



June 10th, 2022

To Whom It May Concern,

Document Reference #: 2022/001/NPRM.01
NOTICE OF PROPOSED RULE MAKING (NPRM) -
Guidelines on the Preliminary Steps for the Submission of Information by DOMLEC
leading up to the Final Tariff Determination Prior to the Licensee Submitting the Notice
of Intent to File

Please find enclosed a copy of the Independent Regulatory Commission's (IRC) Document Reference #: 2022/001/NPRM.01, for your organization's information and comments.

We recognize you are a stakeholder in this consultation process, and as such, you are welcomed to participate and express your opinions on this document. Your responses and comments should be submitted in writing to the IRC's office by Thursday, June 30th, 2022.

Embedded in the document, under the Consultation Timetable, and indicated below, are the procedures and dates for the events of this NPRM, including dates for stakeholders' responses.

Event	Date
Publish NPRM Document	June 10 th , 2022
Close of Responses to NPRM	June 21 st , 2022
Close of Comments on Responses obtained from Consultations.	June 30 th , 2022
Adoption of Amendments by the IRC	July 11 th , 2022

Please be guided accordingly.

Sincerely,
INDEPENDENT REGULATORY COMMISSION


JUSTINN KASE
EXECUTIVE DIRECTOR

Enc.

Independent Regulatory Commission



Notice of Proposed Rulemaking

Document Reference: 2022/001/NPRM.01

Guidelines on the Preliminary Steps for the submission of information by DOMLEC leading up to the Final Tariff Determination prior to the Licensee submitting The Notice of Intent to File

Publication Date: June 10th, 2022

Independent Regulatory Commission

42 Cork Street, 1st & Top Floor.

P. O. Box 1687, Roseau

Commonwealth of Dominica

Tel Nos: 767 440 6634 / 7247 /6635

Email: admin@ircdominica.org

Web: www.ircdominica.org

Independent Regulatory Commission



Abstract

The Commission has recognized that additional rules and amendments must be made to its Decision document - "Tariff Regime for Dominica Electricity Services LTD (DOMLEC) - Ref: 2009/004/D" for the smooth implementation of the tariff review process for DOMLEC.

Consequently, pursuant to section 24 (1) and (2) of the *Electricity Supply Act (ESA) 2006, No. 10 of 2006*, (hereinafter referred to as "the Act"), the Independent Regulatory Commission (the Commission, IRC) has identified that:

"(1) All Tariffs proposed by a licensee shall conform with the principles and provisions governing tariff formulation established by the Commission pursuant to legislation for the time being and shall be submitted to the Commission for review as to their conformity with such principles and provisions."

and that,

*"(2) The Commission shall, **within 60 days** of the submission of a tariff proposed under subsection (1), make a determination to:*

- (a) approve the tariff without amendment;*
- (b) conditionally approve the tariff subject to amendments specifically proposed by the Commission being accepted by the licensee; or*
- (c) reject the tariff proposal outright, stating clearly in writing the reasons for such rejection, which reasons may include a determination that the tariff is not ripe for review."*

The Commission's argument is that the 60-day period as stated in the Act grants insufficient time for the review and approval of the new tariff submission and therefore, in wanting to ensure an efficient and effective process towards the new tariff determination and modernization of the tariff structure; Part B – Standard Filing Requirements for the Rate Review Application of Decision document Ref: 2009/004/D must be amended.

These changes to the existing Decision document Ref: 2009/004/D will list the prescribed steps as well as other amendments that will be required

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to be followed by DOMLEC prior to the issuance of the Notice of Intent to File for the approval of new electricity rates.

This Notice of Proposed Rule Making (NPRM) sets out the general approach that will guide the preliminary tasks prior to DOMLEC submitting its Notice of Intent to File for new electricity rates.

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1.0 Consultation Process

Persons who wish to express opinions on this Notice of Proposed Rulemaking (NPRM) are invited to submit comments in writing to the Independent Regulatory Commission (IRC) by post or email, addressed to:

The Executive Director
Independent Regulatory Commission
P.O. Box 1687
42 Cork Street, MayCourt Building Floors 1 & 2
Roseau

Reference: NPRM - Preliminary Steps for the Submission of information by DOMLEC leading up to the final Tariff Determination prior to submission of the Notice of Intent to File.

