

**GEOHERMAL RESOURCES DEVELOPMENT BILL,
2013**

Draft of January 7, 2013

Explanatory Note

This Geothermal Resources Development Bill (the “Bill”) provides for the regulation of geothermal resources with the objective of ensuring the sustainable development of the resource, and ensuring its allocation to the uses that are most economically beneficial to Dominica.

The general approach taken to achieve the above objective is to create a complete, integrated regulatory framework comprising institutions and rules specific to geothermal resource development designed to complement the existing regulatory framework. This existing framework (contained primarily in the Physical Planning Act, 2002 and the Electricity Supply Act, 2006) was not designed with geothermal resource development in mind yet contain valuable rules that should be applied to geothermal resources. The Bill builds on the existing framework to provide for an efficient and streamlined geothermal resources regulatory regime.

The Bill defines what a geothermal resource is—a one of a kind property (not mineral, not water resource, not real property). It establishes the content of geothermal resources (fluids, vapour, and gases in which geothermal energy—defined as heat of the earth—exists, and which result from the extraction of the energy), and declares who owns geothermal resources—the State.

While electricity generation is expected to be the most profitable of the uses of geothermal resources, the Bill’s provisions permit other uses as well. As a result, the definition of ‘use’ of the resource is not necessarily for electricity generation.

The Bill allows following two procedures or ‘tracks’ for allocating geothermal resources in Dominica:

- **A competitive track.** This track awards a concession to the bidder presenting the best option in areas designated as "special geothermal zones." The Government would designate as a special geothermal zone an area where publicly-funded exploration (most likely performed by a developer acting as a contractor of the State) has revealed promising geothermal potential. The effect of this designation is that further exploration and use must be allocated competitively.

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- **A negotiated track.** In zones other than the special geothermal zones, where there is insufficient information for competition to work—or the Government is unwilling or generally unable to fund it—Dominica must still be able to attract investors. This can be done under a negotiated track. Under such track, developers fund exploration and use. At the same time, developers' rights would be subject to conditions—exclusive rights, limited duration, use or lose provisions, fees and royalties.

The Bill creates a new multi-sectoral statutory board—the Geothermal Resources Advisory Committee (the "Advisory Committee") to advise the Minister responsible for energy, who ultimately approves applications for exploration and use of geothermal resources. The Minister must act on the Committee's advice within an established procedure, and under provisions that ensure transparency and accountability—such as the publication of the Committee's recommendations. The Advisory Committee advises on the ability to use and access the resource in consultation with the Independent Regulatory Commission (IRC) and the Physical Planning and Development Authority (PPDA). The annual report of the Advisory Committee is sent to the Minister and laid before Parliament—this ensures public reporting. Finally, the Advisory Committee can delegate powers to subcommittees to get more work done—and so that it can use specialized technical assistance to exercise its functions (otherwise, its decisions might be in breach of Administrative Law).

The Bill provides for a coordinated approach for securing all relevant approvals: a potential developer applies for all such approvals by submitting one application to the Advisory Committee. Further, all relevant approvals are contained in a single authorisation. The rules provide that such single authorisation be in the form of a contract. This is determined to be the optimum approach that best reflects the reality of awarding the right to develop a geothermal resource—particularly the fact that in most cases the terms and conditions of the award will be consensual, arrived at through negotiation

The Bill's rules control two of the internationally recognized geothermal resource development activities: exploration and use. The Bill protects the geothermal resource from unregulated use, while ensuring that authorised use will be for the economic benefit of Dominica. The contract that authorises exploration is a "Geothermal Exploration Agreement," and the contract that authorises use is a "Geothermal Resource Concession." Geothermal Exploration Agreements and

Geothermal Resource Concessions are referred to collectively as “geothermal resource development agreements.” Reconnaissance remains generally unregulated.

Finally, the Bill makes provisions for violations and penalties applicable persons that do not fulfill their obligations or otherwise disobey the law.

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THE COMMONWEALTH OF DOMINICA
GEOTHERMAL RESOURCES DEVELOPMENT BILL
Draft of January 7, 2013

No. _____ of 20__

[BILL FOR]

AN ACT to provide for the development, exploration, and use of geothermal resources and for related matters.

BE IT ENACTED by the Parliament of the Commonwealth of Dominica as follows—

PART I
PRELIMINARY

1. Short title and commencement

This Act may be cited as the Geothermal Resources Development Act, 2013 and shall come into force on the date set by Order of the Minister.

2. Interpretation

In this Act, unless the context otherwise requires—

“**Advisory Committee**” means the Geothermal Resources Advisory Committee established under section 3;

“**alien**” has the same meaning as in the Aliens Land Holding Regulation Act;

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- “**application fee**” means the application fee set by Order of the Minister under section 40;
- “**bid**” means a proposal submitted for carrying out the terms of reference in the tender documents;
- “**concession area**” is the land, described by parameters related to its surface area or areas and subsurface volume or volumes, that the geothermal resource developer is authorised to develop or to carry on geothermal resource development under the Geothermal Resources Concession;
- “**development**” has the same meaning as in the Physical Planning Act, No. 5 of 2002;
- “**distribution**” has the same meaning as in the Electricity Supply Act No. 10 of 2006;
- “**electricity supply control**” means the term or conditions required or authorised by the Electricity Supply Act, No. 10 of 2006 to be imposed on holders of a licence that is referred to in section 30 of that Act;
- “**exploration**” means activity that demonstrates the dimensions, position, characteristics and extent of geothermal resources by geological, geochemical and geophysical studies and surveys and includes drilling of shallow temperature-gradient wells or deep exploratory wells;
- “**generation**” means production of electrical energy from other forms of energy;
- “**geothermal energy**” means the heat of the earth;
- “**Geothermal Exploration Agreement**” means a development agreement referred to in section 31;
- “**geothermal resource developer**” means a person who is authorised to undertake geothermal resource development under a Geothermal Exploration Agreement or Geothermal Resources Concession, and includes an entity referred to in section 29(3);
- “**geothermal resource development application**” means an application referred to in sections 36 and 37;

