

DOMINICA ELECTRICITY SERVICES LIMITED

CONFIDENTIAL

**DRAFT OPERATING
LICENCE**

FOR DISCUSSION PURPOSES

AUGUST 31, 2012

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PART I: GRANT OF THE LICENCE (IRC T&D Part I, J/CA Part I)

The Independent Regulatory Commission in exercise of the powers conferred on it by section 30 of the Electricity Supply Act 10 of 2006 (the **ESA**) HEREBY GRANTS to Dominica Electricity Services Limited (the Licensee/ **the Company**) the right to **generate, purchase, transmit, distribute, supply and sell electricity for public and private purposes in the Commonwealth of Dominica** for the period specified herein subject to the conditions set out in Parts II, III, IV, V, VI and VII (the Conditions).

This Licence shall be cited as the DOMLEC Operating Licence 20xxx.

This Licence shall come into effect on **the xxxxxx day of xxxx 20xxx** and shall continue in full force and effect until termination or expiry unless modified, revoked or terminated pursuant to the Conditions set out herein.

The licence shall be governed by and construed, enforced and performed in accordance with laws of the Commonwealth of Dominica.

Sealed and executed for and on behalf of the Independent Regulatory Commission on the xxxx day of xxxx 20113.

PART II: GENERAL TERMS AND CONDITIONS (IRC T&D/Gen Cond. 1)

Condition 1: Definitions and 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. (The last portion of this clause was removed as it was a repetition of Condition 1.7)

2. Any word or expression defined for the purposes of any provision of the Electricity Supply Act 10 of 2006 (ESA) shall, unless the contrary intention appears, have the same meaning when used in this Licence.

(IRC Condition 1.3 was removed as it was already stated in Part 1. The clauses were renumbered accordingly)

3. 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 the Companies Act;

“*authorised*” in relation to any business or activity means authorized 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;

(The definition of the term “Catastrophic failure” was removed as it was not used anywhere in the document)

“*Commission*” means the Independent Regulatory Commission as established pursuant to Section 4 of the ESA

“*Companies Act*” means the Companies Act 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;

“*Electricity Grid*” means the electric lines and associated equipment owned and operated by Dominica Electricity Services Limited to convey electricity.

(This term is recommended as a replacement for the term “national grid” which is not defined in the ESA although it is used extensively. This definition should be included in the Act)

“*ESA*” means the Electric Supply Act 10 of 2006 and any amendments thereto.

(The definition for “Electricity Generation Licence” was removed as this licence does not contemplate the issuance of separate licences)

“*Fair Market Value*” means the market value of the Company when evaluated as an ongoing business concern. The *Fair Market Value* shall be determined in accordance with Clause 9 of Condition 3.

“*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 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); (CAY Gen/T&D Cond.1.3)

“*Generation Code*” means the Generation Code prepared by the Licensee and approved by the Commission pursuant to Condition 19;

“*Generating Facility*” means any power plant and associated equipment owned or controlled by the Licensee pursuant to its Licence.

“*Generation Performance Standards*” means the standards of performance approved by the Commission pursuant to Condition 18;

“*Generation Set*” means any plant or apparatus 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.

“Independent Power Producer (IPP)” means a licensed generator which owns facilities for the purpose of generating electricity for sale to the Licensee.

(The definition for *“Integrated Business”* contained references to separate licences and was therefore replaced by the definition for *“Licensed Business”* below. References in the document to *“integrated Business”* has been changed to *“Licensed Business”*)

“Least Cost Expansion Plan” means the plan prepared by the Licensee pursuant to Condition 21 and approved by the Commission; **(J/CA Condition 1.4)**

“Licensed Business” means the business of generation, purchase, transmission, distribution, supply and sale of electricity as carried out under this Licence; **(J/CA Condition 1.4)**

“Minister” means the Minister with portfolio responsibility for Electricity.

“Outside Person” means any person who is not an *Affiliate* of the Licensee;

“Person” means an individual, a partnership, a joint venture, a corporation, a limited liability company, a limited liability partnership or a trust. (ESA definition)

“Power Purchase Agreement (PPA)” means a contract for the provision of the whole or any part of the available capacity and or energy.

“Regulatory Accounts” means the reports on the financial and operating performance of the Licensee in such detail and format as designated by the Commission **to be submitted to the Commission pursuant to Condition 6.**

“Regulatory Fees” mean the Fees prescribed by the Commission from time to time **pursuant to** Section 17 of the ESA;

“Service Territory” means, for the purpose of this Licence the entire island of Dominica;

(The definition of the term *“Site”* was removed as it was not used anywhere in the document)

“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 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;

“System Operator” means the person who is responsible for the real-time operation and co-ordination of the system.

“Technical Inspector” means the Technical Inspector designated as such under the provisions of section 36 of the ESA;

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

“Transmission System” means that part of the **System** that operates at 33,000 volts or higher;

(The definitions for *“Transmission, Distribution and Supply Business”* and *“Transmission, Distribution and Supply Licence”* were removed as they were not required for this integrated licence.)

4. The Schedules attached to this Licence form part of the Conditions.

(Condition 1.5 of the IRC T&D Licence was omitted as it was not relevant to this integrated licence. The clauses were renumbered accordingly)

5. Any reference in a Condition of this Licence to a numbered clause is a reference to the clause bearing that number in the Condition in which the reference occurs.

6. In interpreting this Licence, headings shall be disregarded.

7. 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 this licence comes into effect and all statutory instruments, regulations or orders made thereunder.

(Condition 1.8 proposes that the Licensee be held in continuous breach in respect of failure to comply with obligations in the licence. This has the undesired effect of extending the limitation period under existing legislation and for this reason, that provision has been removed and the clauses renumbered accordingly.

8. A document will be incorporated into and form part of the Conditions if it is referred to in the Conditions and reference to such a document is to that document as varied from time to time.

9. The masculine gender shall include the feminine and neuter, and the singular shall include the plural, and vice versa, and words importing persons shall include firms or companies.