Email: admin@ircdominica.org and/or jgkase@ircdominica.org

Important:

- (1) *Responses are required in compliance with the dates set within the timetable below.*
- (2) *Responses that are not confidential, pursuant to any relevant legislation, will be posted to the IRC's website (www.ircdominica.org). Respondents are therefore requested to supply their responses in electronic form to facilitate such postings.*

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2.0 Comments on Responses

There will be a specific period for respondents to view other (non-confidential) responses and to make comments on them. The comments may take the form of either correcting a factual error or putting forward counter arguments. As in the case of the responses, comments which are not confidential will be posted to the IRC's website.

Photocopies of selected responses and comments may be provided on request at a price which reflects the cost to the IRC.

3.0 Consultation Timetable

The timetable for the consultation on this NPRM is summarized below:

Event	Date
Publish NPRM Document	June 10 th , 2022
Close of Responses to NPRM	June 21 st , 2022
Close of Comments on Responses obtained from Consultations.	June 30 th , 2022
Adoption of Amendments by the IRC	July 11 th , 2022

These dates were derived in compliance with Table S1.2 – Guidelines on Timetable for Notice of Proposed Rule Making (NPRM) on page 32 of Decision Document on Rules of Practice and Procedures 2008, Ref: 2008/004/D.

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4.0 Purpose of this NPRM

- i. The legislation under which the Independent Regulatory Commission (Commission/IRC) carries out its statutory mandate does allow for the principles and provisions governing tariff formulation to be established by the Commission, and any submission by DOMLEC should be in conformity with the principles, process, and provisions.
- ii. This Notice of Proposed Rule Making (NPRM) consultation document sets out the Commission’s general approach to amending a Decision document specifically the “Tariff Regime for the Dominica Electricity Services Ltd (DOMLEC). The proposed guidelines will resolve the issue of the preliminary tasks that should be performed prior to DOMLEC issuing its Notice of Intent to File for new electricity rates.
- iii. It is intended that both parties will adhere to the prescribed steps when it is officially adopted.

5.0 Legal and Regulatory Framework

The primary legislation governing the electricity sector in the Commonwealth of Dominica is the *Electricity Supply Act* (ESA) 2006, Act No: 10 of 2006. It establishes the IRC as a corporate body for “the purpose of performing the functions and carrying out the duties conferred on it ...”. Among other things, the Act provides the framework for the Commission to grant, amend or revoke licences for generation and/or transmission and/or distribution and supply of electricity, to set prices and tariffs, and to protect the interests of consumers and

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investors alike. The Act also grants the Commission the power to issue licences to DOMLEC to generate, transmit, distribute, and supply electricity up to December 31, 2039, subject to the regulatory jurisdiction of the IRC.

The independence of the Commission in so far as the performance of its duties under the Act is enshrined at Section 18.

Section 18

“The Commission shall be independent in the performance of its functions under this Act and shall not be subject to the direction and control of the Government or of any other person, corporation or authority, except that the Commission shall have due regard to the public interest and overall Government policy as embodied in legislation”

The Commission’s general powers, duties, responsibilities, and functions are provided for at Sections 19, 20, 21 and 22 of the ESA.

Section 19

“The Commission shall have sole and exclusive authority to regulate all electricity entities that are subject to this Act and shall have full powers to regulate all licencees with regard to all economic and technical aspects of regulation in accordance with this Act especially with regard to the determination of tariff or electricity charges.”

S. 20. 1 prescribes the general duties of the Commission:

The Commission shall, without limiting the generality of this section, have a duty to perform and exercise its functions and powers under this Act which it considers best calculated to:

(a) encourage the expansion of electricity supply in Dominica where this is economic and cost effective and in the public interest;

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- (b) encourage the operation and development of a safe, efficient and economic electricity sector in Dominica;*
- (c) ensure the security and efficiency of supply of electricity in Dominica through the conduct of an efficient long – term supply planning process with due regard to future potential generation sources such as geothermal and wind energy;*
- (d) facilitate the promotion of fair and sustainable competition in the electricity sector where it is efficient to do so;*
- (e) protect the interests of all classes of consumers.... as to the terms and conditions and price of supply;*
- (f) ensure the availability of health and safety guidance in relation to electricity supply to the public;*
- (g) ensure that the financial viability of efficient regulated undertakings is not undermined;*
- (h) facilitate the collection, publication and dissemination of information relating to standards of performance by licensed operators and for the electricity sector in Dominica for use by the electricity industry and consumers and by prospective investors in the sector;*