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- “**geothermal resource development**” means exploration or use of geothermal resources;
- “**geothermal resource development agreement**” means an agreement referred to in section 29(1);
- “**Geothermal Resources Concession**” means a development agreement referred to in section 32(1);
- “**IRC**” means the Independent Regulatory Commission established under the Electricity Supply Act, No. 10 of 2006;
- “**Minister**” means the Minister responsible for energy unless otherwise stated;
- “**planning and environmental controls**” means the conditions and limitations on developments in general, or geothermal resource developments in particular, required or authorised by the Physical Planning Act, No. 5 of 2002 or regulations made under it;
- “**reconnaissance**” means activity which has minimal impact on the environment of the land that determines whether the land may be a source of geothermal resources, and does not include drilling;
- “**Register**” means the register maintained by the Advisory Committee in accordance with section 41;
- “**special geothermal zone**” means the land described in terms of its surface area and subsurface land, designated as such under sections 23 and 24;
- “**tender documents**” means the documents containing the terms of reference for, and relevant details of, the tender process;
- “**tender process**” means a competitive selection process, the rules, including selection criteria, of which are issued by the Advisory Committee for the purpose of evaluating geothermal resource development applications in special geothermal zones;
- “**transmission**” has the same meaning as in the Electricity Supply Act, No. 10 of 2006;

“**use a geothermal resource**” means accessing the geothermal resource for the purpose of enjoying it, and drawing from it any of the profit, utility and advantage which it may produce, including geothermal energy.

PART II

GEOTHERMAL RESOURCES ADVISORY COMMITTEE

Division 1 — Establishment

3. Constitution

- (1) There is hereby established a statutory board to be known as the Geothermal Resources Advisory Committee comprising the following members—
 - (a) the Permanent Secretary of the Ministry with responsibility for energy;
 - (b) the Executive Director of the IRC;
 - (c) the Chief Physical Planner of the Physical Planning and Development Authority;
 - (d) a State Attorney; and
 - (e) senior technical public officers, and other professionals not in the public service, with relevant knowledge or expertise, altogether totaling 1 or 3 in number, appointed by the Minister.
- (2) The Minister shall appoint one member to be the Chairman. The Permanent Secretary of the Ministry with responsibility for energy shall act as the Deputy Chairman (unless such Permanent Secretary is appointed Chairman, in which case the Minister shall select another member to act as Deputy Chairman).
- (3) The names of the initial members, their title, if any, and the names of subsequent members, shall be published in the *Official Gazette*.
- (4) A member appointed under subsection (1)(d) shall hold office for a term of 3 years.

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- (5) The Chairman and Deputy Chairman shall appoint a secretary from among the members.

4. Alternate members

- (1) The Minister may appoint a person to be an alternate member for any member, other than the Chairman, so long as the alternate member possesses similar qualifications and background as the member for whom he or she is serving as an alternate.
- (2) The alternate member may act temporarily in the place of that member if that member is absent, incapacitated or ineligible to perform the duties of a member.

5. Conflict of interest

- (1) A person is not qualified for appointment as a member if he or she is —
- (a) of unsound mind; or
 - (b) an undischarged bankrupt.
- (2) A member of the Advisory Committee shall inform the Advisory Committee of any matter in which he or she has, either directly or indirectly, personally or by his or her spouse, child, parent, sibling, business associate or company, any pecuniary or business interest, and the member shall take ~~not~~ no part, directly or indirectly, in any consideration or decision of the Advisory Committee on that matter.

6. Vacancy

If a vacancy occurs in the membership, the Minister shall appoint a person to fill the vacancy in a manner that respects the requirements in section 3 for the composition of the Advisory Committee.

7. Casting Vote

The chairman has the right to vote at meetings of the Advisory Committee, and, in the case of an equal division, has also a casting vote.

8. Meetings and Quorum

- (1) The Advisory Committee shall meet at the times that it considers necessary or expedient for the transaction of business and such meetings shall be held at the place that the Advisory Committee determines.
- (2) A majority of all members constitute a quorum, provided that under no circumstance shall less than three members constitute a quorum.

9. Signature

All decisions made by the Advisory Committee shall be signed by the chairman, vice-chairman or secretary.

10. Remuneration

The members of the Advisory Committee shall be paid fees set by Order by Cabinet.

11. Funds

- (1) A budget for the operations of the Advisory Committee shall be a charge on the Consolidated Fund.
- (2) The fees, royalties, bonds and administrative monetary penalties paid under this Act must be paid in to the Consolidated Fund of the Government of the Commonwealth of Dominica.

