

COMMONWEALTH OF DOMINICA

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COMMONWEALTH OF DOMINICA

ACT No. 10 OF 2006

I Assent

NICHOLAS J.O. LIVERPOOL
*President*18th January, 2007.

**AN ACT TO REGULATE THE GENERATION,
TRANSMISSION, DISTRIBUTION AND SUPPLY
OF ELECTRICITY SERVICES AND FOR PURPOSES
CONNECTED THEREWITH; TO ESTABLISH
AN INDEPENDENT REGULATORY COMMISSION;
AND TO REPEAL THE ELECTRICITY SUPPLY
ACT 1996 [NO. 21 OF 1996].**

(Gazetted 25th January, 2007.)BE IT ENACTED by the Parliament of the Commonwealth of
Dominica as follows:**PART I
PRELIMINARY**

1. This Act may be cited as the -

ELECTRICITY SUPPLY ACT 2006.

Short title

Commencement.

2. (1) This Act shall come into force on such day as the Minister may, by Order published in the *Gazette*, appoint.

(2) Except for Part II, the Minister may appoint different dates for the commencement of different provisions or parts of this Act.

Interpretation.

3. In this Act -

“ancillary services” means services which may be required from time to time for system security and stability and which are identified in a transmission code;

“appointing authority” means the Minister responsible for Electricity;

“Board” means the Board of the Independent Regulatory Commission;

“bulk supply” means the wholesale supply of electricity by an electricity producer to another electricity power producer or to a distributor or to any electricity supplier;

“Chairman” means the chairman of the Board;

“Commission” means the Independent Regulatory Commission established under section 4;

“Company” means the Dominica Electricity Services Limited;

“consumer” means any person, supplied with electricity by the Licencee;

“distribution” means the transport of electricity by means of a distribution system;

“distributing and supply licencee” means a licencee who has been granted a licence to distribute, supply and sell electricity to (other licencees or) consumers;

“distribution code” means the distribution code required to be prepared for and maintained by a licensed distribution system operator pursuant to the terms of its licence, which code prescribes standard technical rules to be observed by all those connected to a distribution system for the use and operation of that system;

“distribution system” means the system which consists, wholly or mainly of low voltage electrical lines and electrical plant and which is used for conveying electricity from a substation to final consumers;

“distribution system operator” means the operator of the distribution system;

“electricity” includes electric voltage, electric current, electric energy and any like agency;

“electric line” means any wire or conductor used or to be used for the purpose of conveying, transmitting, or distributing electricity, together with any casing, coating, covering, tube, pole, stay-wire, bracket, pipe or insulator enclosing, surrounding or supporting the same or any part thereof and any transformer, switch-gear or other works or apparatus connected therewith for the purpose of conveying, transmitting or distributing electricity or transforming its voltage and together also with any building or structure required to accommodate any such transformer, switch-gear or other works or apparatus;

“Engineer” means the Engineer (Electrical) in the Public Service;

“Executive Director” means the person appointed pursuant to this Act to carry out the executive functions of and to manage the affairs of the Commission;

“exemption” means an exemption from the requirement to hold a licence issued by the Commission pursuant to this Act;

“generation licencee” means a licencee who has been granted a licence to generate electricity;

“Government” means the Government of the Commonwealth of Dominica;

“Government Electricity Inspector” means the official for the time being who is appointed Electrical Inspector in the Public Service;

“land” includes any land under whatever tenure held and any easement, servitude, right or privilege in or over land;

“local authority” means any city council, an urban council, Carib Reserve Council, a village council, or a town council;

“licence” means a licence issued by the Commission pursuant to this Act;

“licencee” means a holder of a licence issued under this Act and except where a contrary intention appears, includes the company;

“Member” means an appointed member, who may also be the Chairman, of the Board of the Independent Regulatory Commission;

“Minister” means the Minister responsible for electricity;

“month” means calendar month;

“person” means any individual, partnership, joint venture, association, trust, company or corporation;

“premises” means any land, building or structure;

“Region” means the countries of CARICOM, OECS or other sub-groupings of CARICOM or OECS; or other countries to be specified by regulation.

“regulated activity” means any activity pertaining to the generation, transmission, distribution and supply of electricity services that is regulated by the Commission.

“road” means any road or street or part thereof and includes all bridges, culverts, embankments, approaches, drains, verges, pavements, curbs, footpaths, parapets and other works or things, forming part of any road or street;

“self supply” means the supply of electricity by a person to himself, his employees or his business within his private or business premises;

“supply” means, in relation to electricity, a supply through electric lines to final consumers for consumption;

“system operation” means the technical operation of the integrated transmission grid and the dispatch of generation and other facilities interconnected to such grid;

“tariff” means any rate or charge filed with and approved by the Commission;

“transmission” means the transport of electricity by means of a transmission system which consists, wholly or mainly, of high voltage lines and electric plant and which is used for conveying electricity from a generating station to a substation, from one generating station to another such station, or to or from any interconnector or to a final customer; but does not include any such lines which the Authority may, from time to time, specify as being part of a distribution system;

“transmission code” means the code required to be prepared for and maintained by any licensed transmission operator pursuant to the terms of its licence which prescribes standard technical rules to be observed by all those

connected to a transmission system relating to the connection to, and the use and operation of, that system;

“transmission licensee” means a licensee who has been granted a licence to transmit electricity;

“tree” includes bush or shrub;

“unit” means one kilowatt hour.

PART II
ESTABLISHMENT OF THE INDEPENDENT
REGULATORY COMMISSION

Establishment.

4. (1) There is hereby established a body to be known as the Independent Regulatory Commission (“the Commission”) for the electricity sector in Dominica and for the purpose of performing the functions and carrying out the duties conferred on it under this Act.

(2) The Commission -

- (a) is a body corporate with perpetual succession;
- (b) shall have the power to enter into contracts;
- (c) may acquire, hold and dispose of movable or immovable property;
- (d) may sue or be sued in its corporate name; and
- (e) shall perform the duties imposed on it and may exercise the powers conferred on it under or in pursuant to this Act.

(3) The Commission may operate -

- (a) as a separate Regulatory Commission for electricity in Dominica; or

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- (b) as part of a multi-sector Regulatory Commission for Dominica; or
 - (c) as part of a multi-jurisdictional regulatory body serving Dominica and one or more other jurisdictions in the region, each as designated by the appropriate legal authority in such jurisdictions in pursuance to an agreement between appropriate jurisdictions.

(4) When the Commission decides to operate as a Regulatory Commission as envisaged in subsection 3 (b) or (c) the Minister may by Order subject to affirmative resolution in Parliament set out the powers and duties of the Commission in respect of the exercise of the functions under the subsections referred to above to the extent that they are not provided for in this Act but are necessary for the effective performance of those functions.

5. (1) There shall be appointed a Board which shall exercise and perform the powers and duties conferred on the Commission by this Act or any other Act and authorize all activities of the Commission.

Composition of the Board and Appointment of Members.

(2) The Board shall consist of five members appointed by the Minister, and the Minister shall appoint one of the members as Chairman.

(3) The Board shall appoint a full-time Executive Director, subject to the approval of the Minister.

(4) All appointments shall be through the competitive and transparent procedure set forth in this section.

(5) The Board shall invite prospective candidates for the position of Executive Director by public advertisement.

(6) The Minister shall invite prospective candidates to be appointed as members of the Board by public advertisement.

(7) The short-listing, evaluation and selection of candidates for each member position shall be undertaken by the Minister, and for the position of Executive Director shall be undertaken by the Board. All reasonable efforts (including, where necessary, further advertising of positions) shall be made to ensure that an adequate shortlist of candidates is prepared for each position that is vacant.

(8) The shortlist made pursuant to subsection (7) shall, where feasible, contain a minimum of two names for the position of Chairman, for the position of Executive Director and for each other vacant position of a member of the Board.

(9) The Minister shall, from the shortlists prepared pursuant to subsection (8), make one appointment for each of the Board positions.

(10) Subject to subsection 12, the appointment of a person as a member of the Board shall be for a period of three years, which may be renewed for one further term of three (3) years.

(11) At least three months before expiration of such first term, the Minister shall by written notice inform the Member whether he is to be reappointed or not and if the member is not written to by two months his appointment will be automatically renewed.

(12) The first Chairman shall be appointed for three (3) years; two of the first Board Members shall be appointed for a period of one (1) year and the other two first Board Members shall be appointed for a period of two (2) years.

(13) The appointment of the Executive Director shall be for three years and may be renewed for three-year periods thereafter.

(14) Persons who have previously served as Members for two consecutive terms are eligible as candidates for a

Member's position following a minimum period of three (3) years since the termination of their second term of the consecutive period.

