2000 apply to the appeal.

Condition 19: Notices and Communication

Notices, orders and other documents under this Licence may be in writing or in print or in electronic format (permitting confirmation of receipt) and shall, if served on:

- a. *the Commission* be addressed to:
The Executive Director; and
 - b. the Licensee, be addressed to:
The Managing Director/Chief Executive Officer
2. Any notice, order or document required or authorized to be served upon any body or person under this Licence may be served by the same being addressed to such body or person and being left at or transmitted by electronic mail or facsimile or by registered post to the address of such body or to the usual or last known place of abode of such person. If served by post it shall be deemed to have been served at the time when the containing letter would be delivered in the ordinary course of post and in proving such service it shall be sufficient to prove that such letter was properly addressed, registered and put into the post. If served by electronic mail or facsimile it shall be deemed to have been served when the electronic mail or facsimile shall have been transmitted by the sender.
 3. Notwithstanding the above, the Licensee shall designate a person that will act as a primary contact with the *Commission* on matters related to this Licence. The Licensee shall notify the Commission promptly should the contact details change.

PART III: GENERATION STANDARDS

Condition 20: Generation Performance Standards

1. Performance standards will provide a balanced framework of potential penalties or rewards compared to historical performance. Standard shall include "zones of acceptability" where no penalties or rewards would apply. If performance deviates from agreed levels, the first step shall be discussion with the *Commission* to assess the reasons, make and agree on corrections for poor performance as appropriate within such time as may be agreed between the Licensee and the *Commission* and failing such agreement within such time as shall be directed by the *Commission*. The Licensee shall be given reasonable time to rectify these deviations. If performance continues to deviate from the standard after those discussions, the Commission may impose penalties for poor performance if the

Licensee has not implemented the agreed on action plan. The *Commission* may provide rewards for superior performance.

2. These standards may be reviewed at any time, whether initiated by the Licensee or the *Commission*.
3. After review and approval, the *Commission* will implement and enforce all the performance standards on separate schedules for each standard. Each schedule will depend on whether an appropriate measure has yet been defined and the availability of historical performance data against the measure to determine an appropriate benchmark for the Licensee.
4. The Licensee will comply with the Initial Generation Performance Standards with such modifications as the *Commission* may direct, until the Generation Performance Standards proposed by the Licensee pursuant to Clause 6(b) of this Condition 20 are approved by the *Commission*. The Initial Generation Performance Standards shall be as set out in the *Commission's* Decision Document: Tariff Regime for Dominica Electricity Services Ltd; Document Ref. 2009/004/D, namely Plant Fuel Efficiency not less than 17.25 kWh/IG
5. The Licensee shall operate the *Generating Facilities* in accordance with the Generation Performance Standards.
6. The Licensee shall:
 - a. Within 90 days after the *Commencement Date*, assemble the data (covering the five year period ending December 2015 or the date of commissioning into commercial operations, whichever is earlier) associated with
 - i. Generator availability (including scheduled and forced outage hours)
 - ii. Generator capacity factor
The data will be developed in accordance with the statistical terminology of the Institute of Electrical and Electronic Engineers (IEEE)
 - iii. Determination, of the fuel efficiency of the units that operated during the period as well as the record of the computed efficiency of the units.
 - b. within 90 days after the *Commencement Date* of this Licence, prepare and submit to the *Commission* for review and approval, the Generation Performance Standards.
7. Having regard to any written representation received by the *Commission* or upon its own motion, after giving the Licensee an opportunity to present its own perspective on the same, for reasons recorded in writing the *Commission* may require the Licensee to revise the Generation Performance Standards and the Licensee shall comply with the directions of the *Commission*.

Comment [JPM6]: This will be subject to the commencement date - subject to agreements on the term. See condition 3

Condition 21: Generation Code

1. The Licensee shall, subject to clause 4, have in force at all times and shall implement and comply with a Generation Code, consistent with internationally required technical standards and which is in accordance with prudent utility practice:
 - (a) covering all material technical aspects relating to the operation of its Generation Facilities insofar as they affect the *System*, the operation of electric lines and electric plant connected to that *System*;
 - (b) setting out the rules and procedures which govern the dispatch of generators;
 - (c) setting out the rules and procedures which provide for safe and secure operation of its Generating Facilities; and
 - (d) which is designed to ensure:
 - (i) the development, maintenance and operation of an efficient, co-ordinated and economical *System* for the generation of electricity; and
 - (ii) the promotion of the security and efficiency of the Generation Facilities as a whole.
2. The Generation Code in force at the *Commencement Date* of this licence shall be reviewed and resubmitted to the *Commission* for its approval, within 180 days of that date. Thereafter, the Licensee shall periodically on its own volition or on the request of the *Commission*, review the Generation code. The Licensee shall keep the *Commission* fully informed of the submissions to any review process and of any consequent proposals for revisions, which shall be subject to the approval of the *Commission*.
3. The *Commission* may, following consultation with the Licensee, issue directions suspending the Licensee's obligations to implement or comply with the Generation Code to such extent as may be specified in the directions. In the event that such a suspension is granted, the Licensee shall take all necessary action to ensure full compliance with obligations for which the suspension has been issued as soon thereafter as is practicable and shall immediately notify the *Commission* when it was again in full compliance.

SCHEDULES

Schedule 1 - Reporting Requirements

Monthly Reporting - 15 days after the end of the reporting period

Item	Description
Monthly energy production by unit	Gross energy produced by unit and by facility
Gross energy delivered to the system	Gross energy delivered to the <i>System</i> by unit and by facility
Monthly fuel consumption	Data on actual fuel consumed in the previous month showing fuel consumed (by plant and by facility) in imperial gallons, costs of purchases and open and closing fuel stock balances all by type of fuel
Efficiency Reporting	Actual heat rate versus target Generation report by unit Variance explanation for actual vs. target heat rate
Load Duration Curve	A graph showing the load curve for the 24 hour period on the day the peak is set for that month
Generator loading	Load duration curve and generator load on day of peak
Other operating data	To enable derivation of derivation of capacity factors, plant availability, forced outage rates and other operating data relevant to monitoring performance in relation to the <i>Generation Performance Standards</i>

Schedule 2 - Generating Facilities

Existing System Data

	Nameplate	Net Output Rating		In Service
Plants	Capacity	(MW)	Technology	Date
	(MW)			
Fond Colé				
FC1	0.75	0.55	thermal, medium speed	1986
FC4	0.75	0.55	thermal, medium speed	1986
FC5	2.84	2.10	thermal, medium speed	1996
FC6	1.75	1.75	thermal, medium speed	1989
FC7	1.40	1.2	thermal, high speed	2003
FC8	1.40	1.2	thermal, high speed	2003
FC10	1.46	1.46	thermal, medium speed	2009
FC11	1.46	1.46	thermal, medium speed	2009
FC12	1.46	1.46	thermal, medium speed	2009
Sugar Loaf				
SL3	1.35	0.9	thermal, high speed	1998
SL4	1.40	1.2	thermal, high speed	2003
SL5	1.40	1.2	thermal, high speed	2005
SL6	1.28	1.13	thermal, high speed	2007
SL7	1.40	1.4	thermal, high speed	2005
Laudat				
LD1	1.24	1.24	hydro	1990
Trafalgar				
NT1	1.76	1.76	hydro	1991
NT2	1.76	1.76	hydro	1991
Padu				
PD1	0.94	0.94	hydro	1967
PD2	0.94	0.94	hydro	1967