Division 2 — Functions, Duties and Powers

12. Functions and objectives

- (1) The functions of the Advisory Committee are to advise the Minister on the following: —
 - (a) policy formulation for the promotion, sustainable development and use of geothermal resources including policy relating to regional and international co-operation in such matters;
 - (b) the determination of geothermal resource development applications in accordance with section 37;
 - (c) the negotiation of regional and international initiatives and agreements relating to geothermal resources;
 - (d) public education and training on geothermal resources and related matters;
 - (e) setting of fees, royalties and bonds to be charged under this Act; and
 - (f) other functions that the Minister may assign.
- (2) In carrying out its functions the Advisory Committee shall seek to promote —
 - (a) sustainable development and management of Dominica's geothermal resources, for the benefit of the people of Dominica;
 - (b) provision of low cost, secure energy in Dominica, at stable prices;
 - (c) investment and competition in the development of geothermal resources, where applicable; and
 - (d) implementation of best practices in the operation of geothermal facilities.

13. Sub-Committees

- (1) The Advisory Committee may appoint sub-committees to examine and report to it on any matter relating to any of its functions under this Act.

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- (2) A sub-committee shall include not less than 2 members of the Advisory Committee, and may include persons who are not members.
 - (3) The Advisory Committee shall determine the composition and functions of a subcommittee.

14. Delegation by Advisory Committee

The Advisory Committee may delegate, in writing, to a subcommittee or to a member, the exercise of any power or the performance of any duty vested in it by this Act, except the power to delegate under this section.

15. Civil liability

No civil liability shall attach to any member of the Advisory Committee in respect of anything done, or omitted, in good faith under the provisions of this Act.

16. Report

- (1) The Advisory Committee shall give to the Minister any information that Cabinet may require regarding its operations.
- (2) The Advisory Committee shall submit to the Minister at the end of each calendar year a report that includes—
 - (a) an assessment of the state of the development of geothermal resources, and its impact and significance for the development of the State;
 - (b) a description of the activities undertaken by the Advisory Committee; and
 - (c) any other matters that the Minister may require.
- (3) The Minister shall cause a copy of the report to be laid before the Parliament within ninety (90) days following the commencement of each calendar year.

PART III GEOTHERMAL RESOURCES

17. Nature

- (1) A geothermal resource is *sui generis* property and the rules relating to it, including the creation, acquisition, transfer, exercise, termination of rights respecting it, are set out in this Act.
- (2) For the avoidance of doubt, a geothermal resource is not a mineral, nor a water resource, nor real property.

18. Content

Geothermal resource comprises geothermal energy, and includes the geothermal fluids, vapour, and gases in which the energy exists and the fluids, vapour, and gases that result from the extraction of the energy. “Fluids” shall mean any liquid having a temperature of at least 150° Celsius.

19. Ownership

Despite anything contained in any law or title of land, geothermal resources in, or under any land of whatsoever ownership or tenure are deemed to be, and to always have been, vested in, and are subject to the control of, the State.

PART IV MANAGEMENT OF GEOTHERMAL RESOURCE DEVELOPMENT

Division 1 — General

20. Physical Planning Act applies

For the avoidance of doubt, a geothermal resource development is a development within the meaning of the Physical Planning Act for

which development permission must be obtained in accordance with the procedure of Part IV of that Act, except to the extent modified by this Act and any regulations made under this act.

21. Electricity Supply Act applies

For the avoidance of doubt, when electricity is derived from a geothermal resource, the generation, transmission or distribution must be authorised in accordance with Part VI of the Electricity Supply Act, except to the extent modified by this Act and any regulations made under this Act.

22. Aliens Landholding Regulation Act does not apply

- (1) A geothermal resource is not land within the meaning of the Aliens Landholding Regulation Act and a geothermal resource developer who is an alien is consequently not subject to the provisions of the Aliens Land Holding Regulation Act in respect of his rights in respect of a geothermal resource.
- (2) The Aliens Landholding Regulation Act does not apply to a geothermal resource developer in respect of any interest in land that the developer is authorised to hold under the developer's geothermal resources development agreement.

Division 2 — Special geothermal zones

23. Designation

The Minister may, by notice in the *Gazette* and upon consultation with the Physical Planning Development Authority, designate any place (whether surface area or subsurface land or both) to be a special geothermal zone if—

- (a) the Advisory Committee advises that, on the basis of the information it possesses, the place is likely to be a source of geothermal resources; and
- (b) the Minister reasonably believes that it is in the public interest that the right to use geothermal resources in that place be allocated on a competitive basis.

24. Effect of designation

Once a special geothermal zone is designated under this section—

- (a) no right to explore or use geothermal resources in any part of that zone shall be allocated except on application in the form of a bid for a geothermal resource development agreement under the tender process described in sections 35 and 37, as applicable, unless determined otherwise by the Advisory Committee, and
- (b) the Physical Planning and Development Authority shall not approve any development in that zone inconsistent with the uses described in this Act.

Division 3 — Management of Reconnaissance, Exploration, Use and Export

25. Reconnaissance

A person may conduct reconnaissance in any part of Dominica. However, the person—

- (a) is subject to the law relating to trespass and any other law relating to rights of access to, or use of land;
- (b) obtains no rights or interest in respect of any geothermal resources identified through the activities; and
- (c) has no entitlement to any privilege or priority in respect of a geothermal resources development agreement.

26. Exploration

A person shall not, in any part of Dominica, conduct exploration for geothermal resources unless the person is authorised under a Geothermal Exploration Agreement.

27. Use

A person shall not use any geothermal resources except to the extent authorised under a Geothermal Resources Concession.

28. Export

- (1) A person shall not export electricity generated from geothermal resources except if the Minister, after consultation with the Advisory Committee and the IRC, authorises such export under—
 - (a) a geothermal resources development agreement; or
 - (b) a specific contract authorising export of electricity.
- (2) The export shall be on the terms and subject to the conditions imposed by the Minister after consultation with the Advisory Committee and the IRC.
- (3) The terms and conditions may include a requirement to pay royalties based on the use of geothermal resources or on the export of electricity, or both, as the Minister, after consultation with the Advisory Committee and the IRC.