6. (1) The Minister shall determine the terms and conditions of employment of Board members in consultation with the Minister for Finance.

Terms and conditions of Employment.

(2) The Minister shall publish the terms and conditions determined under subsection (1) in the Gazette and two local newspapers circulating in the State and other media as he thinks fit.

(3) The Board shall determine the terms and conditions of appointment of the Executive Director, subject to the approval of the Minister.

(4) The Board shall determine the terms and conditions of employment of other staff in consultation with the Executive Director.

(5) Appointments to the positions referred to in subsections (3) and (4) shall be by advertisement.

7. (1) The Minister in appointing members of the Board, shall appoint persons who collectively have substantial experience and sound qualifications in as many as possible of the following areas: industry, commerce, law, accountancy, economics, engineering, electrical technology; information technology; and in any other field of experience relevant to the regulation of the electricity sector.

Qualification of Board Members.

(2) The Minister shall use his best efforts to ensure that the Board shall comprise at least one member with substantial experience in electric system operation and management, one member with substantial experience in business and in electricity accounting or auditing, and one member with substantial legal or regulatory experience relevant to the electricity industry.

(3) A person shall be disqualified from being a member of the Board or Executive Director if he -

- (1) is an unrehabilitated insolvent;
- (2) has been convicted of a serious crime and/or sentenced to imprisonment;
- (3) has any pecuniary interest, direct or indirect, in an undertaking by a licensed electricity operator otherwise than as a ratepayer;
- (4) is an employee of a licensee or any off-grid operator or any person whose activities are subject to the provisions of the Act.

Resignation of Board Members.

8. (1) A Board member may, at any time, resign his office by giving not less than three months notice to the Minister and the Board simultaneously.

(2) A Board member shall be deemed to have given the notice referred to in subsection (1) if he fails to attend the meetings of the Commission for three consecutive meetings without giving a reason or an acceptable explanation for his absence to the Chairman within thirty days of each meeting the member has failed to attend.

Removal from office of Board Members.

9. The Minister shall have the power to remove any person from serving as a Board member on the proven grounds of -

- (a) physical or mental incapacity which prevents that member from effectively carrying out his duties;
- (b) conviction of a criminal offence and/or a sentence of imprisonment;
- (c) serious financial misconduct of that member;
- (d) personal bankruptcy;
- (e) gross incompetence or maladministration in the exercise of his duties;

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- (f) possession of a pecuniary interest, direct or indirect, in an undertaking by a licensee otherwise than as a ratepayer; or
 - (g) employment by a licensee or any off-grid operator or any person whose activities are subject to the provisions of the Act.

10. (1) The Minister shall, in writing, suspend from office a member of the Board against whom criminal proceedings are instituted for an offence in respect of which a sentence of imprisonment may be imposed.

Suspension of Board Members.

(2) Where a Board member has been suspended on the grounds specified in subsection (1), such suspension shall be in force only until the final determination in such criminal proceeding.

11. Where a vacancy occurs in the membership of the Board either due to the death, resignation or removal from office of a Board member, the Minister shall appoint a person to take the place of such Board member for the period that would otherwise have been served had such member not resigned, died or been removed.

Filling of vacancies on death, resignation or removal from office.

12. (1) Where any Board member has recused himself with regard to any one or more pending matters, or has been duly suspended for any reason, or is unavailable to hear any specifically designated matter due to any combination of recusals or suspensions, the appointing authority shall appoint a person with appropriate qualifications to hear such specifically designated matter in the place and stead of the recused, suspended or unavailable member.

Filling of vacancies on recusal, suspension or unavailability to hear specific matters.

(2) A person appointed pursuant to subsection (1) shall have all the power, authority and responsibility of the member recused or suspended or unavailable but only with regard to the matter specifically designated under subsection (1).

Internal delegation of functions.

13. (1) The Board may appoint employees and may establish sub-committees under the direction of individual members as it sees fit for the purposes of carrying out its duties under the Act.

(2) The Board may, for the efficient discharge of its duties, hire or otherwise receive the advice of expert advisors with regard to all matters relating to the functions of the Board.

Advisory committees.

14. (1) The Board may, for the efficient discharge of its duties, establish advisory committees which shall consist of persons possessing appropriate expertise to adequately advise on the matters under consideration and may include experts from other jurisdictions with appropriate international experience.

(2) Advisory committees established in accordance with subsection (1) shall advise Board members and staff of the Commission but shall not participate in final regulatory decisions.

Conduct of business.

15. (1) The Commission shall conduct its meetings in accordance with procedure determined by the Board and shall inform the Minister of such procedure. The procedure shall be published in the Gazette.

(2) The quorum of the Commission at any meeting shall be three members.

(3) All decisions shall be taken by a majority vote. In the case of a tied vote, the Chairman shall have the casting vote. In the event the Chairman is not able to vote, the decision of the Board shall be by unanimous vote only.

Determining its internal procedures.

16. The Commission shall, by consensus, determine its own internal procedures and management protocols and shall duly inform the Minister of the same and of any unresolved issues relating to such rules and protocols.

Funding of the Commission.

17. (1) The Commission shall have an independent budget proposed by the Chairman, to be approved by its Board, and laid by the Minister before Parliament.

(2) The funds of the Commission shall be generated by

- (a) licence fees;
- (b) other fees determined by the Commission;
- (c) subvention provided by Parliament.

(3) Licence fees, other fees and levies shall require the prior approval of Cabinet.

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

Independence of the Commission.

PART III POWERS, DUTIES AND FUNCTIONS OF THE COMMISSION

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 licensee 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.

Exclusive powers of the Commission.

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

General duties of the Commission.

- (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 the supply of electricity in Dominica through the conduct of an efficient long-term supply planning process with due regard for future potential generation sources such as geothermal and wind energy;
 - (d) facilitate the promotion of sustainable and fair competition in the electricity sector where it is efficient to do so;
 - (e) protect the interests of all classes of consumers of electricity 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 electricity 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 its consumers and by prospective investors in the sector;
 - (i) participate, in consultation with the Minister, in regional and international matters relating to the development and regulation of electricity in the region;
 - (j) assist the Minister in the analysis and advancement of initiatives to establish an effective regional regulatory entity for the region; and
 - (k) develop supply targets for the purpose of ensuring that electricity services are accessible to the widest number of electricity users.

(2) In exercising its duties referred to in subsection (1), the Commission shall have due regard to -

- (a) national and international environmental standards as they affect the electricity sector and shall consult with environmental bodies in Dominica or in the region where necessary or expedient in relation to consumer and industry interests; and
- (b) developments with respect to regional cooperation in electricity supply and regulation in the Region.

21. (1) The Commission shall -

General functions of the Commission.

- (a) review the legislation relating to the provision of electricity supplies in Dominica;
- (b) issue monitor, and amend licences.
- (c) establish, maintain, review and amend as appropriate technical and performance standards for all types of facilities, including hydro facilities, in the electricity sector and shall monitor and enforce compliance with such technical standards;
- (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 of electricity where this is not supplied on a competitive basis, and the methods by which they are to be charged;

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- (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) make rules, by-laws and orders as provided elsewhere in this Act;
 - (j) have the option to recommend to the Minister the establishment of a universal access development fund into which providers of electricity services shall pay any fees that the Commission may prescribe in consultation with licencees the proceeds of which shall be used, with the Commission's approval, solely for the development and expansion of electricity service infrastructure in areas where there are no services.
 - (k) advise the Minister on the generation, transmission, distribution and supply of electricity;
 - (l) collect all fees paid by licencees and other relevant parties;
 - (m) monitor the performance of licencees against mutually agreed targets and benchmarking standards;
 - (n) review the 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;
 - (p) review and report on the efficiency of asset utilization and optimization and the appropriateness and implications of rate structures; and

(q) take such other actions as the Commission deems necessary to fulfill its duties and functions under this Act or as are otherwise necessary to serve the public interest or to fulfill the objectives of other legislation or treaties relating to the electricity sector of the Commonwealth of Dominica.

(2). In relation to off-grid electrification, the functions of the Commission shall include -

- (a) the monitoring and enforcement of technical standards;
- (b) the overseeing of all contractual arrangements;
- (c) the resolution of disputes;
- (d) the facilitation of efforts to expand rural electrification;
and
- (e) assistance with analytical aspects of the tariff setting and collections processes.

