



**CONSULTATIVE DOCUMENT**

**Document Ref: 2012/001/CD-03**

**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)***

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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](mailto: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](http://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-03

**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)**

<b>Event</b>	<b>Proposed Date</b>
Publication of Document	May 11, 2012
Responses close	May 17, 2012
Decision by Commission	May 24, 2012

## **1.0 Introduction**

The Commission issued an NPRM, Document Ref. 2012/001/CD-02 entitled “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*” setting out proposals to amend the licensing framework to specifically introduce procedures for addressing the arrangements for the end of the term of DOMLEC’s Licence. The Commission has considered it necessary to formalise these arrangements into the established licensing procedure as the relevant Act, The Electricity Supply Act 10 of 2006, makes no provisions for or provides guidance as to the procedure to be adopted to secure continuity and security of the public electricity supply to the Commonwealth of Dominica on the expiration of the Term of the Licence.

The NPRM was issued on April 15<sup>th</sup> 2012 with the consultation period scheduled to end on April 30<sup>th</sup>. This aspect of the consultation will end with the return of responses to these comments on May 17, 2012.

The Commission wishes to thank DOMLEC for its formal written response, the full text of which is available on the Commission’s web site at [www.ircdominica.org](http://www.ircdominica.org). While formal written comments is the desired mode of participation in the consultative process, as these are guaranteed to be entered on the record, the Commission has a policy where it will hear and attempt to comment on responses to its consultative documents, however these are conveyed. The Commission believes that this will encourage stakeholder participation in the consultation process leading eventually to increasing levels of participation on the formal basis but in this case the Commission is not aware of any oral or other informal submissions.

The Commission now sets out its responses to the comments received on the issue at hand and subject to its timetable established will issue its final Decision on/or before May 24, 2012.

## **2.0 Comments on Responses**

### **A. DOMLEC’S Responses**

DOMLEC’s comments which are made “without prejudice” raises a number of questions of the Commission and proposes some changes to proposals. These are summarized and discussed as they are raised in DOMLEC’s presentation.

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

**Commission Response**

The procedures discussed in the NPRM will be codified and inserted as a new Section 2.11 “Procedures on the expiration of the Term of the DOMLEC Licences”.

The Commission is of the view that, as the monopoly provider of transmission, distribution and supply services with responsibility for dispatch and for all practical purposes enjoying a monopoly position in the generation market, special provisions must be made to ensure continuity and security of supply on the expiry of the term of DOMLEC’s Licences.

For this reason, the Commission has **Determined** that these provisions will be specially codified and treated outside of the norm of general licensing procedures.

2. DOMLEC 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.**

**Commission Response**

The Commission has reconsidered this point and notes that the situation contemplated in the Document does not fall without the circumstances that would warrant “forced sale” as it relates circumstances where the parties cannot reach agreement. The Commission therefore accepts the concerns raised and has **Determined** that the relevant provision will reflect that the sale will be at 100% of the Fair Market Value.

- b) **Page 9 – provision should be made for what procedure should apply where the valuers selected by the parties are unable to agree on the selection of the Chairman of the panel. We recommend that in such a case, the Chairman should be appointed in accordance with Part II of the Arbitration Act which allows either party to apply to the High Court for appointment of its nominee.**

### **Commission Response**

The Commission accepts this recommendation and has **Determined** that a provision shall be made for the Chairman of the Panel of Valuers to be appointed pursuant to Part II of the Arbitration Act of the Commonwealth of Dominica, in the event that the nominees cannot agree on the selection of the Chairman.

- c) **Page 9 - the process outlined at sub paragraphs (a) and (b) are functions of the panel of valuers.**

DOMLEC then suggests that the process should be included in the table that sets out the time table.

### **Commission Response**

This comment addresses form rather than substance, which the Commission notes.

- d) **Page 10 - 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 (DOMLEC wants "new" deleted) licence for DOMLEC. The time table recognized the difficulties and time needed to "negotiate" (DOMLEC wants "negotiate" changed to "renegotiate") and put a new (DOMLEC wants "new" changed to "renewed" Licence in place .....in the company.**

### **Commission Response**

The Commission notes the suggestions offered by DOMLEC but is of the view that the context of the language in the original text is consistent with the reality in that the legal and regulatory conditions have changed where the Commission will be issuing two (2) new licences to DOMLEC to replace the existing one (1). The licences to be issued will be a Generation Licence and a Transmission Distribution and Supply Licence. In the Commission's view these do represent renewal of the licence that is currently in effect.

In any event, the texts in question are conclusions formed by the Commission to conclude the discussions in the NPRM and will not appear in the text of the amendments to Document Ref. 2009/001/D Regulatory Policy and Procedure - Licencing Procedures.

**B. Other comments**

1. The Commission should like to point out the following reference on page 6 of the NPRM:

“While the rule making powers of the Commission, for the purposes of securing adequacy and efficiency of supply are provided for at S43

*43. (1) The Commission may, with the approval of the Minister, make such rules and by-laws as it sees fit for the purposes set out in the Act, and such rules and by-laws shall be published in the Official Gazette and two local newspapers.*

*(2) Rules and by-laws made pursuant to subsection (1) may be made for the following purposes:-*

*(a) securing regular and efficient supplies of electricity;*

b. ....”

On review the Commission notes that the appropriate reference should be to S41 of the Act and therefore by these means and for completeness amends the document as follows:

**“While the rule making powers of the Commission, for the purpose of granting licences are provided for at S41:**

*S.41 The Commission shall, by notice published, in the Gazette, issue such other administrative orders and rules as are necessary for exercising its powers and performing its duties in the implementation of policies under this Act.*

.....”

2. Superseding licence conditions - The Commission is also aware that licences will be conditioned by the nature of the services being offered where technology, investor requirements, exclusivity and others issues may affect the provisions made for renewal, amendment and/or revocation and in these circumstance the Commission reserves its authority to write any related such special conditions into the individual Licences, which would supersede the related conditions in the published Rules.