



Document Reference: 2012/002/D

DECISION
GENERATION LICENCE
For
DOMINICA ELECTRICITY SERVICES LIMITED

September 2013

INDEPENDENT REGULATORY COMMISSION

Decision

Electricity Supply Act No 10 of 2006

This document sets out the Decision of the Independent Regulatory Commission **2011/001/D- 04** "**Generation Licence for Dominica Electricity Services Limited**" - taken by the Commission at its meeting on August 22, 2013.

The Commission now **ORDERS** that this Licence, granted pursuant to Sections 30 and 31 of the Electricity Supply Act No 10 of 2006, will become effective on the date given below.

Effective date: January 01, 2014

By Order

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LANCELOT MCCASKEY
EXECUTIVE DIRECTOR
On Behalf of the Commission
September 30th, 2013

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GENERATION LICENCE FOR DOMINICA ELECTRICITY SERVICES LIMITED.

Introduction and Background

The Electricity Supply Act 10 of 2006 (ESA) establishes a regime of separate licensing for each of the business sectors of public electricity supply undertakings – generation, transmission distribution and supply. The Act provides a function for the Commission to issue, monitor and amend licences in the context of a general duty to promote competition. All of this however is set within an overarching duty to encourage the expansion of electricity supply and to ensure the security and efficiency of the supply of electricity in Dominica.

While the ESA effectively truncated the Licence issued to Dominica Electricity Services Limited (DOMLEC) by 10 years (effectively to end it 2015), it simultaneously placed the utility under the regulatory jurisdiction of the IRC, thus providing the mechanism for a deliberative consideration of DOMLEC’s licenses going forward and thus establishing regulatory certainty through the legislated independence of the Commission. The Commission in recognizing that the long term security and efficiency of the electricity system could be affected authorized discussions with DOMLEC towards securing a series of agreements on critical issues such as tariffs and other conditions that would lead to the development/conclusion of new licences for DOMMLEC which would be aligned with the principles enshrined in the ESA.

Pursuant to its duties under the ESA, therefore, the Commission embarked on a consultation process in its considerations of a generation licence for DOMLEC.

The consultation was conducted generally in accordance with the timetable set out below at Table 1, which itself is set out as a procedure in the Commission’s Decision “Regulatory Policy and Procedure – Licensing Procedures” Document Referenc:2009/001/D (as amended).

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	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

	meeting the objective contained herein	business of the Licensee
39 - 36	Preliminary negotiation of new licence terms	New investors identified and new Licence negotiated concomitantly with sale/disposal of the asset by the investor
36 - 33	Public consultation on proposed new Licence	
33 - 30	Final round of negotiations	
27	Commission issues new Licence	
24	<p>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.</p> <p><u>New Licence to become effective on the date of acquisition of the asset.</u></p>	

During the process, the Commission conducted two rounds of consultations arising from which it issued its "Statement of Results and Preliminary Decision" Document Ref No: 2011/001/CD-03 on April 05, 2013. In that document the Commission sets out its considerations of the inputs received from several stakeholders including from the Deal Team, established to guide the geothermal development in Dominica, as well as from DOMLEC. The Commission did not receive any substantive comments to its "Statement of Results and Preliminary Decision" and after expiry of the consultation period it embarked on the final round of negotiations with DOMLEC as programmed for months 33 - 30 in the Schedule at Table 1 above.

The Commission and DOMLEC completed these negotiations on July 17, 2013 and the Commission approved the grant of the Licence to DOMLEC at its sitting on August 22nd, 2013

The Commission wishes to thank all stakeholders who participated in the consultation process, those who sent in written comments and those who attended and provided comments at the public hearings. The Commission benefitted immeasurably from these inputs and believes that process has resulted in an outcome which is equitable for all stake holders and will allow for the orderly development of the electricity sector in Dominica through timely and efficient investments.

In the next section, the Commission highlights certain key features of the Licence and the Licence itself is attached as Attachment 1.

Key features of Generation Licence

Grant of Licence

The Commission, in keeping with its powers and duties under Section 30 and 31 of the ESA has determined to grant a non exclusive generation licence to DOMLEC to supply electric energy and capacity to the DOMLEC Transmission and Distribution system.

Commencement Date

The Commencement date will be January 1, 2014.

In the course of the negotiation the parties were mindful that DOMLEC's existing licences expires on December 31, 2015. It was agreed, however, that as no useful purpose would be served to wait two years before the new licence becomes effective and subject to certain other legal matters being resolved, the Commencement Date of the new licensee could be advanced to January 1, 2014.

Term

The term of the Licence shall be 25 years.

In deciding on this period, the Commission had due regard to the provisions of Section 31 (1) (c) which requires that the "duration" of the Licence shall be related to the useful life of the generation facilities. The Commission noted that this issue was discussed extensively at the public consultations and the consensus of participants was that 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. Having considered DOMLEC's records, taking into account the conclusions of an assessment by an independent evaluator and the consensus at the public hearings, the Commission concluded that a term of 25 years would not only satisfy the statutory requirements but also the technical, accounting and rate making imperatives.

Assignment or Transfer of Licence

The Licence sets out specific procedures regarding any intention by the Licensee to Assign or Transfer the Licence. Should the Licensee wish to assign or transfer the Licence, it must request, in writing, the consent of the *Commission*. The *Commission* has 60 days of the receipt of such request to reply informing of its decision on the application. If the Licensee is dissatisfied with the *Commission's* decision it has the option to follow the process for reconsideration and appeal.

Transfer of Shares of the Licensee

The Licensee must advise the Commission in writing of any proposal to transfer shares in the ownership of the licensed business which will have the effect of changing the controlling interest in the Licensee. The information provided in such circumstances must be sufficient to enable the Commission to satisfy itself, pursuant to Section 28 of the *ESA*, that the persons acquiring control or ownership in the circumstances set out above are fit and proper persons. If the Commission determines that the persons acquiring control are not fit and proper persons the Licence provides the Commission with the option to

- a) impose such conditions as it deems necessary; **or**

- b) after consultation and with the consent of the Government revoke the Licence where it determines that such revocation is necessary for reasons of national security or the public interest of the Commonwealth of Dominica.

Reconsideration and Appeal of Commission Decisions

The Licence makes provision for the licensee to appeal the Commission's decisions taken in regard to the licence. The process is a two stage one where the licensee firstly requests the Commission to reconsider the decision and if not satisfied with the Commission's reconsideration the licensee may file an appeal to the High Court. Either party has the right of appeal to the Court of Appeal if dissatisfied with the outcome at the level of the High Court.

Transitional Arrangements

On the Commencement Date, in order to enable a smooth transition to the full force and effect of this Licence, all conditions which would normally have effect under the ESA and Rules, Directives or Determinations of the Commission shall remain in effect until such time when these are logically and practically superseded by the actions taken under the Licence.

Attachment 1 - Generation Licence