(Condition 1.10 of the IRC Gen. and 1.12 of the IRC T&D licence were omitted as they were repetitive of Condition 17 which reflects the same requirements as the provisions of the Interpretation and General Clauses Act)

Condition 2: Scope of the Licence

(We removed IRC Condition 2.1 since it was a repetition of Part 1. The clauses were renumbered accordingly)

1. This Licence authorizes and gives the Licensee the exclusive right and privilege to generate electricity in the Commonwealth of Dominica, except
 - (i) electricity generated from geothermal, wind or other renewable sources of energy or
 - (ii) electricity generated from generation sets less than 20 Kilowatt in accordance with section 31 (3) of the ESA or,
 - (iii) electricity generated for domestic self generation which are not connected to the System in accordance with section 31 (4) of the ESA

Nothing in this subsection shall be construed as a bar to the Licensee exploring and generating electricity from geothermal, wind or other renewable source on a non-exclusive basis. (New DOMLEC Provision)

2. This Licence authorizes and gives the Licensee the **exclusive** right and privilege to ~~purchase~~, transmit, distribute and supply electricity for sale to the public of the Commonwealth of Dominica and to construct, develop, own, operate, reconstruct, modify or replace the transmission and distribution facilities for these purposes ~~subject to the conditions of this Licence and the ESA.~~
3. ~~The Licensee, subject to the conditions of this Licence, the ESA and other relevant laws, has the exclusive right to develop, build, own and operate the transmission and distribution network for the “on island” public electricity supply system; subject to the ESA and the following:~~
 - i. Developers of generating facilities that will interconnect with the **Licensee’s public System** on the basis of Power Purchase Agreement (PPA) with **the Licensee DOMLEC**, will as a general rule be required to provide interconnection to the **Licensee’s DOMLEC System** at the high voltage (HV) side of the generator step up transformer. Under specific circumstances, subject to the approval of and grant of a transmission licence by the Commission the developer may build, own and operate the transmission interconnector to the **Licensee’s System DOMLEC**;
 - ii. Developers of energy resources that are primarily intended for cross border sale of electricity **may**, with the approval of and grant of a transmission licence by the Commission build, own and operate the associated transmission system infrastructure. If circumstances require, the developer **may** be eligible for a transmission licence to build and operate the transmission system to interconnect with the **Licensee’s DOMLEC System**.

3. The Licensee has the exclusive right to supply, for sale, electricity to third parties for public and private purposes in the service territory; for which purpose Licensee is entitled to bill consumers and customers for the electricity supplied at the rates and charges approved by the Commission.
4. Notwithstanding the provisions of Clause 3 of this Condition 2, the Commission will allow and issue licences for the third party supply to any development area where **the Licensee informs the Commission that due to technical and commercial reasons it is unwilling** to extend its electricity supply system to any such area.

(“Development area” needs to be defined)

5. **This Licence authorizes and gives the Licensee the right to purchase electricity in bulk from independent power producers (IPPs) for transmission, distribution, supply and sale in the Commonwealth of Dominica. (J/CA Cond. 2.5)**
6. For the purpose of satisfying the various references in the Act, the Licensee is designated as the *“Transmission System Operator”*, the *“Distribution System Operator”* and the *“System Operator”*.

(We removed IRC T&D Cond. 2.7 as we thought it was not required in the Licence.)

Condition 3: Term and Renewal of Licence (Adapted from CAY T&D Cond. 11 Would required amendment to ESA in terms of section 27 of Cayman Law)

1. **Subject to the provisions herein contained the term of this Licence shall be thirty (30) years from the date hereof (hereinafter called “the date of the Licence”).**
2. **This Licence shall automatically renew for a further term of 20 years without the need for either the Licensee or the Commission to take any action in order to renew this Licence, unless the renewal of this Licence is cancelled in accordance with the terms of this Condition.**
3. **The Licensee may cancel the renewal of this Licence by giving written notice of non-renewal for any reason at least five years prior to the expiry of the Licence. The Commission may cancel the renewal of this Licence for reasonable cause, including where the Licensee is or has engaged in conduct that contravenes the ESA or is or has been otherwise in material breach of this Licence. Where the Commission has reasonable cause for refusing to renew this Licence it shall inform the Licensee by written notice of its intention not to renew this Licence and specify the reasonable cause upon which it relies for refusing to renew this Licence, which notice shall be served upon the Licensee as soon as practicable, but not less than five years prior to the expiry of the Licence.**

4. The Licensee shall have three months from the date of service of the notice referred to in Clause 3 of this Condition 3 to make written submissions to the Commission in respect of the refusal and showing cause why it ought to have its licence renewed.
5. The Commission shall consider any written submissions made under Clause 4 of this Condition 3 and shall inform the Licensee of its decision on the matter and provide written reasons for its decision within two months of the receipt of the said submissions.
6. The Licensee may apply to the Commission for a reconsideration of its decision not to renew this Licence and may appeal any decision made by the Commission following any such reconsideration in accordance with Condition 15.
7. If the Commission serves a notice on the Licensee in accordance with Clause 3 of this Condition 3 above and if, within two years of service of the said notice given by the Commission, reasonable cause has not been shown that the Licence should be renewed, the Commission shall compel compulsory divestiture of the Company upon expiry of the Licence at a value equal to the average of the values determined by a panel of three qualified valuers with experience in valuing such matters.
8. The panel referred to in Clause 7 of this Condition 3 shall be –
 - 3.8.1 One member to be chosen by the Commission;
 - 3.8.2 One member to be chosen by the Licensee; and
 - 3.8.3 One member, who shall be chairman of the panel, to be chosen by the other two members.
 - 3.8.4 In the absence of agreement on the selection of the chairman, the chairman shall be selected by the President for the time being of the Caribbean Development Bank.

(NB: The involvement of the CDB is conditional on their approval)

9. The panel referred to in Clauses 7 and 8 of this Conditions 3 shall determine the Fair Market Value of the Company. The Fair Market Value for these purposes shall be considered to be the fair market value of the Company to another person 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 all of the Shares of the Company 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 compulsion to buy or sell and when both have reasonable knowledge of the relevant facts.

10. Either party may appeal a decision of the valuation panel to the High Court. The Provisions of Condition 15 shall apply to such an appeal.
11. The Commission shall undertake to locate a successor licensee as expeditiously as possible and in any event within 1 year after compelling compulsory divestiture of the Company. If no sale is satisfactorily concluded within the said year the Minister or his designee shall acquire the Company at Fair Market Value.

Condition 4: General Obligations of the Licensee (IRC Gen Cond. 6/T&D Cond.7)

(Condition 6.1 of the IRC Gen was omitted as it was not relevant in an integrated licence)

1. The Licensee shall **generate**, transmit, distribute supply and **sell** electricity in the Commonwealth of Dominica in accordance with internationally accepted standards of prudent utility practice.
2. Subject to the provisions of this Licence, the Licensee shall ensure that the development of the electricity supply system is implemented based on agreed long term planning procedures and methodologies and that investments are made consistent with such plans and in conformity with prudent utility practice so as to ensure adequacy and continuity of supply at the least economic cost **while at the same time ensuring that the utility earns a reasonable return on its investment.**

(IRC T&D Condition 7.4 was omitted as it was a repetition of IRC T&D Condition 23.2).

3. The Licensee shall comply with the provisions of the Generation Code, Transmission and Distribution 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 approved by the Commission pursuant to Condition 18.
5. The Licensee shall comply with the provisions of the ESA and any other laws of the Commonwealth of Dominica that have application to it in the discharge of its performance under this Licence.
6. **Subject to Condition 15**, 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. Subject only to its exclusive rights conferred under this Licence, the Licensee (a) 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; and (b) shall comply with any direction issued by the Commission for the purpose of preventing any practice or arrangement that has the object or effect of preventing, restricting or distorting such competition.

Condition 5: Reporting Obligations (IRC Gen Cond. 7/IRC T&D Cond.8)

1. The Licensee shall furnish to the Commission, without undue delay, such information, documents and details related to the **Licensed** Business or any other related Business of the Licensee, as the Commission may reasonably require in order for it to fulfill its functions and discharge its obligations under the law.