**PART V
GEOTHERMAL RESOURCE ALLOCATION**

29. Power of Minister to allocate resources

- (1) Subject to sections 38 and 39 and to this section, the Minister may, on behalf of the State, enter into any of the following development agreements for geothermal resource development—
 - (a) a Geothermal Exploration Agreement authorising the exploration for geothermal resources; and
 - (b) a Geothermal Resource Concession authorising the use of geothermal resources.
- (2) The Minister may enter into such an agreement only if the application for authorisation to carry on geothermal resources development is made in accordance with Part VI.
- (3) This section applies even though the entity authorised to carry out the geothermal resource development—
 - (a) carries on the development as a contractor of the State using State funds; or

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- (b) is an entity that is partly owned or controlled by the State.

30. No additional permits necessary

A geothermal resources development agreement executed in accordance with section 39 constitutes—

- (a) development permission required by section 17(1) of the Physical Planning Act, No. 5 of 2002 for the geothermal resource development, subject to the planning and environmental controls set forth therein, except as modified or excluded by this Act or regulations under this Act; and
- (b) authorisation required by section 29(1) of the Electricity Supply Act, No. 10 of 2006 for any one or more of the following activities, to the extent authorised in the geothermal resources development agreement, and subject to the electricity supply controls set forth therein, except as modified or excluded by this Act or regulations under this Act—
 - (i) generation,
 - (ii) transmission, and
 - (iii) distribution.

31. Rights accorded by Geothermal Exploration Agreement

- (1) A Geothermal Exploration Agreement entitles the geothermal resource developer to carry on exploration activities for a term, not exceeding three years as stated in the Geothermal Exploration Agreement, subject to the planning and environmental controls set forth in the Physical Planning Act, No. 5 of 2002, except as modified by regulations under this Act or authorised otherwise by the Minister, and subject further to the following—
 - (a) the exploration must be—
 - (i) limited to the area accorded under the Geothermal Exploration Agreement,

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- (ii) with the technology approved in the Geothermal Exploration Agreement, if any, and
 - (iii) in accordance with any other term or condition not contrary to (i) and (ii) above, contained in the Geothermal Exploration Agreement;
 - (b) the geothermal resource developer must pay the fees and bonds set out in the Geothermal Exploration Agreement within the time required and must comply with the other terms and conditions contained in the Geothermal Exploration Agreement; and
 - (c) the Geothermal Exploration Agreement may be renewed on the application of the geothermal resource developer, for a term, not exceeding two years, set out in the Geothermal Exploration Agreement, if the Advisory Committee so recommends in accordance with section 37.
- (2) A Geothermal Exploration Agreement also entitles the geothermal resource developer to obtain the land (including easements) acquired under section 33 for the purpose of the geothermal resource development on payment of the price and in accordance with the statutory rights set out in section 34.
- (3) In a special geothermal zone the geothermal resource developer obtains no rights or interest in respect of any geothermal resources discovered.
- (4) Should a geothermal resource developer operating under a Geothermal Exploration Agreement desire to use any geothermal resource, the geothermal resource developer must apply for and be granted a Geothermal Resource Concession under section 35.
- (5) The State shall be represented in the negotiation of any Geothermal Exploration Agreement by the Advisory Committee or any committee appointed by the Minister for such purpose.
- (6) The rights set out in this section are deemed abandoned—
- (a) in the circumstances set out in the Geothermal Exploration Agreement; or

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- (b) in the absence of contractual provisions under (a), if there is no exploration for a period of 2 years or more from the execution of the Geothermal Exploration Agreement.

32. Rights accorded by Geothermal Resource Concession

- (1) A Geothermal Resource Concession entitles the geothermal resource developer to use geothermal resources in a concession area for the term, not exceeding forty years, set out in the Geothermal Resource Concession, subject to the electricity supply controls set forth in the Electricity Supply Act, No. 10 of 2006, except as modified by regulations under this Act or authorised otherwise by the Minister, and subject further to the following—
 - (a) the use must be—
 - (i) limited to geothermal resources located in the concession area accorded under the Geothermal Resources Concession,
 - (ii) for the purposes authorised in the Geothermal Resources Concession,
 - (iii) with the technology approved in the Geothermal Resources Concession; and
 - (iv) in accordance with any other term or condition not contrary to (i) – (iii) above, contained in the Geothermal Resource Concession.
 - (b) the geothermal resource developer must pay the fees, bonds and royalties set out in the Geothermal Resources Concession within the time required and must comply with the other terms and conditions contained in the Geothermal Resources Concession;
 - (c) the Geothermal Resource Concession may be renewed on the application of the geothermal resource developer, for a term, not exceeding ten years, if the Advisory Committee so recommends in accordance with section 37.
- (2) A Geothermal Resource Concession also entitles the geothermal resource developer to—

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- (a) obtain the land (including easements) acquired under section 33 for the purpose of the geothermal resource development on payment of the price and the statutory rights set out in that section; and
 - (b) export electricity generated from geothermal resources if authorised by the Minister in accordance with section 28.
- (3) The State shall be represented in the negotiation of any Geothermal Resource Concession by the Advisory Committee or any other committee appointed by the Minister for such purpose.
- (4) The rights set out in this section are deemed abandoned—
- (a) in the circumstances set out in the Geothermal Resource Concession; or
 - (b) in absence of contractual provisions under (a), if the use is not started within 3 years or more of the execution of the Geothermal Resource Concession.

