



# **CONSULTATIVE DOCUMENT**

**Document Reference: 2011/002/CD-02**

***DRAFT***

## **TRANSMISSION, DISTRIBUTION AND SUPPLY 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](mailto: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](http://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: 2011/002/CD-02**

**Document Title: Transmission Distribution and Supply Licence for DOMLEC**

<b>Event</b>	<b>Proposed Date</b>
Publication of Document	January 14, 2013
First Responses close	March 04, 2013
Comments on first responses	March 18, 2013
Decision by Commission	September 13, 2013

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# DRAFT TRANSMISSION DISTRIBUTION AND SUPPLY 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 2015), 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.

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 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. <u>New Licence to become effective on the date of acquisition of the asset.</u>	

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 discusses the proposed Draft Transmission, Distribution and Supply. 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).....

While Section 30 sets out the general procedures for the grant of licence, Section 32 provides for the general conditions relating to transmission licences. The relevant clauses are reproduced below.

32. (1) *All transmission licences shall expressly state –*

- (a) the nature of the service to which the licence applies;*
- (b) duration of the transmission licence*
- (c) the service areas or specific facilities to which the licence applies; and*
- (d) the conditions applicable to licence as are prescribed under this Act or Regulations made under this Act or prescribed by the Commission*

*(2) It shall be the duty of the transmission licensee to develop and maintain an efficient, coordinated and economical system of electricity transmission in the service territory designated in its licence.*

Section 33 of the Act provides for the general conditions relating to Distribution and supply licences. The relevant clauses are reproduced below.

33. (1) *A distribution and supply licence shall be issued for a term approved by the Commission and shall be subject to revocation only for violation of this Act or the terms and conditions of such licence, and shall expressly state:-*

- (a) the nature of the service to which the licence applies;*
- (b) the duration of the licence service authorized;*
- (c) area to which the licence applies; and*

(d) *conditions of licence as prescribed by this Act or rules, by-laws and regulations made thereunder.*

(2) *It shall be the duty of the distribution and supply licensee to develop and maintain an efficient coordinated and economical system of electricity distribution as to both the acquisition and supply of electricity service, and as to the physical distribution of such electricity, in the area assigned to it in its licence.*

#### Transmission, Distribution and Supply

In its Decision ***Regulatory Policy and Procedure – Licensing Procedures Document Reference: 2009/001/D***, the Commission sets out its regulatory policy regarding the development of the transmission, distribution and supply system as follows:

- (1) DOMLEC<sup>1</sup> will retain its exclusive right to develop the transmission network for the “on island” public electricity supply system.
- (2) Developers of generating facilities that will interconnect with the public electricity supply on the basis of power purchase agreement (PPA) with DOMLEC, will as a general rule be required to provide interconnection to the DOMLEC system at the high voltage (hv) side of the generator step up transformer. If, however, circumstances dictate that it would be prudent for the developer to construct and own the transmission interconnector to the DOMLEC system, a transmission licence will be issued to the developer. In these circumstances, the Commission’s approval will follow from analysis of the options to achieve the interconnection, including any proposals submitted by DOMLEC, which will provide the most advantageous long term benefit to the consumer.
- (3) Developers of energy resources that are primarily intended for cross border sale of electricity will be allowed to develop the associated transmission system infrastructure and will be granted the required transmission licences. Any interconnection of these facilities to the Dominica public supply system operated by DOMLEC will be at the appropriate transmission voltage for the DOMLEC system. If circumstances require, the developer will be eligible for a transmission licence to build and operate the transmission system to interconnect with the DOMLEC system.
- (4) The Act, in various places, makes reference to “transmission system operator” and “system operator”. As the expression is not explicitly defined, the Commission now assigns that function as well as the functions of “distribution

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<sup>1</sup> DOMLEC is a reference to DOMLEC as presently organised or to its successor, however organised.



system operator” to the entity that has responsibility for “system operation”. For the avoidance of doubt those functions reside with DOMLEC.

- (5) A Distribution licence will be issued to DOMLEC and DOMLEC (or its successor) will continue to have the exclusive right to supply, for sale, electricity to third parties.

This policy essentially seeks to satisfy the provisions of Section 20 cited above where it is recognised that the Dominica system has neither the scale nor scope for effective competition in the wires business and the priority has to be to grow and expand the system in order to bring increasing benefits to all consumers. Without strict observance of the exclusivity in supply to DOMLEC, there is the risk that DOMLEC could become unsustainable and thus find itself unable to make the necessary investments in the system. This is a condition that would apply regardless of ownership (public or private) unless of course a government, as a matter of policy, decided to provide significant subsidies to the utility. The Commission therefore, in pursuit of its mandate has a duty to ensure the financial viability of the service provider and therefore its ability to invest – thus facilitating an environment of growth (scale and scope) thus lowering unit costs of overheads. In doing so it also satisfies its other mandates 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;*

Critically, at an average kWh per customer per annum consumption of 2,144 (180 kWh per month) the DOMLEC system is not conducive for sustainable competition on the supply side.