(The term “related Business” needs clarification)

2. The Licensee shall submit to the Commission (within fifteen days of the end of each month) such reports as the Commission has stipulated providing information on a monthly basis of the operating performance of the generating facilities – such information may include but not be limited to gross energy produced, energy delivered to the Transmission and Distribution System, maximum demand imposed by the System, maximum available capacity at the time of maximum demand imposed by the System, capacity factors, plant availability, forced outage rates and other operating data relevant to monitoring performance in relation to the Generation Performance Standards.
3. The License shall provide by the fifteenth day of each month data on actual fuel ~~and lubricants~~ consumed in the previous month showing the type of fuel ~~(by type) consumed in imperial gallons,~~ cost of purchases and open and closing **fuel** stock balances. ~~and consumption.~~
4. The Licensee shall submit to the Commission (within **thirty** days of the end of each quarter taken on a calendar year basis) such reports as the Commission may **reasonably** require relevant to monitoring the Licensee’s compliance with this Licence and environmental and statutory requirements.
5. The Licensee shall in addition to the Audited Financial Statements required under Clause 2 of Condition 6 submit the Annual Report of its operations for the relevant year to the Commission **120 days after the end of its financial year. (Same as the current reporting requirements under the Securities Act)**

6. The Licensee shall provide to the Commission annual operating statistics which conform to internationally accepted utility industry practices and annual financial statistics which conform to International Financial Reporting Standards (IFRS).
7. The Licensee shall provide the Commission on a quarterly basis, a report with monthly detail of energy sales, peak demands and numbers of customers in each billing class.
8. The Licensee shall provide a quarterly report of monthly operating statistics relevant to monitoring the reliability of the T&D System such as the System Average Interruption Duration Index (SAIDI), the System Average Interruption Frequency Index (SAIFI) and the Customer Average Interruption Duration Index (CAIDI) and such other internationally accepted utility industry performance indicators as the Commission may direct.
9. The Licensee shall provide other specified reports to the Commission as may be reasonably required from time to time.
10. The licensee shall prepare and submit to the Commission a five year forecast of projected loads and generation requirements as often as considered necessary by the Commission but not less more frequently than annually.
11. 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.

(IRC T&D Cond. 8.2 was omitted since it was not relevant to an integrated licence)

Condition 6: Accounts to be kept by the Licensee (IRC Gen Cond. 11/T&D Cond.12)

(Condition 11.1 of the IRC Gen was omitted because it was not relevant to an integrated licence)

1. The financial year of the Licensee at the date this licence comes into effect is 1st day of January to 31st day of December. The Licensee may change its financial year with the approval of the Commission, which approval shall not be unreasonably withheld.
2. Financial Statements shall be prepared in accordance with International Financial Reporting Standards (IFRS) or such other generally accepted accounting principles as the Licensee may select with the Commission's approval.
3. The Licensee shall maintain such regulatory accounts as may reasonably be specified by the Commission consistent with internationally accepted utility industry practices.

(The last sentence of this condition (IRC T&D Cond.12.3) was omitted as it was not relevant to an integrated licence.)

4. The Licensee shall in respect of the **Licensed Business**:
 - a. keep or caused to be kept for the period and in the manner required by the Companies Act such accounting records as would by the Companies Act be required to be kept.
 - b. prepare on a consistent basis from such accounting records, accounting statements which conform to International Financial Reporting Standards (IFRS), state the accounting policies adopted, and are in such form and in such detail as the Commission may from time to time reasonably require;
 - c. procure in respect of accounting statements prepared in accordance with this Condition, a report by the Licensee's auditors for the time being and addressed to the Commission stating whether in their opinion those statements have been properly prepared in accordance with this Condition and give a true and fair view of revenues, costs, assets, liabilities, reserves and provisions of, or reasonably attributed to the Licensed Business; and
 - d. deliver to the Commission a copy of the accounting statements required to be prepared by this Condition together with the Auditor's report referred to clause 4(c) of this Condition as soon as reasonably practical and in any event within **120 days** after the end of the period to which they relate.

(Same time frame as the current reporting requirements under the Securities Act)

(IRC T&D Cond. 12.5 was removed since it repeated Cond. 12.4)

Condition 7: Economic Purchasing of Other Goods and Services (IRC T&D Cond.13)

1. The Licensee shall **endeavour to** purchase or otherwise acquire goods and services from the most economical sources available to it having regard to the quantity, timing and nature of the goods or services required to enable discharge of its obligations under this Licence.
2. The Licensee shall, if requested by the Commission submit to the Commission its procedures for procurement.

3. Nothing in the foregoing shall preclude the Licensee for outsourcing for goods and services through or from connected parties 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 and that the transaction has been conducted on an “arms length” basis.

Condition 8: Audit Rights of the Commission (IRC Gen Con.8/IRC T&D Cond. 9)

1. Pursuant to its powers under Section 19 and 39 of the ESA, the Commission and its 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, **examining** 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. **Any costs so incurred shall be deemed to be “allowable expenses” for the purpose of any rate setting or tariff hearing.** Refrigeration

Condition 9: Licence fees and Regulatory fees (To be determined by Commission. This provision must state that the fees shall be a pass through to consumers and appear as a separate line item on their bills)

Condition 10: Early Retirement of Assets (IRC Gen Con.10/T&D Cond. 11)

The Licensee may retire assets early, 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 an early retirement of assets, the Licensee shall be allowed to recover the net book value of all T&D Assets and Generating Facilities whether those assets are on its books at the effective 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 an 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 Condition 33 of this Licence and the Licensee’s Rate Base shall not otherwise be affected by such retirement.

Condition 11: Assignment or Transfer of the Licence (IRC Gen Con. 4/T&D Cond. 5) (Requires legislative amendment in the terms of section 25 of the Cayman Law)

1. This License 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 transfer or assignment 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.
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 to assign 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 15.

Condition 12: Amendment of Licence (IRC T&D/Gen Cond. 14) (Adapted from Cayman T&D Cond. 12) (Requires legislative amendment in the terms of section 28 of the Cayman Law)

1. The provisions of S.35 of the ESA and any related orders and regulations issued by the Commission shall determine the procedure for amendment of the Licence.
2. Without prejudice to Clause 3 of this Conditions 12, this Licence may be amended at any time during the term by agreement, confirmed in writing, between the Licensee and the Commission.
3. The Commission may amend the Licence otherwise than on the application of the Licensee in accordance with section 35(3) of the ESA.
4. Where the Commission considers that the Licence should be amended pursuant to Clause 3 of this Condition 12 the Commission shall give to the Licensee a written notice that-
 - 4.1 sets out the proposed amendment;
 - 4.2 states the reasons for the proposed amendment; and

- 4.3 invites the Licensee to file submissions within ninety days to show cause why the Licence should not be so amended.
5. The Commission shall consider any written submissions made under Clause 4.3 of this Condition 12 and shall inform the Licensee of its decision on the matter and provide written reasons for its decision within 30 days of the receipt of the said submissions.
6. The Commission may amend the Licence if, after having regard to a submission made under Clause 4.3 of this Condition 12, the Commission considers the Licence should be amended-
- 6.1 in the manner set out in the notice; or
- 6.2 in some other manner consistent with the said submissions.
7. Where the Commission decides to amend the Licence in accordance with Clause 6 of this Condition 12, the Commission shall give to the Licensee a written notice stating-
- 7.1 how the Licence has been amended; and
- 7.2 that the Licensee may apply to the Commission for a reconsideration of its decision.
8. The Licensee may appeal any decision made by the Commission following any such reconsideration in accordance with Condition 15.

