



**Document Reference: 2012/003/D**

# **DECISION**

## **TRANSMISSION, DISTRIBUTION AND SUPPLY 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 2011/002/D- 04 “**Transmission, Distribution and Supply 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, 32, and 33 of the Electricity Supply Act No 10 of 2006, will become effective on the date given below.

Effective date: January 01, 2014

By Order

.....  
**LANCELOT MCCASKEY**  
**EXECUTIVE DIRECTOR**  
On Behalf of the Commission  
September 30<sup>th</sup>, 2013

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# TRANSMISSION DISTRIBUTION AND SUPPLY 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 transmission, distribution and supply 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**

<b>Months before end of Term</b>	<b>Target objective (1)</b>	<b>Target objective (2)</b>
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 framework and draft of proposed new Licence and setting out a proposed time table for meeting the objective contained herein	If Licencee demonstrates its intention to surrender the licence, the Commission to respond to the Licencee proposing the broad framework and procedure for managing the Investor's disengagement from the business of the Licencee
39 - 36	Preliminary negotiation of new licence terms	New investors identified and new Licence negotiated concomitantly with sale/disposal of the asset by the investor
36 - 33	Public consultation on proposed new Licence	
33 - 30	Final round of negotiations	
27	Commission issues new Licence	
24	<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: 2011/002/CD-03 on April 19, 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 22, 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 Transmission, Distribution and Supply 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 an exclusive transmission, distribution and supply licence to DOMLEC subject to the following:

- a) Developers of generating facilities that will interconnect with the transmission and distribution system by virtue of a Power Purchase Agreement will, as a general rule, be required to provide interconnection to the 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 system.
- b) 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 to enable such cross border arrangements. If circumstances require and it is prudent to do so, the developer may be eligible for a transmission licence to build and operate the transmission lines to interconnect with the transmission and distribution operated by DOMLEC.

#### 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 inputs received at the various consultations and to the anticipated development by DOMLEC of appropriate transmission system infrastructure to facilitate evacuation of energy from geothermal generating plant to be developed and to secure electric system stability in the north of Dominica. In fact the Commission was particularly mindful that consensus was quite ambivalent as to a preferred period, the concern being more strongly voiced on insisting that a rigorous review mechanism had to be put in place to ensure that DOMLEC complies with the licence conditions and investment commitments.

### 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.

### DOMLEC's Duties as System Operator

The Licence provides for certain critical functions to be discharged by DOMLEC in its role as the System operator. Among the most critical of these is a duty:

- a) to dispatch sufficient generating capacity to meet system requirements and to ensure that dispatch is at least cost;
- b) in keeping with specific procedures to secure long term system security and reliability by the timely addition of new capacity
- c) to establish and operate a merit order system, for generation sets that are subject to central dispatch.

### Tariffs

The Licence provides for DOMLEC, within 7 days of the Commencement Date, to submit a timetable for the filing of an application to the Commission for a tariff review, and that the date for such a filing shall be no later than 9 months from the Commencement Date without the approval of the Commission.

### Transitional Arrangements

On the Commencement Date, in order to enable a smooth transition to the full force and effect of the 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.

### **Consequential actions**

The Commission acknowledges that certain consequential actions will have to be taken to align the Commission's rules and procedures with the new Licence. In this regard, the following amendments are to be made after due process:

	<b>Description</b>	<b>Document</b>	<b>Proposed Amendment</b>
1.	Rules of Practice and Procedure 2008	2008/004/D	Add a new section "Reconsideration and Appeals of the Commission's Decisions" which will reflect the principles set out in the licence
2.	Regulatory Policy and Procedure- Adding Capacity to the Public Electricity Supply System	2008/002/D	Amendment to remove the 12 month requirement for the introduction of regulatory accounts, specifically to separate DOMLEC's generation and Transmission Distribution and Supply functions -



	<b>Description</b>	<b>Document</b>	<b>Proposed Amendment</b>
			Decision 3.0
3.	Regulatory Policy and Procedure - Licensing Procedures	2009/001/D	Amendment to the general policy to provide for the Commission to grant licences for third party supply to any Development Areas, where there is to be no interconnection with the DOMLEC System and where it is demonstrated that for technical, commercial or other reasons DOMLEC is unable or unwilling to extend the electricity supply system to those areas.

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