22. In carrying out its functions under this Act, the Commission shall - Exercise of functions.

- (a) act in as consistent a manner as practicable;
- (b) impose on licensed operators the minimum restrictions which are consistent with the proper performance of their functions;
- (c) take into account the need for licencees to finance and plan their businesses with a reasonable degree of assurance;
- (d) ensure that, unless a specific Licencee's duties under this Act require otherwise, licences granted to different persons in relation to each type of regulated activity have substantially the same terms and conditions;
- (e) wherever practicable to do so, consult relevant stakeholders prior to making final decisions;

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- (f) make public in writing the content of the Commission's decisions pertaining to application for licences; and filing, redress and resolution of complaints together with the Commission's reasons for reaching such decisions;
 - (g) have the power to collect, gather and extract information that is pertinent and relevant to the generation, transmission, distribution and supply of electricity services, from all parties involved in the energy and electricity sector in Dominica and such information shall not be unreasonably withheld; and
 - (h) have the authority to order a licensee to cease operating and to disconnect its apparatus.

PART IV TARIFFS

Review and setting of tariffs for electricity supply.

- 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 tariffs 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 tariffs in the Gazette and in two local newspapers.

(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 other requirements and conditions as shall be applicable to the licensee concerned.

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.

Review and approval of tariffs.

(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.

(3) In the event 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 a fundamental change in circumstances from the conditions that prevailed when the tariff was originally rejected by the Commission.

(6) In the event 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.

PART V PUBLIC REGISTER AND REPORTING

Public register.

25. (1) The Commission shall maintain a register, which shall contain complete and relevant information on -

(a) every licence granted, including the details of the licence holder;

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- (b) every exemption of licence issued and the particulars thereof;
 - (c) every modification, verification, revocation or surrender of every licence granted;
 - (d) every requirement imposed, and consent or approval given to the licensee, by the Commission under the terms of licence; and
 - (e) every preliminary or final order of the Commission, and revocation of such order.

(2) In entering information into the register, the Commission shall take full account of the need to protect confidential and commercially sensitive information and shall, where necessary, suitably restrict disclosure of such information to achieve such goal.

26. (1) The register required to be maintained under section 25 shall be open for inspection by members of the public at such times and on such days as shall be determined by the Commission.

Public inspection of register.

(2) Any person may, on payment of a fee to be determined by the Commission, require the Commission to supply such person with a copy or an extract, certified by the Commission as a true copy or extract, from any part of the register.

27. (1) The Commission shall, within three months of the end of each calendar year, prepare a written report to the Minister who shall place such report before Parliament within thirty days of receipt of the report.

Reporting.

(2) The report made pursuant to subsection (1) shall contain but not necessarily be limited to the following -

- (a) activities of the Commission during that year, including its finances and accounts;
- (b) significant developments in the electricity sector or its regulation during that year with respect to matters that fall within the scope of the Commission's functions;

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- (c) compliance with the technical, safety, operational and efficiency standards set forth in this Act or Regulations, rules or by-laws made thereunder;
 - (d) major activities proposed for the following year;
 - (e) the development of private sector participation in the electricity sector;
 - (f) the progress of the electrification programmes throughout the country; and
 - (g) the projected finances, accounts and budgetary requirements during the next year and, as necessary, projections of future budgetary needs.

(3) The Commission shall make a copy of the report referred to in subsections (1) available, upon payment of such fees as the Commission may determine, to any person who may request it.

PART VI LICENSING OF SECTOR FUNCTIONS

Licensing criteria.

28. The Commission shall -

- (a) establish and keep under review specified objective criteria to ensure that all prospective licensed operators are fit and proper persons to be issued with a licence or exemption; and
- (b) make a copy of the criteria available to any interested person who may request it on payment of such fees as may be determined by the Commission.

Requirement to be licensed.

29. (1) Subject to section 30, no person, unless authorized to do so by licence under this Act, shall engage in the operation of facilities or systems in order to carry out any of the functions of :-

-
- (a) generating electricity, except in cases where such licencing requirement has been excluded or exempted pursuant to Section 31 (4) of this Act;
 - (b) transmitting electricity;
 - (c) distributing and supplying electricity.

(2) Where any difference or dispute arises as to whether any person is or is not engaging or about to engage in any of the functions set forth in subsection (1), the matter shall be referred to the Commission for determination.

(3) Any person who contravenes this section commits an offence and on conviction be liable for a penalty prescribed in accordance with Part XII.

(4) No proceedings shall be instituted in respect to an offence under this section except by or on behalf of the Commission.

30. (1) The Commission shall, on application for a licence made in such form and by such process as the Commission may prescribe, and on payment of such fee as the Commission may impose to cover the cost of processing such application, make a determination as to granting a licence authorizing such person to operate facilities to-

Granting of licences by the Commission.

- (a) generate electricity;
- (b) transmit electricity;
- (c) distribute and supply electricity; or
- (d) undertake any combination of functions identified in subsections (a) - (c) as the Commission deems appropriate for the most efficient operation of the sector.

(2) A person applying for a licence under subsection (1) shall submit to the Commission for publication by the Commission a notice of such application in the manner, and with the particulars,

prescribed by the Commission, and shall be subject to the following review procedure:-

- (a) the Commission shall publish such notice within 14 days of the receipt of such application and notice.
- (b) the Commission shall consider all objections to or comments on such licence application received within 60 days of such publication of such notice and shall within 30 days of the deadline for objections or comments act upon such objections or comments by either accepting them or rejecting them or remanding them to the applicant with a request for further information relevant to such consideration;
- (c) any determination on such application shall be completed by the Commission within 90 days of the receipt of all information required for processing of the application, including all information necessary to review and evaluate objections; and
- (d) in the event that the Commission does not act upon the application within the time frame and in the manner set forth in subsection (c) the Minister shall direct the Commission to act upon the application and if the Commission still fails to Act, the Minister shall make the determination on the said application.

(3) The Minister may revoke the appointment of the Commission for failing to act upon the application within the time frame and in the manner set forth in paragraph (c). The Minister shall have the power to appoint as members of the new Commission, persons who served on the previous Commission.

(4) A licence shall contain such terms and conditions as the Commission may require in order to carry out the functions under this Act.

(5) Without prejudice to the generality of subsection (3), conditions included in a licence by virtue of that subsection may require the licensee to: -

- (a) enter into agreements with other persons for the use of electric lines, electrical plant and associated equipment operated by the Licencee (wherever situated and whether or not used for the purpose of carrying on the activities authorized by the licensee) for purposes consistent with this Act;
- (b) comply with any direction given by the Commission as to such matters as are specified in the licence or are generically so specified;
- (c) refer for determination by the Commission such questions arising under the licence as are specified or as are generically described for such determination in the licence; and
- (d) refer for approval by the Commission such actions as may be required to be taken to fulfill the terms and conditions of the licence.

(6) All licencees shall comply with all relevant environmental laws and regulations of the Commonwealth of Dominica that are related to their operations.

(7) No licence shall be issued under this section unless the Commission is satisfied that the prospective licencee has the necessary legal capacity, financial standing, technical expertise and managerial competence to carry out efficiently the functions required by such licence.

General conditions
relating to a generation
licence.

31. (1) Generation licences shall be required for all generation facilities that are interconnected to the national grid, and are issued for the purpose of promoting safe, reliable and economically efficient operation of the national electricity system, and shall expressly state:

- (a) the nature of the service to which the licence applies;
- (b) the location of the generation facilities or group of generation facilities;
- (c) the duration of the licence, which shall be related to the useful life of the generation facilities; and
- (d) the conditions applicable to licence as are prescribed under this Act or Regulations made under the Act or prescribed by the Commission.

(2) All applications for generation licences shall be considered by the Commission.

(3) A generation licence shall be required for all generation sets of 20 Kilowatt or greater that are not connected to the national grid, and are issued for the purpose of promoting safe operation of the system.

(4) Subject to subsection (3) generation licences shall not be required for generation facilities utilized for domestic self-generation and which are not connected to the national grid.

(5) For generation facilities connecting directly or indirectly to the national transmission grid, the generation licensee shall make its generating facilities available to the transmission system operator for the safe and reliable dispatch and operation of the transmission system and connected facilities; and shall provide and receive compensation for such services as are directed by the transmission system operator.

(6) The Commission may establish standards based on minimum generation capacity, or such other criteria as it determines, for the exemption of generation facilities under this section.

32. (1) All transmission licences shall expressly state -

General conditions
relating to transmission
licence.

- (a) the nature of the service to which the licence applies;
- (b) duration of the transmission licence;
- (c) the service areas or specific facilities to which the licence applies; and
- (d) the conditions applicable to licence as are prescribed under this Act or Regulations made under this Act or prescribed by the Commission.

(2) It shall be the duty of the transmission licensee to develop and maintain an efficient, coordinated and economical system of electricity transmission in the service territory designated in its licence.