Condition 13: Obligation to Comply with Licence (Adapted from the New Zealand Electricity Industry Act) (Requires legislative Amendment of the ESA)

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 Condition 13.2 do not apply.

Condition 14: Revocation of Licence (IRC Gen Cond. 14/T&D Cond. 15) (Adapted from section 30 of the Cayman Law and condition 29 of the J/CA licence. Requires amendment of the ESA)

1. The Commission may initiate proceedings to revoke this licence, pursuant to S. 34 of the ESA and any **regulations established** by the Commission 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) obtained this licence by false, fraudulent or misleading representation or in some other illegal manner; or
 - g) 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 Clause 1 of this Condition 14, the Commission may, in lieu of revocation, exercise its options pursuant to S.34 (1) of the ESA, if **it is** in the public interest **to do so**.
3. The Commission shall, before revoking the Licence:
 - a) issue written notice to the Licensee of its intention to revoke, providing reasons and indicating that revocation would become effective in not less than **180** days of the issuance of the notice.
 - b) give the Licensee **60** days to respond **and show cause why the licence should not be revoked**.
 - c) **give the Licensee a reasonable opportunity** to remedy the breach, **if capable of remedy**.
4. Subject to the provisions of Clause 2 and 3 of this condition 14, on the expiration of **180** days after the issuance of the notice **of revocation** ~~given at Clause 2 above~~ the Commission shall revoke the Licence.

5. Upon revocation of this Licence, the Commission shall give notice, pursuant to S.34 of the ESA; of its intention to compel compulsory divestiture of the **Company**. The price shall be **at Fair Market Value**. Clause 7, 8 and 9 of Condition 3 shall apply *mutatis mutandis* to the valuation of the Company.

(The last sentence of this Clause 5 which mandated sale at 75% of the Fair Market Value was omitted and replaced as indicated above to conform with section 34 (4) of the ESA which requires sale for "*fair compensation*". The ESA does not enable sale at anything less than fair market value.)

(Clause 6 which enabled revocation on the grounds of national security and public interest was also omitted as it is too subjective and moreover is not provided for in the ESA.)

6. Notwithstanding the issuance of the revocation notice, the Licensee shall, unless requested otherwise by the Commission, continue to operate the Licensed Business in accordance with prudent utility practice or at the same standards that were used to operate the business 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 1 year after compelling compulsory divestiture of the Company.
8. If no sale is satisfactorily concluded within the said year the Minister or his designee shall acquire the Company at Fair Market Value. Fair Market Value shall be determined in accordance with Clause 9 of Condition 3.
9. At any time after the revocation of the Licence but prior to the sale **or acquisition** of the **Company** pursuant to this Condition 14, 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 **shall**, 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 Company**.

(IRC Clause 9 was removed as a result of the amendment at Clause 5 above)

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 15.

Condition 15: Reconsideration and Appeal of Commission Decisions (Requires legislative amendment in the terms of section 71, 72, 73 of the Cayman Law.)

1. Where a 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 therefore, 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.
 - 1.2. On the making of an application under Clause 1 of this Condition 15 the original decision shall not take effect until a reconsideration is made under Clause 1.4 of this Condition 15.
 - 1.3. 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.
 - 1.4. 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.
 - 1.5. 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 1.4 of this Condition 15 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 by Fixed Date Claim Form and the court shall not hear any appeal arising from any original decision specified in Clause 1 of this Condition 15 unless the Commission has made its reconsideration under Clause 1.4 of this Condition 15.
- 2.2. Where an appeal is filed with the High Court, the appellant shall, within twenty-eight days after the day on which the Commission has delivered its reconsideration, serve upon the Commission the claim form and grounds of appeal signed by the appellant or its attorney-at-law.
- 2.3. The Commission shall, upon receiving the claim form and grounds of appeal transmit to the High Court a copy of the reconsideration and all papers relating to the appeal but 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.

The High Court may, in its discretion, order that the hearing or any part of the hearing of any appeal under this clause be held in private.

The High Court may make an order prohibiting the publication of any report or description of a proceeding or any part of a proceeding (whether heard in public or in private), but no order may prohibit the publication of any determination of the High Court.

- 2.4. The High Court may adjourn the hearing of an appeal and may, upon the hearing thereof confirm, reverse or vary the reconsideration of the Commission or remit the matter with the opinion of the High Court thereon to the Commission for the Commission to implement as an original decision.
- 2.5. The High Court may summarily dismiss an appeal if it is of the opinion that the appeal is frivolous, vexatious or not made in good faith.
- 2.6. On appeal to the High Court against a reconsideration of the Authority the execution of the original decision shall not take effect until the hearing of the appeal.

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 16: Force majeure (Cayman T&D Cond.16)

To the extent that the Licensee is prevented by Force Majeure from carrying out, in whole or 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 License 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 it to perform such obligations with all reasonable dispatch after the period of Force Majeure.

Condition 17: Notices and Communication (IRC Gen Cond. 17/T&D Cond. 18)

17.1 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) Commission, be addressed to:
The Executive Director; and
- (b) The Licensee, be addressed to:
The General Manager

At the address, facsimile and email addresses communicated by the respective parties to each other from time to time.

- 17.2 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 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.
- 17.3 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: SPECIAL PROVISIONS APPLICABLE TO GENERATION

Condition 18: Generation Performance Standards (IRC Gen Cond. 18)

1. Performance standards will provide a balance framework of potential penalties or rewards compared to historical performance. Standards 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 and to agree on methods for correction of poor performance as appropriate. **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 if the Licensee has not implemented the agreed on action plan. **The Commission shall** provide rewards for superior performance.
2. These standards **may be reviewed at anytime**, whether initiated by the Licensee or the Commission.
3. After review and approval, the Commission will implement and enforce all 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 18 are approved by the Commission. **The Initial Generation Performance Standards shall be set out in the Commission’s Decision Document: Tariff Regime for Dominica Electricity Services Ltd; Document Ref: 2009/004/D, namely (a) Plant Fuel Efficiency not less than 17.25 kWh/IG and (b) Line Losses not greater than 11.75%.**
5. The Licensee shall operate the Generating Facilities in accordance with the Generation Performance Standards.
6. The Licensee shall:
 - a. Within **180** days after this Licence becomes effective, assemble the data (covering the five year period ending YYYY or the date of commissioning into commercial operations, whichever is later) associated with:
 - i. Individual Generation Set availability (including scheduled and forced outage hours)

ii. Individual Generation Set capacity factor

iii. Determination, **where applicable**, of the average fuel efficiency of the individual Generation Sets that operated during the period as well as the record of the computed average fuel efficiency of each Generating Facility.