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. [The Generation Licence is discussed in a separate proceeding]

- 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 question of the economics of supplying unserved areas arises and while Dominica is highly electrified, it is possible that developments may be initiated in areas where it may prove uneconomical for DOMLEC to make the investment in the transmission and distribution line infrastructure. In such circumstances, the Commission will be minded to issue a licence to the developer/community for generation, distribution and supply. Therefore, while the Commission is minded to and intends to issue an exclusive licence to DOMLEC for Distribution and Supply, there will be a provision to allow third party supply to development areas where it is demonstrated that it is uneconomic for DOMLEC to extend its system to supply the area or, for other reasons, it is unwilling to do so.

The designation of DOMLEC as transmission system operator, system operator and distribution system operator also has important implications to the concept of competition in the lines business. Typically and for good reason, in developed systems the transmission system and dispatch<sup>2</sup> operations are regarded as natural monopolies. Because of the critical nature of these operations to public safety and system integrity (there can only be one system operator) the system operator is vested with the ownership, operational responsibility and control of these facilities. These considerations will become important as the Dominica transmission system develops to accommodate among other things geothermal generation facilities when generating plant will be connected directly to the transmission system.

## **Issues - the Draft Transmission Distribution and Supply Licence**

The attached Draft Transmission, Distribution and Supply 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.

The Licence is structured in seven Parts as follows:

Part I: Grant of the Licence

Part II: General Terms and Conditions

Part III: Special Conditions Applicable to the Licensee as System Operator

Part IV: Special Provisions Applicable to Transmission and Distribution

Part V: Special Provisions for Supply

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<sup>2</sup> Dispatch operations has the responsibility for the safe and efficient management of, the bringing on line and loading of generating plant to meet system demand on a real time basis.

Part VI: Price Controls and Tariffs  
Part VII: Transitional Provision

The ensuing discussion will address issues which the Commission deems to warrant clarification and as well as those specific instances where it would be interested to hear the views of stakeholders. Stakeholders are of course free and encouraged to comment on any aspect of the Draft Licence.

***Part II: General Terms and Conditions***

Scope of the Licence

In the consultation leading to its Decision *Regulatory Policy and Procedure – Licensing Procedures Document Reference: 2009/001/D*, the Commission made no references to the possibility of a third party developer providing retail supply of electricity (using any available technology) where the circumstances are that it is uneconomic for DOMLEC to provide the supply or for any other reason DOMLEC is unwilling to do so. This matter was not raised as an issue during those proceedings and since then the Commission has reflected on the issue and has formed the view that under these circumstances third party supply should be allowed. The Draft Licence therefore makes this provision under Condition 2 where at Clause 3 it provides as follows:

Notwithstanding the provisions of Clause 2 of this Condition 2, the *Commission* will allow and issue licences for third party supply to any *Development Areas* where it is demonstrated that for technical, commercial or other reasons the Licensee is unable or unwilling to extend the electricity supply system to those area.

It would be the intention Commission intention to amend its licensing procedure to reflect the principle which guides this provision. Clear and specific rules/guidelines to govern these arrangements would have to be prepared in order to ensure that this facility does not compromise the exclusivity of DOMLEC's Licence.

**Consultation Question No 1**

The Commission would be interested to hear the views of stakeholders on the principle of allowing third parties to supply un-served areas under specific conditions. Do respondents have any specific recommendations on the circumstances that would allow third party supply to development areas and whether, e.g. the solutions should be prescribed by the Commission or approved by DOMLEC on a case by case basis,

Term and Renewal of Licence

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.