(3) In issuing a transmission licence the Commission may specify the following conditions -

- (a) that the transmission licensee shall provide transmission access and service, and interconnection access and service, on a nondiscriminatory basis on facilities that it operates, and as soon as practically possible in response to service requests by generation licensees or by distribution and supply licensees or by eligible customers;
- (b) unless the Commission determines that a licensee is unable to satisfy a service request while maintaining service at rates or charges, and on such terms and conditions, as are consistent with the public interest; the transmission licensee, within

90 days of the issuance of the transmission licence, shall establish and make publicly available procedures governing requests for service connections and the transmission licensee's response to requests for service connections, which procedures shall be subject to review and, if so determined, modification by the Commission.

(4) A transmission licensee shall -

- (i) make publicly available a tariff schedule that shall state the licensee's currently approved rates or charges and terms and conditions of service for transmission and interconnection service, as approved by the Commission.
- (ii) impose no rate or charge other than its currently approved rates or charges as stated in its tariff schedule; and
- (iii) impose no term or condition of electricity service other than the currently approved terms and conditions of electricity service stated in its tariff schedule or in such rules relating to transmission service as the Commission may promulgate.

General Conditions
relating to a distribution
and supply licence.

33. (1) A distribution and supply licence shall be issued for a term approved by the Commission and shall be subject to revocation only for violation of this Act or the terms and conditions of such licence, and shall expressly state:-

- (a) the nature of the service to which the licence applies;
- (b) the duration of the licence service authorized;
- (c) area to which the licence applies; and
- (d) conditions of licence as prescribed by this Act or rules, by-laws and regulations made thereunder.

(2) It shall be the duty of the distribution and supply licensee to develop and maintain an efficient coordinated and economical system of electricity distribution as to both the acquisition and supply of electricity service, and as to the physical distribution of such electricity, in the area assigned to it in its licence.

(3) A distribution and supply licensee shall establish and file with the Commission a proposed scheme for inviting, receiving, processing and responding to requests for service, and upon final approval of such a scheme by the Commission, the licensee shall within 90 days fully implement the scheme.

(4) A distribution and supply licensee shall

- (a) make publicly available a tariff that states the licensee's currently approved rates or charges to consumers and the terms and conditions of distribution services and electricity supply to consumers, as approved by the Commission;
- (b) impose no rate or charge other than its currently approved rates or charges as stated in its tariff; and
- (c) impose no term or condition of electricity service other than its currently approved terms and conditions as stated in its tariff.

(5) A distribution and supply licensee shall, within 3 months of the issuance of the distribution licence, establish and publish notice of instructions governing:-

- (a) standards and procedures for obtaining service;
- (b) metering, billing and collection of the licensee's approved charges;

(c) remedies for non-payment, theft and use of electricity for purposes other than that for which the electricity was supplied; and

(d) procedures and standards for the reinstatement of service to a consumer in the event of a discontinuation of service;

(6) Instructions published by notice shall be consistent with the purposes and requirements of this Act and to be subject to the review by the Commission, which may make such modifications as it may deem appropriate in consultation with the licensee.

(7) A distribution and supply Licensee shall maintain and make available for public inspection in the Licensee's offices -

(a) the Licensee's approved tariffs;

(b) the Licensee's instructions governing procedures for obtaining and terminating service;

(c) the Licensee's instructions governing metering, billing and collection;

(d) descriptions of the performance standards applicable to the Licensee, including outage standards and the time required to connect new customers;

(e) complete maps and diagrams of the Licensee's facilities; and

(f) a manual explaining in layman's terms how the system operates.

Revocation of licences.

34. (1) The Commission shall revoke any licence issued for material failure of the Licensee to comply with the conditions of its licence; provided that, if the Commission finds that it is in the public interest not to revoke such licence, the Commission may, in lieu of revocation, apply to the High Court to order the Licensee to pay compensation for the damage that the material failure may have caused.

(2) The Commission, by regulation, may establish detailed procedures governing the revocation of licences, such procedures to include reasonable notice to the Licencee and an opportunity to respond to the alleged grounds for revocation. Before revoking a licence, the Commission shall provide the Licencee -

- (a) with written notice of the Commission's intent to revoke, such notice to be provided at least 90 days before revocation would become effective and to state specifically the reasons for revocation;
- (b) the opportunity to respond in writing to the notice within 30 days of issuance of the notice; and
- (c) within 60 days of the issuance of the notice, the opportunity to comply with the conditions of its licence if the Commission, in its sole discretion, determines that such an opportunity is in the public interest.

(3) In the event the Commission revokes a licence under subsection (2), the Commission may undertake to locate a successor licencee as expeditiously as possible and the Licencee shall continue to operate the facilities covered by the licence in accordance with such licence until such successor licencee is able to take over operation of the licensed facilities.

(4) In the event of revocation, the Commission may, issue notice to the Licencee to sell the licensed facilities to the successor licensee for a fair compensation.

(5) Where the Licencee fails to comply with the notice within 90 days of the notice, the Commission may apply to the High Court for an order to compel the Licencee to sell the licensed facilities to the successor Licencee and the High Court shall determine the amount of compensation.

Amendment of licences.

35. (1) The Commission may, on application of a licensee, or otherwise with the Licensee's written consent, and where the public interest so permits, make such alterations or amendments to the terms and conditions of a licence as the Commission and the Licensee may agree upon.

(2) Where a licensee has made an application under subsection (1) proposing alterations or amendments in its licence, the following provisions shall apply:

- (a) the Licensee shall publish a notice of the application in the manner and with the particulars required by the Commission; and
- (b) the Commission shall not make any alterations or amendments to the application until all comments on the objections as to the application received by it within 90 days from the date of first publication of the notice have been considered.

(3) Before making any alterations or amendments in a licence otherwise than on the application of the Licensee, the Commission shall publish the proposed alterations or amendments and shall consider all comments or objections received by it with reference to the proposed alterations or amendments within 90 days from the date of the first publication of the notice.

(4) Upon receipt of all information including comments or amendments, the Commission shall, within 30 days after the period specified in subsections (2) (b) and (3) make the alterations or amendments in the licence.

PART VII
DUTIES AND FUNCTIONS OF TECHNICAL
INSPECTORS

36. (1) The Commission shall, on such terms as are appropriate to serve the purposes of this Act, appoint qualified persons to be technical inspectors.

Appointment and duties
of Technical Inspectors.

(2) Technical inspectors appointed in accordance with subsection (1) shall -

- (a) inspect and test, periodically and in special instances, plant and equipment belonging to persons authorized by licence to conduct a regulated activity;
- (b) examine, periodically and in special instances, the equipment for the generation, transmission, distribution and supply of electricity by licensed operators;
- (c) inspect and test, where required, plant and equipment at a consumer's premises which are interconnected to a licensee's system;
- (d) inspect and test all new electrical installations in all buildings prior to connection to the electricity distribution system;
- (e) perform such other functions as the Commission may determine.

(3) Where probable cause exists to believe that a violation of this Act has been committed, the technical inspector or agent of the Commission appointed to carry out any inspection or investigation may, upon receipt of a written authorization issued by the Executive Director,

- (a) enter the premises and carry out his inspection or investigation; and

(b) take or seize any document or information he may require from any person under inspection or investigation.

(4) Where inspection has to be carried out in residential premises the technical inspectors shall not enter such premises without a warrant issued by a magistrate.

(5) The existence of a probable cause referred to in subsection (3) shall be documented in writing before any inspection.

(6) Technical inspectors of the Commission shall be issued credentials, which they shall present upon seeking entry to premises.

(7) A person who impersonates a technical inspector of the Commission under this section commits an offence.

(8) The Commission may make rules pertaining to the conduct of technical inspectors in the course of their duties under this section.

Technical standards and
equipment type
approvals.

37. (1) The Commission may establish technical standards applicable to electricity equipment and to customer premises equipment in order to ensure against harm to the electricity networks or services or to public health and safety, or to the environment.

(2) The Commission may prescribe rules specifying the types of electricity equipment which may be used for providing an electricity service, for operating electricity equipment, or for connecting to the electricity grid or to an electricity generation, transmission or distribution system.

(3) A person who provides an electricity service or supplies electrical equipment shall not use or supply, as the case may be, any equipment that does not comply with the technical standards as prescribed by the Commission.

(4) The Commission may, by rules, approve electricity equipment by reference to a type approval used in another country.

38. A person conducting a regulated activity shall afford inspectors appointed in accordance with subsection 36(1) unrestricted access during normal business hours to all plant, equipment and premises used for the purposes of the regulated activity, on production of identification by such inspectors.

Unrestricted access to inspectors of all plants, equipment and premises.

