



CONSULTATIVE DOCUMENT

Document Reference: 2011/001/CD-03

DRAFT

GENERATION LICENCE

For

DOMINICA ELECTRICITY SERVICES LTD

STATEMENT OF RESULTS AND PRELIMINARY DECISIONS

April 2013

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:

Executive Director
Independent Regulatory Commission
P.O. Box 1687
42 Cork Street
Roseau
Commonwealth of Dominica

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-03

Document Title: Generation Licence for DOMLEC - Statement of Results

Event	Proposed Date
Publication of Document	April 05, 2013
Responses close	April 15, 2013
Decision by Commission	September 13, 2013

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DRAFT GENERATION LICENCE FOR DOMINICA ELECTRICITY SERVICES LTD.

Introduction and Background

Pursuant to its duties under the Electricity Supply Act 10 of 2006 (ESA), which establishes a regime of separate licensing for each of the business sectors of public electricity supply undertakings – generation, transmission distribution and supply, the Commission issued Consultative Document Ref No: 2011/001/CD-02 as the second consultation in its deliberations regarding the issuance of a new Generation Licence for DOMLEC.

The consultation is being conducted in accordance with the timetable set out below at Table 1.

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
36 - 33	Public consultation on proposed new Licence	

33 – 30	Final round of negotiations	by the investor
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>	

The Commission issued the second consultative document Consultative Document Ref No: 2011/001/CD-02 on January 14, 2013 and held four public meetings at which members of the public were invited provide inputs to the discussion. The following public meetings were held

- Roseau January 28, 2013
- Portsmouth January 29, 2013
- Marigot February 19, 2013
- Grand Bay February 26, 2013

Additionally, the Commission received some comments posted to its web site and also formal written comments from the Government of Dominica’s “Deal Team” which is negotiating certain geothermal arrangements on behalf of the Government.

The Commission wishes to thank all those who have participated in the process and to recognize the valuable inputs that have been provided.

This document discusses the comments received and sets out the Commission’s preliminary decisions in regard to the issues raised. The Commission wishes to assure all stake holders that all inputs and suggestions have been carefully reviewed. However it should be borne in mind that many of the points raised will have been repetitive and where this is so the Commission has, in this document, chosen to group similar comments and represented these as a single comment.

In the next section the issues raised in the Consultation are discussed and in the section following the Commission sets out its preliminary decisions.

For completeness, the Draft Generation Licence which was attached to the Consultation Document is attached for ease of reference.

Consultation Questions

The Commission raised two specific issues in the consultation; one with regard to the proposed Term of the Licence and the other regarding the Commencement Date.

Term

The Commission pointed out that the question of the Term has only arisen because of DOMLEC's peculiar position of having an existing licence and existing operating generating assets. In a green-field situation, where a new facility was being developed the term would be tied to the economic life of the plant usually (but not necessarily) reflecting the term of any financing arrangements. The Commission recognises that 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. In arriving at its recommended position, the Commission took note of the status of the existing plant summarised below at Table 2.

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 initial 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.

DOMLEC has persisted with the view that the terms of the generation and the transmission, distribution and supply licences should be tied and concurrent. DOMLEC also formally introduced into the process the argument 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 as 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.”

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.

Consultation Question No 1

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

- a. its view that the Act provides clear guidance as to the factors that influence the term of a generation licence and
- b. its approach to relying on the advice of an independent consultant to be given after an assessment of the plant is conducted?
- c. If respondents believe the approaches are not appropriate, what alternatives are recommended and why?

Responses

It should first be noted that DOMLEC clarified its position regarding the view expressed in the consultative document the “that the terms of the generation and the transmission, distribution and supply licences should be tied and concurrent”. DOMLEC explained that it was not proposing that the initial term of the generation licence be tied to the initial term of the Transmission Distribution and Supply (TDS) Licence but that there is provision to extend the TDS Licence commensurate with the extended term any new generation facility imposes on the generation licence.

As is usual in meetings of this type, many questions are asked and there is much discussion and complaints about the services provided by the utility company as well as that by the regulator. One participant at the Roseau meeting suggested that there may be a way to link the useful life of the generation assets to the percentage contribution of each technology (fossil fuel and hydro) but conceded that it may be

complex in determining the useful life and that it may be easier in adopting the fixed term being proposed by DOMLEC.

However, the general view as summarized at the end of the public meeting in Marigot is that participants felt generally, that all things taken into consideration, a 25 year licence for generation is not unreasonable, this being linked to the remaining life of the existing hydro plant. With regard to the question of retaining an independent consultant to advise on the “useful life” of the plant, a view was expressed that the expenditure could be avoided if the parties actually agreed on the term.

One comment at the Marigot meeting suggested that as the ESA does not define generating facility, it is within the purview of the Commission to do so and therefore the Commission has it within its scope to determine the associated “useful life”.

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.

Responses

The overall consensus is reflected at the discussions at the Roseau meeting where it was felt that the commencement date is (2014 or 2016) is a non issue and really is a matter of what is practical. Both DOMLEC and the Commission’s representatives were not seized with any preference except that the attractiveness and practicality of having the new licensing and therefore regulatory regime in place earlier rather than later had some merit.

Preliminary Decisions

After having considered all the views and comments received the Commission's preliminary decisions and the reasons there for are set out below

Term

The views expressed to fix the term at 25 years is persuasive and the Commission has given further consideration to the implications of Section 31 (1) (c) that the duration of the licence "*shall be related to the useful life of the generation facilities*". With further reflection, the Commission has revisited the retirement schedules as presented in the DOMLEC's Audited Financial Statements which confirms that the book life of the last hydro plant extends until 2041. This is 25 years beyond the proposed effective date and as such the Commission is now minded to provide for this Term in the Licence. In doing so, the Commission has also had regard to the argument that any truncating of the book life of the asset would have implications for the consumer in the tariffs as the question of the recovery of the asset over a shorter period would have to be entertained.

The Commission has therefore determined that the Term for the Generation Licence shall be 25 years from January 1, 2016.

Commencement Date

As far as the Generation Licence is concerned, the responses have not been sufficient to sway the Commission's thinking towards one option or another. The Commission however, recognizes that the commencement date of the Generation Licence has to be concurrent with that of the TD&S licence. In this regard the outcome of the consultations on the TD&S Licence will determine the commencement date for the Generation Licence

The Commission has therefore determined that the Commencement Date of the Generation Licence will be fixed to that of the TD&S Licence.

Attachment 1 - Draft Generation Licence