The data will be developed in accordance with the statistical terminology of the Institute of Electrical and Electronic Engineers (IEEE).

b. Within **180 days** after the effective date of this License, prepare and submit to the Commission for review and approval suggested appropriate Generation Performance Standards.

7. Pursuant to S.39 of the ESA, 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.

Condition 19: Generation Code (J/CA Condition 22)

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 connections to and the operation and use of the System (and 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 the System; and

(d) Which is designed to ensure:

(i) the development, maintenance and operation of an efficient, co-ordinated and economical system for the generation and transmission of electricity; and

(ii) the promotion of the security and efficiency of the System as a whole.

2. The Generation Code in force at the date this licence comes into effect shall be reviewed and resubmitted to the Commission for its approval, within nine months of the date this licence comes into effect. 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. In preparing, implementing and complying with the Generation Code, including the scheduling of maintenance of the System, the Licensee shall not unduly discriminate against or unduly prefer any person or group of persons in favour of or as against any other person or group of persons.
4. 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.

PART IV: SPECIAL CONDITIONS APPLICABLE TO THE LICENSEE AS SYSTEM OPERATOR

Condition 20: Duties as System Operator (IRC T&D Cond. 19)

1. The Licensee shall be responsible for dispatching sufficient generating capacity to meet system requirements in a prudent manner, taking into consideration various operating considerations, including but not limited to least-cost, planned **and forced** generator maintenance schedules and operating reserves (both on-peak and off-peak) and subject to the terms and conditions of any PPAs.
2. The Licensee shall, as far as is practicable and safe, dispatch available generation in such a manner that the energy produced and dispatched is at the least cost to consumers.
3. The Licensee may purchase some or all of its **energy and or capacity** requirements from **Independent Power Producers** pursuant to relevant PPAs. Such purchases may be made on an energy-only or capacity-and-energy basis as appropriate in accordance with the procedures agreed with or established by the Commission and subject to the relevant PPAs.

4. The responsibility for the procurement of adequate generation supply in terms of required energy, capacity and ancillary services to fully meet the needs of the customers will be that of the Commission through its established procedures for Capacity Addition in accordance with the Regulatory Policy and Procedure Adding Capacity to the Public Electricity Supply System 2008/002/D.
5. *[The Licensee shall be required to ensure that adequate reserve generating capacity, both spinning and cold standby, are available at all times to meet the guidelines promulgated by the Commission. The Licensee may provide such reserve capacity itself or contract some or all of it to any base-load Independent Power Producers (IPP's) with whom a PPA has been signed.]*
6. Except as authorized by the Commission in connection with purchases of renewable energy from customer-owned generation for self-supply, the Licensee shall not purchase electricity from any Person other than **an Independent Power Producer** and may not purchase electricity from **an Independent Power Producer** except in accordance with the relevant PPA.
7. Subject to satisfactory inspection of the interconnection on behalf of the Commission and by the Licensee, consumers who generate renewable energy for self-supply may sell energy to the Licensee, and the Licensee **may** purchase such renewable energy at rates to be proposed by the Licensee and approved by the Commission. The Licensee shall file with the Commission, from time to time, its proposals that describe the basis on which, and the rates at which, such consumers may sell energy to, and purchase energy from, the Licensee, which proposal will be subject to the Commission's review and approval.

Condition 21: Duty to secure [long term] system security and reliability (IRC T&D Cond. 20)

1. Pursuant to the Commission's duty under the Act to "ensure the security and efficiency of the supply of electricity in Dominica, through the conduct of an efficient long term planning process with due regard for future potential generation sources such as geothermal and wind energy", the Licensee shall periodically prepare and update, in accordance with **internationally accepted best industry practice**, an Integrated Resource Plan and Least Cost Expansion Plan.
2. The Commission, when satisfied, after due consultation, that the Plans represent the least economic costs for system expansion consistent with internationally accepted best industry practice, will approve the Plans following which the Licensee shall be committed ~~and bound~~ to implementing the approved Plan.
3. Notwithstanding Clause **2** of this Condition 21, the Licensee shall prepare and/or update the Least Cost Expansion Plan at any time when reasonably requested by the Commission but not more frequently than biennially, **taking into account internationally accepted best industry practice**.

4. Complementary to the provisions of clauses 1, 2, and 3 of this Condition 21, The Licensee shall, on an annual basis, prepare and publish a statement, in a form approved by the Commission, showing, in respect of each of the five succeeding financial years, circuit capacity, forecast power flows and loading on each part of the Transmission and Distribution System and fault levels for each conveyance node, together with:
 - (a) a 5 year forecast of the expected load growth for its service territory.
 - (b) fault level calculations and protective device ratings and settings for each protected node.
 - (c) the peak, minimum and maximum loading, and design capacity on each transmission line and distribution feeder.
 - (d) such other matter as shall be specified in directions issued by the Commission from time to time for the purpose of this Condition;

Provided that the Commission may, upon application of the Licensee, relieve the Licensee from the obligation to prepare any such statement in respect of any period and any part or parts of Transmission and Distribution System specified in directions issued to the Licensee by the Commission from time to time for the purposes of this Condition.

5. The Licensee may, with the prior agreement of the Commission, omit from any such statement (excluding the copy provided to the Commission) any details as to circuit capacity, power flows, loading or other information, disclosure of which would, in the view of the Commission, seriously and prejudicially affect the commercial interests of the Licensee or any third party.
6. The Licensee may periodically revise the information set out in and, with the approval of the Commission, alter the form of the statement prepared in accordance with clause 4 of this Condition 21 and shall, at least once in every year this license is in force, and at such other intervals, as the Commission may deem necessary, revise and republish such statement in order that the information set out in the statement shall continue to be accurate in all material respects.
7. The Commission may direct the Licensee to correct any error it finds in computation or transcription in any statement that the Licensee submits to the Commission in accordance with clause 4 of this Condition 21.

8. The Commission shall publish the statement, and any subsequent revisions, on its website.

[We have removed IRC T&D Conditions 21 and 22 respectively entitled Procurement and Addition of New Generation Capacity and Encouragement of the Development of Renewable Energy Resources and recommend that they be incorporated in the Commission's Decision Document on Adding Capacity or issued as a separate Rule.]