PART VIII ENFORCEMENT AND ADMINISTRATIVE POWERS OF THE COMMISSION

39. (1) The Commission shall investigate any matter which appears to be an enforcement matter and which is the subject of a representation to it by a person having an interest in the matter in cases other than those in which it considers the matter frivolous or in which the Commission considers that such an investigation would not be beneficial to or appropriate in the public interest.

Commission's duty to investigate.

(2) For purposes of this section, an enforcement matter means any matter in respect of which any of the functions of the Commission under this Act are or may be exercisable and which requires enforcement.

40. The Commission may, without limiting its powers, issue such administrative orders and rules or take such actions as are necessary to:-

Administrative orders.

- (a) appoint, remove, promote and discipline staff;
- (b) conduct the administrative operations of the Commission;
- (c) establish its own internal organization including creation of divisions and offices as it may deem necessary for the exercise of its powers;

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- (d) delegate its authority as to any regulatory matter under its jurisdiction, except matters relating to licensing or to tariff formulation, to the Chairman, Executive Director or divisions and offices of the Commission;
 - (e) grant, amend and revoke licences;
 - (f) set technical standards and procedures to monitor adherence to standards;
 - (g) contract for services of external professional consultants and advisors as may be necessary and prudent to the conduct of the business of the Commission;
 - (h) establish and, as required, amend the fees and other charges applicable under this Act;
 - (i) investigate possible violations and otherwise enforce the provisions of the Act;
 - (j) make public through open sessions, hearings or publications, such matters within its authority as it sees fit, subject to legal requirements as to confidentiality of information; and
 - (k) establish formal and informal consultation processes, including open public meetings, with stakeholders, consumers and the general public.

Administrative orders relating to implementation of policies.

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.

Regulations.

42. (1) The Minister, upon consultation with the Commission, may make Regulations for the carrying out of the functions of the Commission including provisions for -

- (a) the formulation of rules of conduct;
- (b) the imposition and payment of administrative fees including licence application fees.

(2) Regulations made under subsection (1) may provide for the imposition of fines by the Court not exceeding five thousand dollars for contravention of the Regulations.

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.

Rules and By Laws.

(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) protecting the general public from danger related to electrical works and installations;
- (c) eliminating or reducing the risk of personal injury or property damage arising from the generation, supply or use of electricity;
- (d) requiring licencees to take all prescribed steps to secure compliance with quality standards;
- (e) ensuring that the electricity fittings installed and used by persons to whom electricity is to be supplied are safe;
- (f) promoting the efficient use of electricity;
- (g) establishing technical standards applicable to electricity equipment and to customer premises equipment in order to safeguard against harm to the electricity networks or services, to public health and safety and to the environment;
- (h) specifying the types to electricity equipment and which may be used for providing an electricity service, for operating electricity equipment or for connecting to the electricity grid or to an electricity generation, transmission or distribution system;

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- (i) approving electricity equipment by reference to a type approval used in another country;
 - (j) enquiring into any accident which is or may be attributed to an escape of electricity or to the state or conduct of any part of the operations of a licensee; and
 - (k) regulating tariffs for electricity and electrical services.

(3) Rules and by-laws made for purposes specified in subsection (2) may -

- (a) prohibit transmission or supply in specified circumstances;
- (b) require notification of accidents, and of failures of supply, transmission or distribution facilities;
- (c) require plans, maps and related documents to be kept and made available for inspection and copying;
- (d) require compliance with directives served by the Commission which -
 - (i) are intended to prevent or end a breach of regulations made under this Act; or
 - (ii) eliminate or reduce risk of personal injury or property damage or interference with property;
- (e) restrict or require the use of certain products, substances or processes or forbid unapproved substances, products and processes;
- (f) require substances, products and processes to comply with standards or other requirements established by the regulations;

-
- (g) require the provision of information to prescribed persons;
 - (h) forbid the use or installation of fittings which have not been approved;
 - (i) impose requirements as to installation, arrangement, connection, testing disconnection, alteration and repair of electrical equipment;
 - (j) improve requirements regarding earthing of electrical installations, electrical voltage and frequency; or
 - (k) provide for the installation and certification of meters.

**PART IX
POWERS AND EXEMPTIONS OF LICENCEE**

44. (1) Where in the exercise of its powers under this Act a licencee finds it necessary to enter upon any land or property in accordance with the provisions of this section, the Licencee shall so locate all its poles, lines, apparatus or equipment as not in any way to obstruct or hinder the use or development of the land or property.

Powers of licence.

- (2) Subject to subsection (3), a licencee may -
- (a) erect or fix in, on, under or over any land, any pipe, electrical line or other work or apparatus used or to be used in the installation or operation of the undertaking; and
 - (b) alter, substitute, repair or remove any pipe, electrical line, work or other apparatus when so erected or fixed at any time when, in the opinion of the Licencee such undertakings are necessary or desirable.

(3) In the exercise of its power under subsection (2) (a), a licensee shall serve written notice of its intention on the owner or occupier of any private land or property if the name and address of the owner or occupier can reasonably be ascertained and if the name and address of the owner or occupier cannot reasonably be ascertained the Licensee shall post the notice in a conspicuous place on the land or property in question, and if the owner or occupier, within fifteen days of the notice, gives written notice to the Licensee of his objection thereto, the matter shall be referred by the Licensee to the Commission.

(4) Within fifteen days of the referral of the matter to the Commission, the Commission shall afford the owner or occupier of the land an opportunity to be heard on the objection and shall have the power to overrule the objection and direct the Licensee to enter upon the private land or property in question for the purpose set out in subsection (2).

(5) A licensee may, for the purpose of erecting, fixing, altering, substituting, repairing or removing any pipe, electrical line or other apparatus, enter upon any land and may -

- (a) clear the land;
- (b) dig the soil and remove the surface of the land;
- (c) temporarily close or obstruct the land; and
- (d) generally do all acts and things necessary for its purposes.

(6) An owner or occupier of land to which subsection (2) applies may request a licensee, through the Planning Authority to relocate on another part of his property or move completely from his property of the Licensee's poles or lines, and the Licensee shall accede to any such request if the Authority confirms that any pole or line occupy the only available area of the property where any structure may be built or erected.

(7) Where the cost of relocation or removal exceeds seven hundred and fifty dollars, the owner shall pay a proportion of the excess as may be determined by the Licencee as fair and reasonable.

(8) A licencee shall do as little damage as possible in carrying out any of the works permitted by this section.

(9) A licencee may on application grant to an electrical contractor approved by the Licencee and the Commission permission to construct lines for the transmission of electricity anywhere in the State.

(10) Any contractor referred to in subsection (9) shall comply with the requirements of any Regulation made under this Act and any other condition which may be specified by the Licencee.

(11) For the purposes of this section, "Planning Authority" means the Physical Planning and Development Authority established by section 4 of the Physical Planning Act 2002

Act No. 5 of 2002.

45. (1) During the continuance of the licence, all plant, and equipment, machinery, meters, instruments, protective clothing and gear and materials imported by a licencee for the purpose of the Licencee's business of generating, transmitting, distributing or supplying electricity or for the purposes of any capital project are exempt from all duties and taxes on importation or any sales tax or value added tax.

Duty free importation of goods.

(2) Notwithstanding subsection (1) a licencee is liable for all duties and taxes in respect of plant and equipment imported by the Licencee for hire, resale or the private use of any of its employees.

46. The Government shall, whenever requested by a licencee and approved by the Commission, acquire in accordance with the Land Acquisition Act any land reasonably required by the Licencee for the purpose of its business of generating, transmitting, distributing or supplying electricity and shall transfer the land to the Licencee at the actual cost of acquisition.

Acquisition of land.

Transfer of state land.
Chap. 53:01.

47. Subject to the State Lands Act Government shall, whenever requested and approved by the Commission transfer to a licensee the freehold title of any State land reasonably required by the Licensee for the purpose of the Licensee's business at a price equal to the value of such land on the open market or at such lesser price as the Government may in its sole discretion determine.

Licensee may enter
lands.

48. (1) In the course of construction and for the more effective working of the undertaking, a licensee may enter upon and remove from any public or private land, any tree, branch, or part of a tree growing on such land which is within one hundred feet of any electric line and which may interfere with, endanger or otherwise prejudicially affect the working of its operations.

(2) Notwithstanding subsection (1), a licensee may not, except with the consent of the owner or occupier of any land, enter upon the land before the expiration of fifteen days' notice in writing given to the owner or occupier thereof or posted thereon in a conspicuous position.

(3) Where the owner or occupier, within seven days from the service or posting up of a notice, gives written notice of his objection to the proposed entry, the matter shall be referred by the Licensee to the Commission.

