

DOMINICA ELECTRICITY SERVICES LIMITED

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30th April, 2012

Mr. Lancelot McCaskey
Executive Director
Independent Regulatory Commission
P.O. Box 1687
ROSEAU

**Re: Consultative Document 2012/001/CD-02 Amendment to Decision
2009/001/D Regulatory Policy and Procedure
– Licencing Procedures**

We have reviewed the captioned document submitted to us on April 16th 2012 and have set out the details of our concerns on the enclosed document. We have noted the timetable you have set out and trust that there will be some time for face to face consultation on the issues raised before the Commission finalizes its decision on the same.

Without Prejudice

We note in the document your reference to the expiration of Domlec's licence in 2015 under the provisions of the Electricity Supply Act (ESA). While we do not seek to challenge your interpretation of the Act we do wish to reserve our legal position as articulated under the pending Arbitration and High Court Application in regard to the company's operating licence. Our comments on the captioned document and indeed all our discussions regarding the licence issue do not constitute a waiver of these legal rights.

Domlec remains committed to continued dialogue with the Commission and with the Government to advance the resolution of the licensing and other issues.

Sincerely

A handwritten signature in blue ink that reads "Collin Cover". The signature is fluid and cursive.

COLLIN COVER
General Manager

30th April, 2012

Response to the IRC's Consultative Document 2012/001/CD-02
Amendment to Decision 2009/001/D Regulatory Policy and Procedure
– Licencing Procedures

1. Where in 2009/001/D Regulatory Policy and Procedure Licencing Procedure will this be placed? Will it become section 2.10 Procedure for the Renewal of Licence?

2. Suggested changes
 - a) Page 9 – The conditions for a “forced sale” of the assets at 50% of its Fair Market value is not only grossly unfair to the licensee but may constitute unlawful acquisition of assets. The proposal, if accepted, would be a disincentive to shareholders and investors, both local and foreign, would adversely affect Dominica’s investment climate and undermine its global financial standing. Moreover, the substantive legislation does not empower the IRC to do so.

Against the background of such a provision, the Commission can impose conditions in the renewed licence which the Licensee may find so onerous that the Licensee may wish to wind up operations. These same conditions will prevent the licensee from being able to find a purchaser satisfactory to the Commission. The result is then that the Licensee through no fault of its own would be pressured to sell its assets at 50% of its Fair Market Value to the Government. The only way to prevent this from constituting an unfair acquisition of assets by the State is for the value paid by the State to be the Fair Market Value. To have a Licensee who agrees to continue to operate a business not because it wants to, but because it is being coerced to because of a fear of losing 50% of the value of its assets is not a basis for a good relationship between the Regulator and the Licensee or indeed the Government and the Licensee and its investors, both local and foreign.

- b. Page 9 – provision should be made for what procedure should apply where the valuers selected by the parties are unable to agree on selection of the Chairman of the panel.
We recommend that in such a case, the chairman should be appointed in accordance with the provisions of Part II of the Arbitration Act which allows either party to apply to the High Court for the appointment of its nominee.
- c. Page 9 - the process outlined at sub paragraphs (a) and (b) are functions of the panel of valuers. This process should be incorporated into the time table as follows:

12	The Panel of Valuers will furnish to the Minister the average value of the sum to be paid upon acquisition and arrangements will then be concluded as to the manner of payment by the Government
Date of Expiration of the Licence	The government shall pay to the Licensee such sum as agreed in accordance with the arrangements above.

- d) Page10 – Change wording of the conclusion to read “This procedure is intended to provide, in the first place a basis for timely consistent process for negotiating a new licence for DOMLEC. The timetable recognized the difficulties and time needed to renegotiate and put a renewed Licence in place.....in the company”