Some of the general functions of the Commission, as provided at S. 21 (1), are:

- (a)*
- (b) issue, monitor and amend licences;*

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- (c) establish, maintain review and amend as appropriate technical and performance standards for all types of facilities including hydro in the electricity sector and enforce compliance;*
- (d) establish, maintain, review and monitor safety standards for all types of facilities, including hydro facilities, in the electricity sector and shall monitor and enforce compliance with such safety standards;*
- (e) establish, maintain, review, monitor and amend as appropriate, customer care standards;*
- (f) regulate prices charged to consumers where this is not supplied on a competitive basis, and the methods by which they are to be charged;*
- (g) approve, modify, monitor and enforce terms and conditions for the supply of electricity to consumers;*
- (h) review, approve and propose modifications to the transmission codes and to the distribution codes that govern sector entities;*
- (i)*
- (j)*
- (k)*
- (l)*
- (m) monitor the performance of licencees against mutually agreed targets and benchmarking standards;*
- (n) review development plans, expansion programmes and fuel cost efficiencies of licencees;*
- (o) mutually agree with electricity providers and set operational and efficiency standards and benchmarks for licencees;*

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(p) *review and report on the efficiency of asset utilization and optimization and the appropriateness and implications of rate structures;*

(q)

The Procedure for the setting and review of tariffs for electricity supply is provided at Sections 23 and 24.

Section 23

(1) *An electricity service provider shall not –*

(a) *Offer service unless it has, prior to offering such services, filed its proposed tariffs with the Commission and such tariff rates and charges have come into effect pursuant to section 24; and*

(b) *Make changes on tariffs, or other terms of the service after proposed tariffs have been filed with the Commission, except as authorized under this section.*

(2) *An electricity service provider shall submit tariff proposals in conformity with this section in writing to the Commission with respect to the tariffs it intends to apply for the use of its systems, facilities, and services.*

(3) *Proposed tariffs filed under subsection (2) shall contain all relevant information concerning rates and charges for services, including deposits, non-recurring charges and monthly charges as well as terms and conditions applicable to the provision of services, including disputes or claims over billing or provision of services.*

(4) *A Licencee shall make tariffs available to the public by publishing such tariff in the Gazette and two local newspapers.*

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(5) All proposed tariffs filed with the Commission shall be kept complete, accurate and up to date.

(6) After a proposed tariff has been filed with the Commission and has come into force and effect, no changes may be made in the rates, charges or other terms of service relating to all the services provided under the tariff, except upon the filing and review of tariffs as provided in this Act.

(7) Proposed Tariffs shall:

(a) Be accompanied by all accounting and costing information as the Commission may require; and

(b) Comply with all the other requirements and conditions as shall be applicable to the licensee concerned.

Section 24

(1) All tariffs proposed by a licensee shall conform with the principles and provisions governing tariff formulation established by the Commission pursuant to the legislation for the time being and shall be submitted to the Commission for review as to their conformity with such principles and provisions.

(2) The Commission shall within 60 days of the submission of the tariff proposed under subsection (1), make a determination to:

(a) approve the tariff without amendment;

(b) conditionally approve the tariff subject to amendments specifically proposed by the Commission being accepted by the licensee; or

(c) reject the tariff proposal outright, stating clearly in writing the reasons for such rejection, which reasons may include a determination that the tariff is not ripe for review.

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(3) In the event that the Commission makes a determination under subsection (2) (b) the licensee may submit a revised tariff within 30 days of the determination; and the Commission shall make a new determination in accordance with one of the three options specified in subsection (2) within 30 days of such submission.

(4) In the event of an outright rejection of the proposed tariff under subsection (2) (c), the Licensee may file a new tariff at any time; or may file a petition to the Commission for reconsideration of such rejection.