(4) Within fifteen days of the referral of the matter to the Commission, the Commission shall afford the owner or occupier of the land and opportunity to be heard on the objection and shall have the power to overrule the objection and direct the Licensee to enter upon the private land or property in question for the purpose set out in subsection (1).

(5) Where any condition exists which is dangerous or is interrupting or threatens to interrupt, the supply of electricity in Dominica or any part thereof, a licensee may immediately enter upon any private land without the consent of the owner or occupier and take whatever action is necessary to establish safe conditions or to ensure the continuity of the supply of electricity.

(6) Where the Licencee takes action under subsection (4) the Licencee shall within three days, inform the owner or occupier of the land in question (either by service of a written notice on him or by posting up conspicuously a notice on such land) of the action taken.

(7) Any person wishing to erect any building or structure in such a position or manner as may interfere with the supply of electricity conducted through any overhead electric line, which belongs to a licensee, shall apply to the Commission for permission to erect such building or structure.

(8) Whenever any overhead line has been constructed and any person erects any building or structure which interferes with or which may interfere with the proper working of such line, a licensee may request the owner or occupier of the building or structure in question to remove or adjust the same as may be necessary.

(9) Where the owner or occupier fails to comply with the request, the Licencee may apply to the Commission for the determination and the removal or adjustment of the building or structure in question and, after making any enquiry as the Commission deems necessary, the Commission may make such order as it deems fit.

(10) Every such order may, by leave of the High Court, be enforced in the same manner as an injunction granted by a Judge of the High Court.

49. (1) A licensee may at all reasonable times enter upon any land or premises to which electricity is or has been supplied by the Licencee for the purpose of inspecting, testing or maintaining the electric lines, meters, accumulators, fittings and other works and apparatus thereon belonging to the Licencee, or of ascertaining the quantity of electricity consumed or supplied in or to such premises or, where a supply of electricity is no longer required or where the Licencee is entitled to take away and cut off the supply of electricity from any such land or premises, for the purpose of

Power of entry for
ascertaining electricity
consumed.

removing any electric lines, meters, accumulators, fittings, or other works or apparatus belonging to the Licencee and the Licencee shall repair all damages caused by an entry, inspection, maintenance or removal.

(2) Notwithstanding subsection (1), anyone who willfully or maliciously places or erects anything which impedes or hinders the easy entry, inspection, maintenance or removal by a licencee of its property the licencee may remove the impediment or hindrance in question at the cost of the occupier of the land or premises in question and the Licencee is not liable for any damage caused thereby.

Licencee may run lines etc. on roads without charge.

50. (1) Subject to a licencee making good to the reasonable satisfaction of the Chief Technical Officer (Works), all damage occasioned thereby, the Licencee may erect, place or replace pipes and electric lines along or under or over any road in Dominica without payment of any way-leave, rent, fee or other charge, to remove or repair any such pipe or electric line and for the purpose of erecting, placing, replacing, removing or repairing the same, break, excavate and temporarily obstruct any road.

(2) Whenever a licencee breaks up or excavates any road, it shall with all convenient speed commence the works for the purpose for which the road was broken up or excavated within fourteen days of completion of the breakup and excavation and the repairs to the road to be completed within three months or a period to be determined by the Commission.

(3) Subject to subsection (4), where a road has been broken up or excavated, the Licencee shall commence repairs within fourteen days of completion of works and shall ensure that such works are completed within three months or otherwise determined by the Commission and shall carry away the rubbish occasioned thereby.

(4) Until the road has been made good, the Licencee shall fence the road where it has been broken up or excavated and shall maintain during the hours of darkness a light sufficient to warn persons using the road of the danger constituted by the breaking up or excavation.

(5) Where a road has been broken up or excavated by the Licencee, the Licencee shall keep the same in good repair for three months after it is made good and for such further period not exceeding twelve months as the sub-soil of the road at that place continues to subside.

51. Where any electric line, meter, accumulator, fitting, or other work or apparatus belonging to a licencee is placed for the purpose of supplying or measuring electricity in or upon any land or premises not being in the possession of the Licencee, the electrical line, meter, accumulator, fitting or other work or apparatus shall not be subject to distress or to the landlord's remedy for rent of the land or premises where the same may be, nor can the same be liable to be taken in execution under any process of a Court of Justice, or under any proceeding in bankruptcy or insolvency.

Property for supplying etc. of electricity.

52. (1) Any person who on any private land fells, lops or trims any tree thereby causing damage to any electric line or other works or apparatus which forms part of the Licencee's electricity operation commits an offence and in addition to any penalty that may be imposed on him, is liable to pay the expenses of remedying the damage so caused.

Damage to lines, etc. and payment of compensation.

(2) Notwithstanding subsection (1), whenever a licencee is requested by any owner of land to cut, lop or trim any tree on the owner's land, which is threatening to damage any electric line, or other works or apparatus the Licencee shall do so.

53. (1) In the exercise of any powers conferred by this Act, a licencee shall cause as little inconvenience and damage to other persons as is reasonably practicable and a licencee is liable to pay compensation to any person who suffers damage to his property in consequence of the exercise of the Licencee's powers.

Payment of compensation.

(2) No compensation shall be payable in respect of any tree planted on or near the right of way after the location of the electrical lines over the property, in such a manner that the tree does or is likely to endanger, interfere with or prejudicially affect the electric lines.

(3) The amount of compensation shall, failing agreement, be determined by arbitration.

(4) All losses or damages caused to any property through the negligence of a licensee its agents, contractors or officers shall be paid by the Licensee.

(5) A licensee shall be answerable for all damages or injuries sustained by any person through the negligence of the Licensee or of any person in its employment, by reason of or in consequence of the Licensee works.

(6) A licensee shall save harmless and keep indemnified all persons by whom any road or street is repairable in respect of any damages or injury referred to in subsection (5).

Licencee may harness water.

54. (1) Subject to Government's approval a licensee may without making payment therefore, harness waterpower throughout Dominica at such sites as the Government may from time to time reserve for public electricity supply purposes and the Government shall reserve for the generation of electricity energy by hydroelectric works for public electricity supply purposes the water power rights of the Roseau and Mural rivers and their respective tributaries from their sources to a point one mile down stream from the confluence of the two rivers below the waterfalls, and no development for any other purpose of those stretches of the above rivers or their tributaries shall be allowed.

(2) Notwithstanding subsection (1) any person may use the waterpower of that part of any river within the confines of his property where this has not been previously reserved for public electricity supply purposes.

PART X
GENERATION AND SUPPLY OF ELECTRICITY
AND CHARGES THEREFORE

55. (1) The voltage of electricity supplied for domestic or lighting purposes shall be 230 volts and this shall be maintained by a licensee within plus 4% and minus 8% (measured at the consumers' terminals) of such voltage.

Voltage of electricity supply.

(2) The frequency of electricity supplied for any purpose shall be 50 cycles per second and this shall be maintained within plus and minus 3% of such frequency.

(3) Subject to subsection (4), the system of distribution of electricity shall be 3 phase 4 wire for 400 volts between lines and 230 volts between line and neutral, single phase 3 wire for 460 volts between lines and 230 volts between lines and neutral, the neutral in each case being earthed, or single phase 2 wire for 230 volts between lines with one line earthed and designated "the neutral" all or any of such systems to be used, the choice in any particular case being by the Licensee according to load conditions and the most economical method of supply.

(4) A consumer may by agreement with the Licensee be supplied with electricity at a voltage in excess of 460 volts and step this down in his own transformers to any voltage for the time being approved by the Government Electrical Inspector.

(5) A consumer may by agreement with the Licensee be supplied with electricity at a single phase 2 wire for 115 volts between lines with one line earthed and designated "the neutral."

56. (1) A licensee shall use reasonable efforts to ensure that sufficient firm generating capacity is maintained in order that peak demand may be met, assuming that the largest single thermal generating unit is unavailable for generating electricity and all other systems are restricted to firm power criterion. This constraint may be varied by agreement between the Licensee and the Commission in the event that a higher level of reliable supply is determined than the estimation of firm generating capacity dictates.

Maintenance of adequate generating capacity.

(2) For the purposes of this section, “peak demand” means the highest demand for electrical energy in any continuous half hour period in any given year.

Electricity supply to Government.

57. Whenever required, a licensee shall enter into a contract for the supply of electricity to the Government for the Government’s own use and consumption at any place in Dominica which is within 100 feet of any distributing main of the Licensee.

Rural electrification.