33. Compulsory acquisition rights

- (1) Land that the Advisory Committee advises the Minister is required for a geothermal resource development may be purchased compulsorily by the State in accordance with the Land Acquisition Act as being land required for public purposes within the meaning of that Act. In lieu of a compulsory purchase of such land, the State may acquire an easement over such land in a manner consistent with the Land Acquisition Act.
- (2) Land (or any easement thereon) acquired under this section and transferred to a geothermal resource developer must be at ~~the~~ ~~actual~~ not less than cost of acquisition.

34. Statutory rights relating to land

- (1) Subject to subsection (2), section 44 of the Electricity Supply Act applies to a geothermal resource developer in respect of all of the apparatus of the geothermal resource developer used in, or in the installation of, the developer's authorised geothermal resource development as if the word 'licencee' were replaced

with ‘geothermal resource developer,’ ‘Commission’ were replaced with ‘Advisory Committee’ and the words ‘this Act’ were construed as references to [this Act] the Geothermal Resource Development Act.

- (2) Subsections 44(9) and (10) of the Electricity Supply Act apply only to a geothermal resource developer who is authorised to generate, transmit, distribute or supply electricity.

PART VI

PROCEDURE FOR OBTAINING DEVELOPMENT AGREEMENT

35. Geothermal resource development agreement application

- (1) An application for a geothermal resource development agreement must be made—
- (a) in writing if—
 - (i) the area to be developed is not located in a special geothermal zone; or
 - (ii) the application is for renewal of the geothermal resource development agreement; or
 - (b) in the form of a bid as part of a tender process in accordance with tender documents issued by the Advisory Committee in the event the area to be developed is located within a special geothermal zone.
- (2) An application must be accompanied by the application fee set by Order of the Minister under 40, and contain the information required—
- (a) by the tender documents prepared by the Advisory Committee (in the case of an application under paragraph 1(a) above);
 - (b) under section 23 of the Physical Planning Act, except to the extent excluded by paragraph (2)(a); and
 - (c) such other information and particulars as may be prescribed by the Advisory Committee.

36. Submission of application

An application under this Part must be submitted to the Advisory Committee.

37. Determination of application

- (1) In this section,
 - “**application**” means an application for the making or renewal of a geothermal resource development agreement, unless otherwise stated;
- (2) The Advisory Committee shall review an application in accordance with the procedure in Schedule 1 and recommend—
 - (a) in respect of an application for the making of a geothermal resource development agreement in respect of an area not located in a special geothermal zone, whether approval should be given by the Minister;
 - (b) in respect of an application for the making of a geothermal resource development agreement in respect of an area located within a special geothermal zone—
 - (i) the list of bidders who qualify for approval in descending order starting with the highest evaluated bidder,
 - (ii) the parameters of the development area to be accorded under the geothermal resource development agreement; and
 - (c) in respect of an application for renewal of a geothermal resource development agreement, whether approval should be given by the Minister and the term of the renewal.
- (3) The Advisory Committee shall not recommend an application under subsection (2) unless the Advisory Committee is satisfied—
 - (a) upon consultation with the Physical Planning and Development Authority, that the application qualifies for planning approval having regard to the considerations set out in section 25 of the Physical Planning Act, No. 5 of

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- 2002 and any applicable planning and environmental standards;
- (b) the application does not pose an unacceptable threat to national security and establishes an acceptable balance among competing developers, if any, of the geothermal resources and competing users of land affected by the application;
 - (c) upon consultation with the IRC, that the applicant meets the criteria, if any, established by the IRC under section 28 of the Electricity Supply Act, No 10 of 2006;
 - (d) the applicant has the necessary legal capacity, financial standing, technical expertise and managerial competence to carry out efficiently, any electricity generation, transmission, or distribution as required by section 30(7) of the Electricity Supply Act, No. 10 of 2006, which the geothermal resources development agreement may authorise; and
 - (e) upon consultation with the IRC, that the geothermal resource developer has, in the case of an application for renewal, during the preceding terms of the geothermal resource development agreement, continued to invest in the efficient and sustainable use of the resource, complied with requirements of applicable environmental and planning regulations, and met the specific terms set out in the geothermal resource development agreement.
- (4) The objectives in deciding on the parameters of the concession area for the purpose of paragraph (3)(b)(ii) include—
- (a) allowing for efficient use of the geothermal resources;
 - (b) limiting conflict between geothermal resources users;
 - (c) fairly rewarding the investment, if any, that parties have made in exploration leading to the finding of useable geothermal resources.
- (5) Recommendations of the Advisory Committee must be forwarded by the Advisory Committee to the applicant promptly following communication thereof to the Minister.
- (6) For the purpose of this section, the Advisory Committee, or any person authorised by it in writing, has the powers of entry,

examination and inquiries conferred by section 81 of the Physical Planning Act for the purpose set out in section 81(1)(b) of that Act.

38. Minister Approval

- (1) The Advisory Committee shall submit its recommendation in respect of an application to the Minister for his approval in the time frame required under Schedule 1.
- (2) The Minister shall not give his approval in respect of an applicant recommended under section 37, unless the terms and conditions of a geothermal resources development agreement are successfully negotiated with the applicant.
- (3) In the case of an application in respect of an area located within a special geothermal zone, the parties are bound by the terms in the relevant tender documents and the bid, where applicable, but may negotiate in respect of other terms and conditions not inconsistent therewith.