Condition 22: Merit Order Dispatch (J/CA Cond. 23)

1. The Licensee shall establish and operate as part of the Generation Code a Merit order system, for generation sets that are subject to central dispatch.
2. The Licensee shall schedule and issue direct instructions for the dispatch in accordance with a merit order system of all available generation sets of each authorized electricity operator which are required or are agreed to be subject to such scheduling and instructions.
3. Subject to the factors in clause 4, the Licensee shall schedule and issue direct instructions for the dispatch of such generation sets as are at such times available to generate or transfer electricity:
 - (a) in ascending order of the marginal cost in respect of any hour for the generation and delivery or transfer of electricity into the System, to the extent allowed by Transmission System operating constraints based on "Equal Incremental Cost-System" principles; and
 - (b) As will in aggregate and after taking into account electricity delivered into or out of the System from or to other sources be sufficient to match at all times (so far as possible in view of the availability of generations sets) demand forecast taking account of information provided by authorized electricity operators, together with an appropriate margin of reserve for security operation.
4. The factors referred to in clause 3 above include:
 - (a) Forecast demand (including transmission losses and distribution losses);
 - (b) Economic and technical constraints from time to time imposed on the System or any part or parts thereof;
 - (c) The dynamic operating characteristics of available generation sets; and
 - (d) Other matters provided for in the Generation Code.
5. The Licensee shall provide to the Commission such information as the Commission shall request concerning the merit order system or any aspects of its operation.

PART V: SPECIAL PROVISIONS APPLICABLE TO TRANSMISSION

Condition 23: Duties of the Licensee (IRC T&D Cond. 23)

1. The Licensee shall develop and maintain an efficient, coordinated and economical system of electricity transmission in the island of Dominica.
2. Subject to the provisions of its license the Licensee shall provide access to its transmission and/or distribution system as appropriate, and interconnection access and service, on a non-discriminatory basis on facilities that it operates to requests by Independent Power Producers (IPP's) and, where appropriate, transmission licensees. Subject to consent by both parties any dispute as to the terms and conditions on which such transactions take place may be determined by the Commission. The Licensee shall have no obligation to connect Independent Power Producers (IPPs) unless both the Licensee and the Chief Electrical Inspector agree that the Independent Power Producer's connection will not compromise the safety and protection of the system.

Condition 24: Technical Standards (IRC T&D Cond. 24)

1. The Licensee shall design, specify and build the Transmission system in accordance with the latest revisions of the following standards (or the equivalents approved by the Commission):
 - a. Transmission line design and construction XXXXXXXX
 - b. Line materials, cables, fittings and hardware XXXXXXXX
 - c. Substation design and construction XXXXXXXX
 - d. Equipment, transformers, fittings, relays, etc. XXXXXXXX

(There is a variety of standards applicable to the above. Finalisation of this requirement requires further discussion with the IRC)

2. Where not specifically defined, the Licensee shall propose standards to the Commission for its approval.

Condition 25: Service Levels (IRC T&D Cond. 25)

1. The Licensee shall develop and operate the transmission system so as to **ultimately** achieve service levels in line with international best practice for **island systems of a similar size** and such other benchmarks as the Commission, after consultation with the Licensee, may direct from time to time.
2. Without limiting the requirements of clause 1 of this Condition 25, the Licensee shall, at the request of the Commission, submit to the Commission a plan setting out its strategy for achieving the target levels that will have been established in accordance with clause 1 of this Condition 25.
3. The Commission may direct the Licensee to update and resubmit such plans from time to time but no more frequently than annually.
4. The Commission may direct the Licensee as to matters to be included in such plans and may amend or replace such direction from time to time but no more frequently than annually.
5. The service level targets and the plans submitted by the Licensee or any revisions thereof, once approved by the Commission, shall form part of this License as a Condition.
6. Within thirty days of the end of each calendar year during the Term, the Licensee shall provide the Commission with a written report on its achievements under the Plans during the preceding year, as set out in clause 2 of this Condition 25.
7. The Licensee shall comply with directions issued by the Commission from time to time, regarding other quality of service indicators and measurement methods for the transmission business and shall, as and when required, supply to the Commission the results of its measurements of actual performance against the quality of service indicators and measurements so specified, and the Commission may publish or require publication of such information as it considers appropriate.

Condition 26: Development of and Compliance with Technical and Operational Codes (IRC T&D Cond. 26)

1. The Licensee shall develop technical and operational codes in consultation with other Licensees or other parties liable to be materially affected thereby. Such codes will be submitted to the Commission for approval prior to implementation. The Commission may from time to time direct that technical and operational codes be developed and implemented.
2. The Licensee shall, in consultation with any Licensee liable to be materially affected thereby and such other persons as the Commission shall consider appropriate, periodically review (including at the request of the Commission) such technical and operational codes as are developed and implemented by the Licensee pursuant to clause 1 of this Condition 26.
3. Following the development of any technical and operational codes pursuant to clause 1 of this Condition 26 and the review of any such codes, the Licensee shall send to the Commission:
 - (a) a report on the outcome of any consultation and of the review as the case may be; and
 - (b) any proposed revisions to any such code from time to time as the Licensee (having regard to the outcome of any consultation or review) reasonably thinks necessary; and
 - (c) any written representations or objections from any Licensee arising during the consultation process and not withdrawn.
4. Having considered the information provided pursuant to clause 3 of this Condition 26 and such other **relevant** information as ~~the Commission considers appropriate~~, the Commission may direct the Licensee to change any technical and operational codes developed pursuant to clause 1 of this Condition 26 and the Licensee shall comply with such directions.
5. The Licensee shall give or send a copy of all approved technical and operational codes (and any revisions thereto) developed and implemented by the Licensee pursuant to this Condition to the Commission and at the same time the Licensee shall make this information available generally by way of publication on the Licensee's website.
6. The Licensee shall comply with the provisions of any approved technical and operational codes insofar as applicable to it.

7. The Commission may, following consultation in relevant circumstances with any Licensee liable to be materially affected thereby and such other Licensees and other parties as the Commission shall consider appropriate, issue directions relieving the Licensee of its obligation under clause 6 of this Condition 26 in respect of such part or parts of any approved technical and operational codes to such extent as may be specified in those directions.

PART VI: SPECIAL PROVISIONS FOR DISTRIBUTION AND SUPPLY

Condition 27: Duties of the Licensee (IRC T&D Cond. 27)

1. The Licensee shall develop and maintain an efficient coordinated and economical system of electricity distribution and supply to consumers and its customers, in the service territory.
2. The Licensee shall at all times during the term of this License or any extension thereof furnish and maintain a distribution system and supply of electricity for public and private use in accordance with reasonable standards of safety and dependability as understood in the electricity supply business.
3. The Licensee has a duty to connect to any person desiring to obtain electric service **in accordance with the provisions of the ESA.**
4. The Licensee shall have regard to the provisions of Section 33.(3), (4) (5) and (7) of the Act.

Condition 28: Service Levels (IRC T&D Cond. 28)

1. The Licensee shall develop and operate the electricity supply system so as to ultimately achieve service levels in line with international best practice and such other benchmarks as the Commission, after consultation with the Licensee, may direct from time to time.
2. Without limiting the requirements of clause 1 of this Condition 28, within twelve months of the License Commencement Date the Licensee shall submit to the Commission a plan setting out its strategy for achieving the target levels that will have been established in accordance with clause 1 of this Condition 28.
3. The Commission may direct the Licensee to update and resubmit the plans from time to time but no more frequently than annually.