58. The Government may require a licensee to implement rural electrification programmes from time to time and the Licensee shall accede to any such requirement, on terms and conditions agreeable to both Government and the Licensee which shall include the provision of funds by the Government for this purpose if it is confirmed by the Commission that the said rural electrification programmes are not financially viable for the Licensee to invest in.

Charges to Government.

59. (1) A licensee may charge the Government for all electricity supplied to the Government at the rates as determined by the Commission after deducting from the basic energy rate a discount at the rate of up to 10 percent conditional upon payment for such charges being made within forty-five days of the date upon which an invoice for those charges is issued.

(2) This section does not apply to electricity supplied or to be supplied for the purposes of street lighting and domestic consumption. Electricity supplied to the Government for the purposes of street lighting shall be charged at such rate as the Licensee and Commission shall agree in consultation with Government.

Street lighting.

60. (1) Subject to subsection (2), whenever required to do so, a licensee shall enter into a contract to supply street lighting in any area in Dominica which is supplied with electricity by the Licensee.

(2) The Licencee shall be entitled to charge for electricity supplied for street lighting and for the hire of street lamps (and associated fittings and equipment) on the basis that, subject to the payment by the consumer of such minimum annual amount as may be agreed in writing between the consumer and the Licencee, the consumer will pay such monthly sum as may be agreed per street lamp of a specified type and output rating for the time being comprised in the street lighting system in question.

61. Where a certificate of electrical fitness is issued by the Commission to an intended consumer and the consumer pays to a licensee not later than one month before the date of the expiry of the certificate any deposit or contribution as may be required by the Licencee and the Licencee fails, within one month from the date of payment, to supply electricity to such consumer and does not give to the Commission a satisfactory explanation for its failure to do so, the Licencee is liable to pay the fee in respect of a valid certificate approving the supply of electricity.

Licensee's liability for failure to supply electricity.

62. (1) A licensee may require any consumer to deposit with the Licencee by way of security for sums from time to time due by the consumer to the Licencee for electricity supplied such sums of money as may from time to time be fixed by the Licencee.

Deposits and contributions.

(2) Any sums of money fixed under subsection (1) may not exceed the charge for an estimated two months supply of electricity and shall be placed to the credit of a deposit account in the consumer's name in the books of the Licencee and the deposit shall bear interest at a rate to be determined from time to time by agreement between the Licencee and the Government; however the rate shall not be less than the rate the consumer would have earned over the period aforesaid if the deposit had been placed on a savings account in a commercial bank.

(3) A licensee shall not require any monies to be paid in the form of a contribution or by way of a bond or security by an intended domestic consumer towards the cost of construction and erection of service lines to any property where the service lines do not exceed one hundred feet in length from the nearest point of connection.

(4) A licensee may require a consumer or intended consumer to pay a contribution determined by the Licensee in accordance with this section towards the cost of the erection and construction of service lines in excess of one hundred feet in length from the nearest point of connection to his property excluding distance traversed across any road.

(5) Notwithstanding any payments made in accordance with subsection (4) and anything contained in this Act whereby a consumer lawfully erects and constructs transmission and supply lines on his property and pays a contribution in accordance with this section for the erection and construction thereof, such transmission and supply lines shall be the property of the Licensee which shall be responsible for their proper maintenance, repair and safe condition.

(6) Where a consumer, hereinafter referred to as the first consumer, requests transmission and supply lines to be erected and constructed, whether or not on his own property, and makes a contribution in accordance with this section towards the erection or construction thereof, the lines may be used by the Licensee for the purpose of supplying other consumers or intended consumers on condition that the use shall not prejudicially affect the supply of electricity to the first consumer.

(7) Every such other consumer or intended consumer so connected shall pay to the Licensee on demand, such sum as may be determined by the Licensee to be a fair and just proportion of the contribution paid by the first consumer, and the Licensee shall promptly pay to the first consumer the part thereof as may be determined by the Licensee to be a fair and just proportion of his contribution.

Meters.

63. (1) Whenever requested by any consumer, and after payment of the meter testing fee for such service, a licensee shall test the meter registering the electricity supplied to that consumer against a standard meter, and supply the consumer with a certificate showing the result of the test.

(2) Where the result of the test shows that the meter is registering more than three per cent above or below the registration of the standard meter, the Licencee shall replace the meter in question and refund to the consumer the fee that he was required to pay by the Licencee.

(3) The Commission shall be entitled to require and supervise any test carried out pursuant to subsection (1) and to be supplied with a copy of the report.

(4) Where a meter through no fault of the consumer fails to record within the margin of error allowed by subsection (2), the consumption of electricity by a consumer, the Licencee shall, upon the written request of the consumer, examine the accounts of the consumer and from the examination compute the average monthly sum charged to that consumer over the six months immediately preceding the meter failure, or from the date of connection, whichever period is the shorter, and the Licencee shall charge or credit as the case may be, the account of the consumer at a rate not exceeding the average monthly charge.

64. (1) Subject to this section, where a consumer defaults with respect to payment due to the Licencee for electricity supplied, a licencee may disconnect the supply of electricity to that consumer until the payment and the reconnection fee prescribed in the tariff structure determined by the Commission are paid.

Non-payment of
electricity charges.

(2) The Licencee shall not discontinue the supply of electricity to any consumer unless -

- (a) the consumer is given not less than twenty-one days previous written notice by the Licencee of its intention to do so; and
- (b) the consumer has not during the period of notice required under paragraph (a) paid all sums due by him to the Licencee.

(3) Where the Licencee in accordance with subsection (1) discontinues the supply of electricity to a consumer the Licencee shall reconnect the supply of electricity to the consumer within twenty-four hours after the arrears reconnection fee and any required deposit have been paid to the Licencee.

(4) Where the consumer remains disconnected for a period of three months before reconnecting, the consumer shall be required to present a new certificate of electrical fitness to the Licencee before such reconnection.

(5) Notwithstanding subsection (3) where the day for reconnection falls on a Sunday or a public holiday, the reconnection shall be effected on the next working day thereafter.

(6) Where over a period of five successive years a consumer has not suffered disconnection of his supply of electricity for failure to pay his proper charges and there has been no significant delay in payment of those charges, a licensee shall, upon written application, accompanied by his deposit receipt, by the consumer, pay to the consumer the interest which the deposit paid to the Licencee by the consumer would have earned over the period aforesaid if the deposit had been placed on a savings account in a commercial bank in Dominica.

(7) Any previous subsection does not affect the right of the deposit to continue to bear interest in accordance with this Act and the consumer to payment thereof in accordance with subsection (6).

Obligation to provide electrical services.

65. A licensee shall not withhold electrical services once a consumer has complied with all the requirements necessary for the provision of electrical service.

PART XI ARBITRATION

Disputes to be determined by arbitration.

66. (1) When any disagreement relating to any matter touching or concerning anything under this Act arises between a licensee on the one hand and the Government or any local authority on the other hand, the disagreement shall be determined by arbitration.

(2) Where there are disputes between Licencees, the dispute may be determined by arbitration.

67. (1) When any disagreement is required to be determined by arbitration then, unless both parties to the disagreement concur in the appointment of a single arbitrator, each party on the request of the other party shall nominate and appoint an arbitrator to whom the disagreement shall be referred.

Appointment of
arbitrator.

(2) The appointment of an arbitrator

(a) by the Government, shall be made under the hand of the Attorney General;

(b) by a local authority, shall be made under the hand of the Clerk of the local authority; and

(c) by a licencee or debt holder shall be made under the hand of a director or other officer of the Licencee.

(3) Every such appointment shall be delivered to the arbitrator so appointed and shall be deemed a submission to arbitration by the party delivering the same.

(4) After any of the appointments specified in subsection (2) is made neither party to the disagreement may revoke the appointment without the consent of the other.

(5) Where after a period of fourteen days after a request in writing (in which must be stated the matter so required to be referred to arbitration) is served by one party on the other party to appoint an arbitrator and the last mentioned party fails to appoint the arbitrator, then upon such failure the party making the request and having himself appointed an arbitrator may appoint an arbitrator to act on behalf of both parties, and the arbitrator may proceed to hear and determine the matter to which the disagreement relates and in such a case the award or determination of the single arbitrator is final.

Vacancy of arbitrator.

68. (1) Where before the matter so referred is determined any arbitrator appointed by either party dies or becomes incapable of acting, the party by whom the arbitrator was appointed may nominate and appoint in writing some other person to act in his place.

(2) Where after a period of seven days after notice in writing from the other party for that purpose the party fails to do so, the remaining or other arbitrator shall act as sole arbitrator and his award is binding on both parties as if he had been appointed sole arbitrator by consent.

(3) Every substituted arbitrator has the same power and authorities as were vested in the former arbitrator at the time of his death or disability.