(5) A petition shall be filed within 30 days of the rejection and shall state the Licensee's basis for reconsideration, which may include fundamental change in circumstances from the conditions that prevailed when the tariff was originally rejected by the Commission.

(6) In the event that the Licensee files a petition for reconsideration under subsection (4), the Commission shall act upon such petition within 30 days and make a determination in accordance with one of the three options set forth in subsection (2).

(7) If the Commission fails to act on a tariff submission pursuant to this section within the timeframes for determination specified in subsections (2), (3) and (6), the tariff shall be deemed approved until such time as the Commission makes a determination.

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6.0 Proposed Amendments

The Commission intends to amend Part B – Standard Filing Requirements for Rate Review Application on page 33 of the Decision Document -Tariff Regime for the Dominica Electricity Services Ltd. (DOMLEC) – Document Ref: 2009/004/D.

Amend Part B to introduce the preliminary steps to be followed prior to **Notice of Intent to File**.

The proposed preliminary steps are:

1. DOMLEC and the IRC agree on the Tariff Review Schedule.
2. DOMLEC will submit to the Commission, the deliverables in compliance with the dates agreed in the Tariff Review Schedule
3. The IRC will be guided by its Rules of Practice and Procedures, Document Ref: 2008/004/D, in performing consultations on the information submitted by DOMLEC in the agreed Tariff Review Schedule.
4. All information submitted by DOMLEC should be complete and follow the Supplemental Filing Requirements as stated in the Decision Document Ref: 2009/004/D - Tariff Regime for Dominica Electricity Services Ltd (DOMLEC).
5. Regular meetings at least every two weeks, between the Commission and DOMLEC will be held after submission of the information at the designated times on the tariff review schedule. This provision should allow for the smooth flow of work towards completion through agreement between all parties.

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The proposed additional amendments are:

1. On page 31 under “Subsequent Tariff Reviews,” an amendment is required to delete three yearly intervals and substitute five-year intervals. The topic currently reads:” *Subsequent tariff reviews will be conducted on application by DOMLEC, in conformity with the established procedures, at three-year intervals.*”
2. The Independent Regulatory Commission (IRC) shall ascertain the completeness of any/all information from DOMLEC pertaining to the tariff review process upon receipt. Consequently, if upon reviewing the information submitted by the utility or IPP, it is found to be incomplete, then the date of initial submission **will not be taken** as the date of actual submission until all relevant information pertaining to the specific phase of the process is received within 10 working days from the date of submission and verified by the IRC. Until such time that the required information is submitted by the utility/IPP and verified by the IRC as complete, the submission or application by the utility/IPP will then be formally acknowledged inclusive of the new date of submission which will be designated as the date of actual submission/application. Additionally, if the Commission fails to respond to the Utility’s/IPP’s submission/application within 10 working days as to the completeness of the information supplied, then the date of initial submission will be denoted as the date of actual submission.

7.0 Guidelines for the Process of Consultations

The process of consultation is guided by the Commission’s Decision Document on the Rules of Practice and Procedures 2008 Ref: 2008/004/D.

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8.0 Guiding Principles

The principles which guide the Independent Regulatory Commission's decision-making process are:

Vision:

To be numbered amongst the best regulators in the Caribbean by fairly balancing the interests of all stakeholders.

Mission:

The Independent Regulatory Commission is committed to acting in a transparent and predictable manner to ensure that the highest quality of electricity service is supplied to customers throughout Dominica at fair and reasonable prices while also maintaining the financial viability of the electric utilities and protecting the national environment.

Core Corporate Values:

- i. Professionalism:** The Commission shall uphold high standards of professionalism; and all members of the Commission and professional staff are expected to adhere to their respective code of ethics.
- ii. Predictability:** The Commission shall follow clearly defined rules and regulations in the efficient and equitable delivery of its services.
- iii. Integrity:** The highest levels of integrity shall be expected in all transactions.

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- iv. **Responsiveness:** The Commission shall endeavor to be sensitive and expeditious in dealing with stakeholder concerns.
- v. **Teamwork:** The Commission shall always embrace teamwork, cooperation, extensive consultations, and appreciation of diverse perspectives in the discharge of its functions.
- vi. **Transparency:** Establish rules and guidelines which will allow for consistency, predictability and transparency in the regulation of electricity supply in the nation.

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