As the Licensee is required to invest in the electricity delivery infrastructure on an ongoing basis to ensure that the transmission and distribution systems are robust and have the capacity to deliver electricity from the generating plant to the end user with acceptable reliability and quality, the licensee really requires a longer term certainty of the licensing environment. For this reason the licence cannot reasonably be tied to the economic life of the investment as is the case of generating licences. In considering the question of what is a reasonable term the Commission feels that the utility company as a corporate entity should not be confused with the investors in that entity. The fact is that while the investors and perhaps the controlling interest in the company may change from time to time, the utility will always exist, however organised, with the express purpose of supplying electricity to the country. In this sense the utility company is unlike any other business which can open and close depending on the business climate. The important issue here is that the licence is granted to the utility company, in this case DOMLEC and not individually to the investors in DOMLEC. The perception of risk is the factor that will largely influence the investor's attitude to DOMLEC, and in many instances this perception will drive expectation of return or willingness to invest. Clearly, the longer the term of the licence (all other things being equal) is the lesser the risk or the greater the certainty of recovering investment over the life of the licence. In any dispensation, however, where a licence has a finite term, the problem of the willingness of the investor to make new investments will always arise as the term comes to an end. The Commission has considered these greatly and in weighing the competing requirements, it has formed the view that the initial term should be related to the typical period for the recovery of Transmission and distribution infrastructure assets, if those investments were made on the first day of the licence. However, instead of waiting three and half years before the end of the term to start the process of renegotiating the licence, the Commission has attempted to provide a regime of periodic assessment of the licensee's performance during the life of the licence and where the performance is deemed to be acceptable the licence term is extended for a specified period. If this arrangement works as intended, the term of the licence should roll at specified intervals, presuming the licensee (investors) have met its commitments.

It is against this background that the Commission has proposed that the initial term of the licence be 20 years subject to the following:

- a. At any time after the fifth anniversary but prior to the sixth anniversary of the Commencement Date, and thereafter at every consecutive five (5) year interval, the Licensee may serve notice on the *Commission* requesting an extension of this Licence for a further period of five years. The Licensee must demonstrate to the satisfaction of the *Commission* that it has met or is meeting its obligations under the Licence and provide economic and technical justification in support of its request.

- b. Provided that the Licensee demonstrates, to the satisfaction of the *Commission*, that it has made the previously submitted levels of investment and that it is not otherwise in breach of this Licence, then this Licence will be extended for a further five years subject to the same conditions or any modified conditions.

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

**[With respect to the duration of this licence, the IRC has proposed an initial term of twenty years. Similarly to the Generation Licence, Domlec considers that this term is not adequate enough to permit it to source the required financing at reasonable cost. Domlec's case is that a twenty-five year initial duration would be more appropriate and less costly to the company and more importantly to consumers.]**

**Provision has been made in the proposed licence for a renewal mechanism, so that the T&D licence term can be extended every five years by a further five years upon satisfactory proof of adequate investment and operation of the system. This provision, whilst welcome, does not however in Domlec's view negate the necessity for an initial duration period of twenty-five years.]**

## **Consultation Question No 2**

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

- a. the Commission's proposals for (i) an initial term of 20 years based on the premise that, the best practice is that investments in transmission and distribution infrastructure are assigned an economic life of 20 years and (ii) that DOMLEC's performance be reviewed every five years and that the license term be extended by five years where it is assessed that the company has met its commitments under the Licence.
- b. DOMLEC's request for an initial term of 25 years

The Commission would also be interested in hearing alternate views with reasons.

## **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". The Commission would not be unsympathetic to this

proposal but it has the view that because of certain legacy considerations, the Government of Dominica should explicitly provide its opinion on this proposal.

### **Consultation Question No 3**

Nevertheless, 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.

### ***Part III: Special Conditions Applicable to the Licensee as System Operator***

The designation of DOMLEC a System Operator, Transmission System Operator and Distribution System Operator was determined in the Commission's Decision *Regulatory Policy and Procedure - Licensing Procedures Document Reference: 2009/001/D*. This designation carries a number of critical and important functions, all of which combine to ensure that the electricity is delivered to the consumer, efficiently, safely and at least cost. These functions will become even more critical in the emerging environment where there will be multiple generators supplying electricity to the system. Among the critical operational functions are:

- a. to dispatch sufficient generating capacity to meet the system requirements in a prudent manner
- b. to dispatch available generation in such a manner that the energy produced and dispatched is at the least cost to consumers
- c. to ensure that adequate reserve generating capacity, both spinning and cold standby, is available at all times to meet the system reliability and security guidelines promulgated by the Commission.

As the system operator DOMLEC also has the duty to secure long term system security and reliability based on guidelines and planning procedures established by the Commission.

These functions and duties will become even more critical as the system develops, remains interconnected and expands to meet increased demand brought about the expected economic growth of Dominica.

Interested parties are encouraged to read the relevant section in the Draft Licence in order to gain a clear understanding of the role and function of the Transmission and Distribution Licensee.

### ***Part VI: Price Controls and Tariffs***

For general information, the provisions of this Part are extracted from and summarises the Commission's Decision *Tariff Regime for Dominica Electricity Services Ltd. Document Reference 2009/004/D*. These issues have therefore already passed through the consultation and decision process. Interested parties may read the full text of that decision and follow the consultation through access to the Commission's web site at [www.ircdominica.org](http://www.ircdominica.org).

#### **Attachment 1 - Draft Transmission, Distribution and Supply Licence**