Appointment of umpire.

69. (1) Where two arbitrators are appointed, the arbitrators shall before they enter upon any matter referred to them nominate and appoint, by writing under their hands, an umpire to decide any matter on which they differ, or which is referred to him under this Act.

(2) Where an umpire dies or becomes incapable of acting or refuses to act, the arbitrators shall forthwith after the death, or incapacity or refusal appoint another umpire in his place, and the decision of any umpire on the matters so referred to him is final.

(3) Whenever the arbitrators cannot agree upon the umpire to be appointed or substituted by them for the purpose of subsection (1) the umpire shall be appointed or substituted in writing, in the case of any disagreement to which the Government is a party, under the hand of the President of the Dominica Association of Professional Engineers and, in the case of any disagreement to which the Government is not a party under the hand of the Registrar General and Provost Marshal.

Circumstances of single arbitrator.

70. Where a single appointed arbitrator dies or becomes incapable of acting or refuses to act before he makes his award, any disagreement referred to him shall be determined by arbitration in the same manner as if such arbitrator had not been appointed.

71. Where two arbitrators are appointed under section 69 and either of them, in writing, refuses or for seven days neglects to act, the other of them shall act as sole arbitrator and his award is binding on both parties as if he had been appointed sole arbitrator by consent.

Refusal of arbitrator to act.

72. Where two arbitrators are appointed, and either of them refuses or neglects to act, or fails to make their award within twenty one days after the day on which the last of such arbitrators is appointed, or within any extended time as appointed for that purpose by both arbitrators under their hands, the matters referred to them shall be determined by the umpire to be appointed.

Refusal to make award.

73. The arbitrators, or their umpire, may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute and may examine the parties or their witnesses on oath, and administer any oath necessary for that purpose.

Power to call for books.

74. (1) Before any arbitrator or umpire enters into the consideration of any matters referred to him, he shall in the presence of a person legally authorised to administer oaths, take and subscribe the oath as set out in the schedule.

Arbitrator and umpire to take oath.

(2) The affidavit shall be annexed to the award when made and if any arbitrator or umpire, having made such oath, willfully acts contrary thereto, he commits an offence.

75. All the costs of and incidental to any arbitration (which costs shall be settled by the arbitrators or the umpire to whom the disagreement in question has been referred) shall be borne by the parties in such proportions as the arbitrators or umpire determine and in arriving at their decision on costs the arbitrators or umpire shall apply the same principles as are applicable to suits heard and determined by the High Court.

Costs of arbitration.

Correction of slips in awards etc.

76. (1) Every arbitrator and umpire shall have power to correct in any award made by him any clerical mistake or error arising from any accidental slip or omission.

(2) A copy of every award made in the course of any arbitration shall be certified as a true copy by the arbitrator or umpire making the award and shall be delivered by him to each of the parties to the arbitration.

Awards to be final

77. Every award made in the course of any arbitration shall be final and binding on the parties to the arbitration and the persons claiming under them respectively.

Enforcement of awards.

78. Every award made in the course of any arbitration may, by leave of the High Court, be enforced in the same manner as a judgment or order to the same effect, and where leave is so given, judgment may be entered in terms of the award.

PART XII GENERAL

Powers of Technical Inspector.

79. (1) The Technical Inspector shall enforce any Regulations under this Act and he may at all reasonable times enter, for the purpose of inspecting or testing any electrical line or any electrical apparatus or works, upon any land or premises to which electricity is supplied or upon which electricity is generated, transmitted or distributed.

(2) The Commission shall direct a licensee not to supply electricity to any installation, apparatus or works that it deems unsafe or which, in its opinion, fails to comply in any respect with any Regulations.

(3) The Licensee shall require the Technical Inspector to inspect and test any installation, apparatus or works which the Licensee has reason to believe is unsafe or fails to comply with any Regulations.

80. Any person who without due cause obstructs or attempts to obstruct a licensee in the performance of any of the powers conferred on it by this Act commits an offence and is liable on summary conviction to a fine of five thousand dollars and six months imprisonment.

Offence of obstructing the licensee.

81. If any person without legal right, the proof of which shall be upon him, abstracts or causes to be abstracted, or diverts or causes to be diverted, any electricity, or consumes or uses any such electricity, knowing the same to have been wrongfully or unlawfully abstracted or diverted, the person commits an offence and is liable on summary conviction to a fine of five thousand dollars and twelve months imprisonment.

Stealing electricity.

82. (1) If any person without legal right, the proof of which shall be upon him, willfully disconnects, damages or removes or suffers to be disconnected, damaged or removed any electric line, meter, switch, fuse or other works or apparatus belonging to a licensee, or alters the index of any meter belonging to the licensee or otherwise prevents such meter from correctly registering any quantity of electricity supplied by the licensee, that person commits an offence and for every offence he is liable on summary conviction to a fine of one thousand dollars for the first offence and a fine of five thousand dollars for any subsequent offence, and without prejudice to the foregoing, the licensee may recover from that person the amount of any damage sustained by it and may also (notwithstanding any agreement or contract previously existing) discontinue any supply of electricity to that person.

Criminal liability for damage and prima facie evidence thereof.

(2) If upon any premises or land in the occupation of a consumer there is connected to any electric line or meter any wire or device capable of wrongfully abstracting, diverting, consuming or using electricity or of preventing any meter from correctly registering any quantity of electricity supplied by a licensee, the existence of the wire or device shall be accepted by a Court as *prima facie* evidence that the consumer has without legal right abstracted or diverted electricity, or (as the case may be) has without legal right prevented a meter from duly registering any quantity of electricity supplied by the licensee .

Regulations.

83. (1) The Minister may, after consultation with a licensee or licensees and a body representing consumers, make Regulations for -

- (a) the protection of consumers and of the public generally against personal injury or damage to property arising from the generation, supply or use of electricity;
- (b) enquiries to be held in connection with any accident which is or may be attributed to an escape of electricity or to the state or conduct of any part of the undertaking;
- (c) conferring or imposing upon any sub-licensee, powers, privileges, obligations and restrictions similar to those imposed or conferred upon the Licensee by this Act;
- (d) the purpose of preventing or minimizing radio interference or electrical interference arising from the generation, transmission, distribution or use of electricity;
- (e) prescribing the qualifications of electrical engineers, chargemen, wiremen and contractors;
- (f) the examination, licensing and registration of electrical engineers, chargemen, wiremen, and contractors and for the grant of certificates of competency and of registration;
- (g) prescribing the forms of certificates of competency and registration for electrical engineers, chargemen, wiremen and contractors;
- (h) prescribing the fees to be charged in respect of the examination of electrical engineers, chargemen, wiremen, and contractors; and
- (i) prescribing the forms of certification of inspection to be issued by electrical inspectors, the fees to be charged for inspections to be made by those

inspectors and the persons by whom the fees shall be paid.

(2) In accordance with the procedure of subsection (1) Regulations may be made for carrying into effect the purposes of this Act.

84. Any Regulations made under section 83 may impose penalties for any failure or omission to observe or comply with the Regulations, not exceeding five thousand dollars for each offence and a further penalty not exceeding five hundred dollars for each day or part thereof on which the offence continues after a conviction.

Penalty for breach of regulations.

85. Any person who commits an offence under this Act for which no special penalty is provided is liable on summary conviction to a fine of ten thousand dollars and one year imprisonment.

General Penalty.

86. (1) The Electricity Supply Act 1996 is hereby repealed.

Repeal and savings.

(2) Notwithstanding subsection (1) and any other law -

- (a) the Company shall be licensed to generate, transmit, distribute and supply electricity up to December 31, 2015 subject to the regulations imposed by the Independent Regulatory Commission.
- (b) if the Company fails to conform to the regulations imposed by the Commission, the Company's licence shall be revoked by the Commission if in the opinion of the Commission the revocation of such Licence will serve the public interest.
- (c) within six months of the establishment of the Commission, the Company shall comply with the provisions of this Act and in particular section 23 and section 24 as if it has not been licenced under this Act and seek to get the tariff approved by

following the procedures prescribed in the afore-said sections.

Non-application of
Aliens Land Holding
Regulations Act.

87. The Aliens Land Holding Regulation Act shall not apply to a licensee.

SCHEDULE

(section 74 (1).)

OATH

I, do solemnly swear that I will faithfully and honestly and to the best of my skill and ability hear and determine the matters referred to me under the provisions of the Electricity Supply Act, 2006.

A.B.

Taken and subscribed in the presence of

C.D.

Passed in the House of Assembly this 9th day of November, 2006.

HELEN E. AMBO

Clerk of the House of Assembly (Ag.)

DOMINICA

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