



**NOTICE OF PROPOSED RULE MAKING
(NPRM)**

**AMENDMENT TO MISCELANEOUS RULES CONSEQUENT
ON THE GRANT OF NEW LICENCES TO DOMLEC**

Document reference: 2013/004/NPRM-01

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: 2013/004/NPRM-01

Document Title: Amendment of certain Rules consequent on the grant of new licences to DOMLEC

Event	Proposed Date
Publication of Document	October 2, 2013
First Responses close	October 25, 2013
Comments on Responses close	November 11, 2013
Decision by Commission	November 26, 2013

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1.0 Introduction

Pursuant to its powers under the Electricity Supply Act 2006, (ESA, the Act) the Independent Regulatory Commission (the Commission, IRC) has approved the issue of a (a) Generation Licence and (b) Transmission Distribution and Supply Licence to Dominica Electricity Services Limited (DOMLEC). These licences may be accessed on the Commission's website (www.ircdominica.dm) Document references: 2012/001/D1 and 2013/002/D1 respectively. The licences will become effective on January 1, 2014.

During the negotiations and consultations leading to the grant of the licences, certain issues were raised which were not consistent with the existing rules issued by the Commission and it was recognized that the rules would have to be amended to ensure the consistency of the regulatory framework.

The affected rules are:

	Description	Document	Proposed Amendment
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 - 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

	Description	Document	Proposed Amendment
			the electricity supply system to those areas.

The Commission is therefore of the view that that process would have formed part of the consultation required to amend the affected rules and it therefore now issues this Notice of Proposed Rule Making (NPRM) as the next step in the process towards amending the rules affected.

2. Legal Framework

The Act, Section 22, establishes the Commission’s duty to consult. Section 22 (e) provides:

*“In carrying out its functions under this Act, the Commission shall -

 wherever practicable to do so, consult relevant stakeholders prior to making final decisions;
”*

3.0 Consultations already held

The Commission first issued the Draft Generation Licence and the Draft Transmission Distribution and Supply Licence for comment; Document references: 2012/001/CD 01 and 2012/002/CD1 on xxxx 2012. Having completed the first round of public consultations on the draft licences, the Commission and DOMLEC engaged in and completed “good faith” negotiations as required by the established procedure. A second round of consultation then took place with the issue of Consultative Documents ref 2012/001/CD 02 and 2012/002/CD2 on January 13, 2013 and January 14, 2013 respectively. Associated with the issue of these documents were a series of public hearings as follows:

- Roseau January 28, 2013
- Portsmouth January 29, 2013
- Marigot February 19, 2013
- Grand Bay February 26, 2013

Arising from these consultations the Commission issued its “Statement of Results and Preliminary Decision” Document Ref No: 2012/002/CD-03 and 2012/002/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 required by the established procedure.

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 impact of the decisions on the licences requires consequential amendments to the Commission’s rules.

Of the three rules to be amended, two were placed in the public domain during the consultations. The third however, as below, was introduced in the final round of negotiations and is articulated in the Commission’s Decision issued **October 2, 2013**.

Description	Document	Proposed Amendment
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 - Decision 3.0

4.0 Proposed Amendments

The Commission intends to amend its current Rules as follows:

A. Rules of Practice and Procedure 2008 - Document Ref: 2008/004/D

“Amend Section 18 as follows:

(1) Change the section title to **“Reconsideration and Appeal of Commission’s Decisions”**

(2) Insert new section 8.2

Review and appeal of Commission's Decisions where a Licensee is the aggrieved party

1. Where the Licensee is aggrieved by a decision of the *Commission* (hereinafter called "The original decision") it shall, within thirty days of the receipt of the original decision and written reasons therefor, apply in the prescribed manner to the *Commission* for reconsideration of that original decision and may present further relevant information to the *Commission* upon such reconsideration.
 - a. On the making of an application under Clause 1 of this Condition 18 the original decision shall not take effect until a reconsideration is made.
 - b. The *Commission* shall convene the proceedings constituting the reconsideration of the original decision within 14 days of the receipt of the application from the Licensee.
 - c. After reconsidering its original decision, the *Commission* shall confirm, amend or reverse its original decision or any part thereof and render its determination within a reasonable period of time not to exceed twenty-eight days after conclusion of the proceedings.
 - d. Where the original decision is confirmed, the confirmation shall be deemed to take effect from the date on which the original decision was first made notwithstanding the reconsideration proceedings.
2. An appeal from a reconsideration made by the *Commission* under Clause 1 of this Condition 17 may be made to the High Court on one or more of the following grounds namely -
 - i. that the reconsideration is erroneous in law;
 - ii. that the reconsideration is unreasonable;
 - iii. that the reconsideration is against the weight of the evidence
 - iv. that the reconsideration is contrary to the principles of natural justice;
 - v. that the reconsideration is not proportionate; or
 - vi. that the Commission lacks jurisdiction.

2.1. An appeal to the High Court from a reconsideration by the *Commission* shall be in accordance with the provisions of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000, as amended from time to time.

2.2. The *Commission* may seek an order from the High Court directing the *Commission* to file under seal any information if it is considered that the public interest would suffer by disclosure of such information.

2.3. On appeal to the High Court against a reconsideration of the *Commission* the execution of the original decision shall not take effect until the hearing of the appeal.

3. Any party to an appeal before the High Court under this Condition who is dissatisfied with a decision or order of the High Court may appeal to the Court of Appeal. The Eastern Caribbean Supreme Court (Dominica) Act Chap 4:02 and the Eastern Caribbean Supreme Court Civil Procedures Rules 2000 apply to the appeal."

B. Regulatory Policy and Procedure- Adding Capacity to the Public Electricity Supply System - Document Ref: 2008/002/D

Delete Decision 3.0

"DOMLEC is required to prepare regulatory accounts where there is separate reporting for its generation and its TD&S functions. DOMLEC and the Commission will agree on the structure of these accounts within 12 months of the effective date of this Decision with a view to the first accounts being presented on this basis within 24 months of this Decision."

By way of explanation – This decision became effective became effective on July 29, 2009 but for a variety of reasons was never implemented. It was agreed during the negotiations that such a requirement would impose a disproportionate regulatory burden during the early stages of the new regime. The Commission has the ability to impose this requirement, by virtue of its statutory powers, at any appropriate time in the future.

C. Regulatory Policy and Procedure - Licensing Procedures - Document Ref: 2008/002/D

Amend the Decision (Section 2), General Policy Clause 2.1(5) to read:

"A Distribution licence will be issued to DOMLEC and DOMLEC (or its successor) will continue to have the exclusive right to supply, for sale, electricity to third parties. Notwithstanding, the Commission may allow and issue 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 the Licensee is unable or unwilling to extend the electricity supply system to those areas."