4. The Commission may direct the Licensee as to matters to be included in the plans and may amend or place such direction from time to time but no more frequently than annually.
5. The service level targets and the plans submitted by the Licensee or any revisions thereof, once approved by the Commission, shall form part of this License as a Condition.
6. Within thirty days of the end of each six month period during the Term, the Licensee shall provide the Commission with a written report on its achievements under the plans during the preceding six month period, as set out in clause 2 of this Condition 28.
7. The Licensee shall comply with any directions issued by the Commission from time to time, regarding any other quality of service indicators and measurement methods for the distribution and supply business and shall, as when required, supply to the Commission the results of its measurements of actual performance against any quality of service indicators and measurements so specified, and the Commission may publish or require publication of such information as it considers appropriate.

Condition 29: Technical Standards (IRC T&D Cond. 29)

1. The Licensee shall design, specify and build the Distribution system in accordance with the latest revisions of the following standards (or the equivalents approved by the Commission);
 - a). Distribution line design and construction XXXXXXXX
 - b). Line materials, cables, fittings and hardware XXXXXXXX
 - c). Equipment, transformers, fittings, relays, etc. XXXXXXXX

(There is a variety of standards applicable to the above. Finalisation of this requirement requires further discussion with the IRC)
2. Where not specifically defined, the Licensee shall propose standards to the Commission for its approval.
3. The Licensee shall design, operate and maintain the distribution and supply infrastructure in accordance with the applicable XXXX standards.
4. Within 180 days of the date this licence comes into effect, the Licensee shall deposit with the Commission a schedule of the applicable standards that relate to its distribution and supply operations along with the references in soft copy.

Condition 30: Security and Safety of Supply (IRC T&D Cond. 30)

1. The Licensee shall make arrangements to keep each of its customers informed of the postal and email addresses and telephone number of any enquiry service established and operated for the purposes of receiving reports from any person about any matter or incident that:
 - a) causes danger or requires urgent attention, or is likely to cause danger or require urgent attention, in relation to the supply or supply of electricity; or
 - b) affects or is likely to affect the security, availability or quality of service of the Licensee's supply system through which the relevant customer is supplied with electricity.
2. The enquiry service referred to at clause 1 of this Condition 30 must be:
 - a) provided without charge to the customer;
 - b) available to receive and process telephone email ~~and text~~ reports and enquiries at all times on every day of each year; and
 - c) operational on the date of this License.
3. The Licensee may discharge the duty imposed by clause 1 of this Condition 30 by providing the requisite information to each of its customers;
 - a) On the occasion of the customer first commencing to take a supply from the Licensee; and thereafter
 - b) either:
 - i). where bills or statements in respect of charges for the supply of electricity are rendered to the customer, on a quarterly basis (it being sufficient that the information is included on or with any bill or statement); or
 - ii). in any case, on an annual basis;
 - c). by publishing such information on its website and in such other manner as will, in the opinion of the Licensee, secure adequate publicity for it.

(IRC T&D Cond. 31 was removed as it is provided for in the ESA)

Condition 31: Preparation, Review of and Compliance with Codes of Practice (IRC T&D Cond. 32)

(We thought it would be better if the codes existed outside of the licence rather than enumerated within the licence and so the conditions setting out references to the individual codes were removed. The following condition was amended accordingly to establish a general requirement to develop the codes.)

1. The Licensee shall, within twelve months of this license coming into force prepare Codes of Practice setting out the principles and procedures the Licensee will follow in respect of the requirements of section 33 (3), (4), (5) and (7) of the ESA and the various matters that affect customers. These are: Efficient Use of Energy; Payment of Bills; Handling Customer Complaints; Access to Customers' Premises; Connections and Disconnections and Meter Reading;

[The Codes listed as IRC T&D Conditions 34, 35 and 37 were not included since these require DOMLEC to undertake a degree of social work that is both unreasonable for any business and is not mandated by the Act.]

[The Code listed as IRC T&D Cond.38 was also not included since this is already covered in detail in the Commission's Decision Document on Quality and Service Standards.]

2. Notwithstanding clause 1 above, the Licensee may issue Codes of Practice on its own volition
3. The Licensee may review a Code and the manner in which it has been operated with a view to determining whether any modification should be made to that Code or to the manner of its operation, and shall do so **on its own volition or** whenever directed to by the Commission.
4. Pursuant to the review undertaken in clause 2 of this Condition 31 the Commission may, after Consultation with the Licensee, approve any amendments or modifications (including deletions) to a Code. In addition the Commission may issue directions to the Licensee to provide information to the Commission or to notify the Commission of matters affecting the Licensee's customers where such matters are relevant to the issues addressed by the Codes.
5. The Licensee shall:
 - a) as soon as practicable following the preparation of a Code or any revision made to it, send to the Commission a copy of the Code or such revision in the form approved by the Commission;
 - b) draw to the attention of its customers the existence of the Codes and each substantive revision of each of them and how they may inspect or obtain a copy of the Codes in their latest form;

- c) make a copy of the Codes available for inspection by members of the public at each of the relevant premises during normal opening hours;
 - d) give or send, at reasonable charge, a copy of the Codes (as from time to time revised) to any person who requests it.
- 6. Subject to clause 7 of this Condition 31, the Licensee shall ensure that it complies with the terms of and the arrangements or procedures (as the case may be) as are contained in or described by each Code to which this Condition applies or any revision to such Codes approved by the Commission.
- 7. The Licensee shall provide the Commission with all assistance reasonably necessary to enable the Commission to monitor the implementation and operation of any Code and this assistance shall include permitting the Commission access to relevant documentation held by the Licensee.
- 8. The Commission may (following consultation with the Licensee and such other parties as the Commission considers appropriate) issue directions relieving the Licensee of any of its obligations under this Condition 31 to such an extent as may be specified in those directions and subject to such terms and conditions as the Commission thinks fit.
- 9. In this Condition “**relevant premises**” means any premises of or occupied by the Licensee or any associated company or related undertaking of the Licensee open to customers in the normal course of the Licensee’s business.

[We removed IRC T&D Conditions 42 & 43 since these subjects are already covered in detail in the Commission’s Decision Document on Quality of Service Standards.]

Condition 32: Joint use of poles (Adapted from J/CA Cond. 28)

1. The Licensee may enter into any arrangement or contracts for the joint use of poles and, if the public interest so requires, the Commission shall have the right, to direct the Licensee, after consultation, to use any poles jointly with Subscriber Television Companies (STV) or telecommunications service providers so long as such use shall not contravene any other law or violate any safety code, or, in the sole opinion of the Licensee, provide an unsafe working condition for the Licensee's employees. It shall be a condition of any such directions that the Licensee shall receive fair compensation for the use of its poles by such companies, including any costs for pole modifications.
2. The Licensee shall publish a Code of Practice for use by STV companies and telecommunications service providers, setting out the procedures that are in place for management of these joint-pole arrangements and the standards for use of its poles by these companies. A copy of this Code of Practice, along with the scale of charges that may be in effect for the time being must be deposited with the Commission.
3. The prices which the STV companies and telecommunications service providers are charged by the Licensee for attachment to its poles shall be fair and reasonable.

