



CONSULTATIVE DOCUMENT

Document Ref: 2012/001/CD-04

Document Title:

**Amendment to Decision 2009/001/D - “Regulatory Policy
and Procedure - Licensing Procedures”**

*Procedures to secure continuity and security of the public
electricity supply on the expiration of the Term of the
DOMLEC Licence*

(Comments on Responses - Part 2)

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CONSULTATION PROCESS

Persons who wish to participate in this consultation and to express opinions on this Document are invited to submit comments in writing to the IRC. Responses/Comments should be sent to:

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

Responses, clearly showing the Document Reference identification, may be sent by mail or fax to the address or fax number above or by e mail to: ircdominica@gmail.com. Confidential information provided with responses should be submitted as a separate document and clearly identified as such.

In order to stimulate debate, the IRC will place any responses received on its website at www.ircdominica.org immediately following the last date for receipt of responses. Comments on the responses will also be entertained by the IRC which should, likewise, be submitted by the date indicated.

The references and proposed time table for this consultation are:

Document Ref No: 2012/001/CD-04

Document Title: *Amendment to Decision 2009/001/D - "Regulatory Policy and Procedure - Licensing Procedures" - Procedures to secure continuity and security of the public electricity supply on the expiration of the Term of the DOMLEC Licence*
(Comments on Responses)

Event	Proposed Date
Publication of Document	May 25, 2012
Responses close	May 28, 2012
Decision by Commission	May 29, 2012 (Extended Date)

Comments on Consultative Document Ref: 2012/001/CD-03

The full text of DOMLEC's comments is available on the Commission's web site www.ircdominica.org. The Commission now responds to the issues raised.

1. Can some clarification be given on the statement that “*these provisions will be specially codified and treated outside of the norm of general licensing procedures*”? This statement seems to conflict with the earlier statement that the procedures would be codified and inserted as a new section 2.11.

Additionally, the references in that section to DOMLEC licences should be corrected to licence as DOMLEC currently has one integrated licence.

Commission's Response

If there is ambiguity arising from the two statements, this is regretted. The substantive point is that the procedure will be codified and inserted as a new section 2.11.

While the second point questions the use of the plural “licences” it should be noted that this procedure is not a “one off” condition and is intended to have application in subsequent periods, when DOMLEC will have more than one licence.

2 (c) The Commission's proposal requires valuations to be conducted by parties other than the panel of valuers. DOMLEC's proposal seeks to correct this and to have the valuation conducted only by the panel of valuers and incorporated into the timetable. DOMLEC's proposal removes the vague term “probable estimates” and replaces it with the precise term “average”. This addresses both substance and form.

Commission's Response

Domlecs suggestion has merit and the affected sections will be amended appropriately.

2 (d) The ESA empowers the Commission to issue single as well as integrated licences. It is both unfair and unreasonable for the Commission to set out a policy statement making a determination on the type of licence it will issue to DOMLEC even before DOMLEC has applied for a licence or had the opportunity to negotiate the terms of the new licence it requires.

Commission's Response

The Commission regrets DOMLEC's expressed view that “unfair and unreasonable” positions have been take by the Commission. The Commission is of the view that it arrived at the policy positions in question after due process and, consistent with the provisons of the ESA, after having provided all stake holders (including DOMLEC) with the opportunity to be heard. In this regard, the Commission reminds DOMLEC that these policy positions were adopted after consultation in accordance with the procedures established by the Commission and directs

DOMLEC's attention to the proceedings associated with Consultation Document Ref. 2008/002/NPRM-001 "Regulatory Policy and Procedure – Adding Capacity to the Public Electricity Supply System" dated November 26, 2008. Although DOMLEC participated in that proceeding, it did not raise concerns or question the policy positions articulated by the Commission.

DOMLEC also had a second opportunity to raise concerns about the Commission policy positions in a subsequent proceeding associated with Consultation Document Ref No: 2009/001/CD "Regulatory Policy and Procedure – Licensing Procedures" issued April 1, 2009, to which DOMLEC made no contribution.

B2. The substantive legislation does not permit the Commission to write special conditions into the individual licenses which supersede the provisions in its published rules unless the rules and/or the substantive legislation have been amended to provide for these special conditions.

Commission's Response

The Commission is of the view that the substantive legislation does not expressly forbid the procedure proposed but in any event the outcome of the current proceeding is to amend the substantive rules to allow such a procedure. This would appear to address DOMLEC's proviso "**unless the rules and/or the substantive legislation have been amended to provide for these special conditions**".