39. Execution of Agreement

If the Minister approves an applicant, a geothermal resources development agreement, to be valid, must be executed by—

- (a) the Commonwealth of Dominica, represented by the Minister, as party to it;
- (b) the applicant, as party to it;

PART VII FEES, BONDS AND ROYALTIES

40. Minister to set fees and royalties

- (1) The Minister shall set application fees, annual fees and bonds to be payable by geothermal resource developers by Order published in the *Gazette*, which fees and bonds shall apply, unless otherwise agreed to in the geothermal resource development agreement.

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- (2) The Minister, after consultation with the IRC and the Minister for Finance, shall set royalties that geothermal resource developers are required to pay, by Order published in the *Gazette*, which royalties shall apply, unless otherwise agreed to in a geothermal resource development agreement.

PART VIII

RECORD KEEPING AND PUBLICITY

41. Register

- (1) The Advisory Committee shall maintain a Register of all geothermal resource development plans, special geothermal zones, geothermal resource development applications, and geothermal resources development agreements.
- (2) The Register shall contain the particulars of applications under this Act and an indication of whether or not the Minister's approval was given. In entering information into the register, the Advisory Committee 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.
- (3) Subject to subsection (2), the Register shall be a public register and shall be open for inspection by members of the public at such times and on such days as the Advisory Committee determines.
- (4) A person may, on payment of a fee to be determined by the Advisory Committee, require the Advisory Committee to supply such person with a copy or an extract, certified by the Advisory Committee as a true copy or extract, from any part of the Register.

42. Publication in the *Gazette*

The Advisory Committee shall cause to be published in the *Gazette*, within six weeks of the occurrence, the following—

- (a) notice of geothermal resource development applications;
- (b) recommendations made under section 37;

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- (c) notice of the execution, expiration, suspension, surrender, modification, revocation, or extension of geothermal resource development agreements.

PART IX COMPLIANCE AND ENFORCEMENT

Division 1 — General

43. Responsible Authorities

- (1) The Advisory Committee shall—
 - (a) assist the Physical Planning and Development Authority in the monitoring and enforcement of compliance with planning and environmental controls, subject to subsection (2);
 - (b) assist the IRC in the monitoring and enforcement of compliance with the electricity supply controls; and
 - (c) monitor and enforce any other term or condition in a geothermal resources agreement.
- (2) Despite the provisions of the Physical Planning Act, No. 5 of 2002, the Physical Planning and Development Authority shall exercise its monitoring and enforcement powers conferred under Part V of the Physical Planning Act, No. 5 of 2002 in respect of geothermal resource developments, only in accordance with the advice of the Advisory Committee.
- (3) Despite the provisions of the Electricity Supply Act, No. 10 of 2006, the Independent Regulatory Commission shall exercise its monitoring and enforcement powers conferred under Parts III, VI, VII, and VIII of the Electricity Supply Act, No. 10 of 2006 in respect of geothermal resource developments, only in accordance with the advice of the Advisory Committee.

44. Self-monitoring

For the purpose of Part IX, of this Act the Advisory Committee may direct, by notice in writing, the geothermal resource developer to

submit information to it, with the frequency and in the manner indicated in the notice, or by a time stipulated in the notice, concerning its activities under the geothermal resource development agreement, and the geothermal resource developer shall comply with the notice.

Division 2 — Inspections

45. Designation of inspectors

- (1) For the purpose of assisting in its monitoring and enforcement functions set out in section 43, the Advisory Committee may designate any qualified person, whether a member of the Advisory Committee or not, as an inspector to carry out inspections.
- (2) An inspector shall be provided with a certificate of designation, which certificate the inspector shall present at the request of any person appearing to be in charge of any place entered by the inspector.

46. Powers of inspectors

- (1) An inspector may, for the purposes for which the inspector was designated an inspector under section 45—
 - (a) enter and inspect, subject to subsection (2), at any reasonable time, any place owned by, or under the control of, a geothermal resource developer, in which the inspector believes on reasonable grounds there is any document, information or thing relevant to the enforcement of this Act, or a geothermal resource development agreement, and examine the document, information or thing, or remove it for examination or reproduction;
 - (b) make use of, or cause to be made use of, any data processing system at the place to examine any data contained in or available to the system;
 - (c) reproduce any record, or cause it to be reproduced, from the data, in the form of a print-out or other intelligible

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- output, and take the print-out or other output for examination or copying;
- (d) make use of any copying equipment or means of communication located at the place;
 - (e) take photographs of any thing in the place being inspected and remove the photographs from the place;
 - (f) take for analysis of any thing in the place being inspected and remove for analysis outside the place;
 - (g) search and bore for the purpose of examining the subsoil;
 - (h) interview any person in the place being inspected; and
 - (i) make any other investigation, examination and inquiries that are necessary to achieve those purposes for which the entry was authorised.
- (2) An inspector must not enter a dwelling-place except with the consent of the occupant or under the authority of a warrant issued under subsection (3).
- (3) Where on *ex parte* application a magistrate is satisfied by information on oath—
- (a) that a dwelling-place is a place described in paragraph (1)(a);
 - (b) that entry to the dwelling-place is necessary for the monitoring and enforcement referred to in section 43; and
 - (c) that entry has been refused, or that there are reasonable grounds for believing that entry will be refused, or consent to entry cannot be obtained from the occupant,
- the magistrate may issue a warrant authorizing an inspector named in the warrant to enter the dwelling-place, subject to any conditions specified in the warrant.
- (4) An inspector executing a warrant issued under subsection (3) shall not use force unless the inspector is accompanied by a peace officer and the use of force has been specifically authorized in the warrant.
- (5) If any damage is caused by reason of the exercise of any right of entry conferred by this section, or in the making of any survey for the purpose for which such right of entry was

conferred, or by the wrongful or negligent use of powers conferred, or alleged to have been conferred, by this section, the Advisory Committee, as soon as may be after such entry, must pay compensation to the person injured.