PART VII: PRICE CONTROLS AND TARIFFS

Condition 33: Price Control Mechanism (IRC T&D Cond. 44)

1. Tariff Principles

The Commission shall determine the Licensee's rates for electric power based on the principles set out in the Commission's Decision Document: Tariff Regime for Dominica Electricity Services Ltd; Document Ref: 2009/004/D.

The Tariff shall be a two-part consisting of a non-fuel base rate and a fuel/purchased energy rate as follows:

- i). Non-Fuel Base Rate which is adjusted annually to reflect the impact of Dominican inflation.
- ii). Fuel/Purchased Energy Rate which is a 100% pass-through of actual costs incurred and is adjusted monthly to reflect fluctuations in fuel costs and amounts of energy purchased.

2. Tariff Components

i). **Non-Fuel Base Rate**

The Non-Fuel Base Rate Revenue Requirement shall be developed consistent with the following formula:

$$RR = OC + FC + GO + RF$$

Where: RR = Revenue Requirement

OC = Non-fuel Operating Costs

FC = Financing Costs

GO = A provision to recover or return the cost of obligations imposed by government which were not known or anticipated at the tariff review

RF = Applicable regulatory fees

The average Non-Fuel Base Rate is the Revenue Requirement (\$) divided by the prior month's sales (kWh).

$$\text{Average Rate} = \text{Revenue Requirement (\$)} / \text{Sales (kWh)}$$

The components of the Non-fuel Base Rate Revenue Requirement are:

- a). Non-Fuel Operating Costs:
Non-Fuel Operating Costs (OC) = operational, maintenance and administrative costs (OMA), depreciation, income taxes, deferred costs, etc
- i). Operational, maintenance and administrative costs – All prudently incurred costs which are not directly associated with investment in capital plant, other operating costs shall include, but not be limited to: salaries and other costs

related to employees; operating costs of generation, transmission and distribution and supply facilities; interest costs on other borrowings not associated with capital investment, if applicable; rents and leases on property associated with the Licensed Business; taxes which the Licensee is required to pay other than income taxes of the Licensee; and other costs which are determined to be reasonably incurred in connection with the Licensed Business.

- ii). Depreciation – The depreciation component will be calculated by applying annual depreciation rates, as provided in the **Commission’s Decision Document: Tariff Regime for Dominica Electricity Services Ltd.; Document Ref. 2009/004/D**, to the gross value of the individual plant asset accounts. The Licensee shall from time to time undertake depreciation studies, the results of which shall be agreed with the Commission and **the annual depreciations rates** amended accordingly.
- iii). Taxes – Taxes which are calculated based on the net income of the Licensee (Income Taxes) and payable to the Government of the Commonwealth of Dominica. Loss carry – forwards and any incentives to encourage capital investments are not included in the calculation of income taxes.
- iv). Deferred Costs – Deferred costs are costs that have been incurred by the utility that have not yet been recovered from ratepayers. These cost deferrals occur because in determining revenue requirements estimates are used, which may vary from actual costs.
- b). Financing Costs
This component is calculated based on the approved Rate Base of the Licensee and the allowed rate of return on that Rate Base, which is equivalent to the Weighted Average Cost of Capital (WACC). The Rate Base is computed net of depreciation expense and includes a component for working capital. The WACC will be based on the actual capital structure as approved by the Commission at the time of the last tariff filing and is comprised of the weighted average costs of debt and equity.

$$\text{Return on Rate Base} = \text{WACC\%} * (\text{Rate Base})$$

i. Cost of Debt

The Commission has decided that using the actual historic debt cost (interest) plus forecast future interest rate is appropriate.

ii. Cost of Equity

The Commission has decided to use the average of two recognized

models for determining the cost of equity, namely the Discounted Cash Flow Model and the Capital Asset Pricing Model. The version of DCF model chosen is the constant growth or Gordon Model. The CAPM model assumes that the cost of equity investment is equal to the risk-free rate of interest plus the risk premium on the market portfolio adjusted by the company specific risk factor, beta, plus an additional size premium reflecting the small size of both the company and its market. Finally, a Sovereign risk premium (country risk) must be added to the average of these two models to reflect the additional geopolitical risk associated with businesses located outside of the base country (United States).

c). Government Obligations

Government Obligation means any obligation imposed by the Government or its agencies on the Licensee, after the date of implementation of the Tariff, in the areas such as environmental standards, laws and regulations, license fees, taxes other than general income, corporate or general consumption tax, etc.

A Government Obligation shall be deemed to be material only if the annual incremental costs or savings to the Licensee that result there from is at least the amount defined in the **Commission's Decision Document: Tariff Regime for Dominica Electricity Services Ltd.; Document Ref: 2009/004/D**. The fixed amount shall be adjusted annually for Dominican inflation from the date of tariff and will apply until the next tariff review when the impact of the obligation will be fully taken into account.

d). Regulatory Fees

Regulatory Fees are the fees prescribed pursuant to Condition 8 of this License.

i) .

Energy Rate

Fuel/Purchased

The Fuel/Purchased Energy Rate shall be calculated using the Fuel Operating Cost plus the Purchased Energy Cost and the monthly energy sales as follows:

The Fuel Operating Cost for the current month will be the total *cost of fuel* used to generate electricity during the previous month. The Fuel Operating Cost (adjusted for efficiencies) will be a 100% pass through and shown as a separate line item charge in the tariff.

The pricing, will reflect a regulatory environment where the Licensee, through efficient operational practices and continual efficiency improvements with regards to fuel use, will have

the opportunity to commensurately enjoy gains or absorb losses depending on whether or not it meets the prescribed efficiency and performance targets. Consumers, on the other hand, will pay a fair rate for the direct cost of fuel consumed, related to energy usage conditioned by efficiency factors set by the Commission.

The Purchased Energy Cost for the current month will be the total cost of all **energy-only purchases** from third party electricity generators, **during the previous month**, according to contracts signed with those generators. The Purchased Energy Cost will be a 100% pass through and shown as a separate line item charge **on the customer's bills**. **Any costs associated with capacity-and-energy purchases have not been addressed by the Commission's Decision Document: Tariff Regime for Dominica Electricity Services Ltd; Document Ref: 2009/004/D, and must be dealt with differently from energy – only purchases.**

The Fuel/Purchased Energy Rate for the current month shall be the sum of the Fuel Operating Cost and the Purchase Energy Cost divided by the total energy sales in kWh for the previous month.

The formula for calculating the Fuel/Purchased Energy Rate is set out in the **Commission's Decision Document: Tariff Regime for Dominica Electricity Services Ltd; Document Ref: 2009/004/D.**

The SCHEDULES were removed as the details they provided were not used anywhere in the licence.