- (6) If the amount of such compensation cannot be agreed, the amount payable must be determined in the same manner as compensation payable under section ~~68~~ 69 of the Physical Planning Act, and the Advisory Committee must refer the matter accordingly.

Division 3 — Administrative Monetary Penalties and Other Sanctions

47. Commission of violation

- (1) A person commits a violation who—
- (a) fails to comply with a notice for information under section 46;
 - (b) fails to comply with the planning and environmental control or electricity supply control to which their geothermal resource development is subject; or
 - (c) fails to pay in full when due, a fee or royalty imposed by Order of the Minister under section 40;
 - (d) fails to comply with or defaults under a Geothermal Resource Development Agreement; or
 - (e) commits any other act which the Minister by Order published in the Gazette, designates as a violation.
- (2) A person who commits a violation referred to in subsection (1)(a) is liable—
- (a) in the case of an individual, to an administrative monetary penalty of \$1,000; or
 - (b) in the case of a corporation, to an administrative monetary penalty of \$5,000.
- (3) A person who commits a violation referred to in subsection (1)(b) is liable—

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- (a) in the case of an individual, to an administrative monetary penalty of \$2,500; or
 - (b) in the case of a corporation, to an administrative monetary penalty of \$10,000.
- (4) A person who commits a violation referred to in subsection (1)(c) is liable to an administrative monetary penalty in the amount of 10% of the outstanding fee or royalty.
 - (5) A person who commits a violation referred to in subsection (1)(d) is liable to the administrative monetary penalty set out in the Order, which may not exceed \$1,000 in the case of an individual and \$5,000 in the case of a corporation.
 - (6) A violation that is continued on more than one day constitutes a separate violation in respect of each day during which it is continued.

48. Notice of intention to impose penalty

- (1) If the Advisory Committee believes on reasonable grounds that a person has committed a violation, the Chairman may issue, and shall cause to be served on that person, a notice of its intention to impose an administrative monetary penalty which—
 - (a) sets out the name of the person who is believed to have committed the violation;
 - (b) sets out the alleged violation and the relevant facts surrounding the violation;
 - (c) sets out the administrative monetary penalty prescribed in section 47 for the violation that it intends to impose; and
 - (d) advises the person of the right to make written representations to the Advisory Committee and of the period within which that right must be exercised in accordance with subsection (2);
- (2) A person who receives a notice under subsection (1) may, within 28 days of the date upon which he or she receives the notice, send written representations to the Advisory Committee respecting the facts of the alleged violation or the administrative penalty imposed or both.

49. Penalty Notice

- (1) After the expiration of 28 days from the date that it sent a notice of intention to impose a penalty under section 48, the Advisory Committee may impose an administrative monetary penalty in the amount prescribed in section 47 by sending him a penalty notice stating—
 - (a) the name of the person;
 - (b) the violation for which the penalty is imposed;
 - (c) the date on which the notice of intention to impose a penalty in respect of that violation was sent to the person;
 - (d) the amount of the penalty for the violation in accordance with section 47;
 - (e) a date, not less than 28 days after the date of the penalty notice, by which the person must pay the penalty to the Advisory Committee; and
 - (f) the fact that, if the person does not pay the penalty or appeal to the High Court under section 50, the person is considered to have committed the violation and that he or she is liable for the penalty set out in the notice.
- (2) Before imposing an administrative monetary penalty under this section, the Advisory Committee shall consider any written representations that it has received from the person and, where it receives such representations, it must provide reasons for the action that it takes.
- (3) A person who receives a penalty notice under this section shall pay the penalty stated to the Advisory Committee on or before the date specified in the notice, or appeal to the High Court under section 50.
- (4) If the person pays the administrative monetary penalty, the person is deemed to have admitted the violation and proceedings in respect of it are ended.
- (5) A person who neither pays the administrative monetary penalty nor appeals to the High Court under section 50 is considered to have committed the violation and is liable for the penalty.

50. Appeal to the High Court

- (1) A person served with a penalty notice under section 49 may, within 28 days after the notice is served, or within any longer period that the High Court allows, appeal in writing to the High Court.
- (2) On an appeal, the High Court may confirm, set aside or vary the decision of the Advisory Committee.

51. Publication

If the Advisory Committee imposes an administrative monetary penalty on a person, the Advisory Committee shall publish the imposition of the penalty in the Gazette as soon as practicable thereafter—

- (a) if the person pays the penalty, the date of payment;
- (b) if the person neither pays the penalty nor appeals the penalty notice, the date stipulated in the penalty notice for payment;
- (c) if the person appeals under section 50, the date the High Court confirms that the person is liable to pay the penalty.

52. Debts to the State

- (1) An administrative monetary penalty constitutes a debt due to the State and may be recovered as such in the High Court.
- (2) The Advisory Committee may, on the later of the dates referred to in section 51(b) or 51(c) issue a certificate certifying the unpaid amount of any debt referred to in subsection (1) and the registration of the certificate in the High Court has the same effect as a judgment of the High Court for a debt of the amount specified in the certificate, together with the costs of registration.
- (3) No proceedings to recover a debt referred to in subsection (1) may be commenced later than six years after the date stipulated in the penalty notice in accordance with section 50(1)(e) or, if

the person appeals under section 51, the date the High Court confirms that the person pay the penalty.

- (4) An administrative monetary penalty paid or recovered in relation to a violation is payable to and must be remitted to the Accountant General.

53. Common law principles

Every rule and principle of the common law that renders any circumstance a justification or excuse in relation to a charge for an offence applies in respect of a violation to the extent that it is not inconsistent with this Act.

54. Time limit

- (1) No proceedings in respect of a violation may be commenced later than two years after the day on which the subject-matter of the proceedings became known to the Advisory Committee.
- (2) A document appearing to have been issued by the chairperson, vice-chairperson or secretary of the Advisory Committee, certifying the day on which the subject-matter of any proceedings became known to the Advisory Committee, is admissible in evidence without proof of the signature or official character of the person appearing to have signed the document and is, in the absence of evidence to the contrary, proof of the matter asserted in it.

55. Invalidation of agreement

- (1) In this section “competent authority” means the authority empowered in accordance with section 57 to make a decision that is final and binding on the parties to a dispute arising under a geothermal resource development agreement.
- (2) A geothermal development agreement is invalidated if a competent authority declares that the agreement is terminated owing to the breach by a party that the competent authority considers substantial, or that is stated in the geothermal resource development agreement to constitute a substantial breach.

56. Forfeiture

- (1) If the geothermal resource development agreement is terminated within the meaning of subsection (4), the geothermal resource developer must, as soon as practicable, and in any event, by the date stated in a notice served under subsection (2), remove any equipment, assets or other property from any land owned or leased by the State for use by the developer for the purpose of the geothermal resource development activities.
- (2) If the geothermal resource development agreement is terminated within the meaning of subsection (4), the Advisory Committee may issue a notice to the geothermal resource developer to remove any equipment, assets or other property from the land by the date stated in the notice.
- (3) If a geothermal resource developer fails to comply with the provisions of this section, the equipment, assets or other property is forfeited to the State on the date stated in the notice in accordance with subsection (1).
- (4) A geothermal resource development agreement is terminated if—
 - (a) rights under a geothermal resource development agreement are abandoned in accordance with sections 31(6) or 32(4);
 - (b) the agreement is invalidated under section 55 or any other law;
 - (c) the obligations under the agreement are executed; or
 - (d) it is terminated by operation of any law of Dominica.

*Division 4 — Alternative Dispute Resolution***57. Dispute Settlement**

Unless, and to the extent that, the geothermal resource development agreement otherwise provides—

- (a) disputes arising under the agreement shall be referred to three arbitrators, one to be appointed by the developer,

one appointed by the Minister, and one appointed by the first two arbitrators.

- (b) the provisions of the Arbitration Act, Chapter 4:50 apply and references in that Act to an arbitration agreement are to be construed as a reference to this section to the extent, if any, modified by this Act or a geothermal resource development agreement.

Division 5 — Miscellaneous

58. Statutory provision obligatory

A provision of a geothermal resources development agreement or other document that derogates from the provisions of this Act is invalid, except to the extent the derogation is expressly authorised by this Act.

59. Schedules

The Minister may, by Order published in the Gazette, amend the Schedules.

60. Regulations

The Minister may make regulations required by this Act and respecting anything that the Minister considers expedient for the administration or enforcement of this Act.

PART X

61. Consequential and transitional provisions

- (1) A person who at the commencement of this Act, is conducting exploration activities for, or is using, geothermal resources under any licence or other authority, does not commit a violation if he or she applies for the relevant geothermal resource development agreement in accordance with the

provisions of this Act within three months of the date this Act comes into force.

- (2) The application described in paragraph (1) above shall be made and determined in accordance with Part VI of this Act.
- (3) In respect of applications under this section—
 - (a) the parties must negotiate on reasonable grounds and in good faith, and must respect all rights granted under existing authorisations to the extent that they are not inconsistent with this Act; and
 - (b) the terms and conditions must be determined by reference to arbitration under section 57, if the parties fail to agree.

62. Amendment of Physical Planning Act

Schedule II of the Physical Planning Act, No. 5 of 2002 is amended by adding the following at the end of the list—

19. Geothermal resource development within the meaning of the Geothermal Resources Development Act.

63. Repeal of Geothermal Energy Act

The Geothermal Energy Act, No. 24 of 1974 (Chapter 85.02) is hereby repealed in its entirety.

SCHEDULE 1
ADVISORY COMMITTEE PROCEDURE FOR DETERMINING APPLICATIONS

(Section 37)

Part A

Applications subject to a competitive process

This process applies only to applications for the grant of a geothermal resource development agreement in a special geothermal zone.

The Advisory Committee must determine the application in accordance with the procedure outlined in the tender documents which documents must include information in respect of

- (a) technical approach and methodology; and
- (b) cost.

Part B

Applications subject to a negotiated process

This process applies to applications for—

- *the grant or renewal of a geothermal resource development agreement in any part of the State not located in a special geothermal zone; and*
 - *the renewal of geothermal resource development agreement in an area that is designated as a special geothermal zone.*
1. Within 7 days of the receipt of an application, the Advisory Committee shall publish a notice containing particulars of the application in the Gazette inviting comments in writing from the public.
 2. Within 60 days of the receipt of the application or, such extended time that the Minister authorises, the Advisory

Committee shall submit a report to the Minister containing its recommendations.

3. In determining the application, the Advisory Committee shall consider any comments and any further information requested in clarification of the comments, received before the expiration of 30 days from the publication of the notice described in item 1.