



## **NIGERIAN ELECTRICITY REGULATORY COMMISSION**

ORDER NO. NERC/ SC062

**BEFORE THE NIGERIAN ELECTRICITY REGULATORY COMMISSION**

### **ORDER FOR THE PAYMENT OF LICENCE FEES** **BY THE SUCCESSOR COMPANIES**

#### **PREAMBLE:**

The Nigerian Electricity Regulatory Commission (NERC) in carrying out its objectives as provided in Section 32(1) of the Electric Power Sector Reform (EPSR) Act, 2005, has the function under Section 32(2) (d) of the Act to “licence and regulate persons engaged in the generation, transmission, system operation, distribution, and trading of electricity.”

Section 23(1) of the EPSR Act stipulates, “On the transfer date specified in the relevant transfer order, the Commission shall issue an interim licence, to each successor company, which shall be valid for a period not exceeding one year.” Furthermore, Section 23(2) of the EPSR Act states that the successor companies shall within 6 months of the grant of the interim licence apply to the Commission for a regular licence in accordance with the provisions of Part IV of this Act.

Section 62 (1) of the Electric Power Sector Reform (EPSR) Act 2005 clearly states that *no person shall construct, own or operate an undertaking, or engage in the business of electricity generation, transmission, system operation, distribution, or trading in electricity, without a licence issued pursuant to the Act or deemed to have been issued under Section 98(2) of the Act.*

Furthermore, Section 62(5) states, *any person who contravenes Section 62(1) commits an offence and is liable on conviction to a fine not exceeding five hundred thousand Naira or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.*

Section 96(1) of the Electric Power sector Reform Act, 2005, empowers the Commission to make Regulations prescribing all matters that by the Act are required or permitted to be prescribed for carrying out or giving effect to the Act.

Section 96(2)(h) of the Electric Power sector Reform Act, 2005, empowers the Commission to make Regulations on fees, levies, and other charges that may be payable by licensees, eligible customers or consumers.

## FACTS:

Pursuant to these provisions of the Act and all other powers enabling it in that behalf, the Commission prepared a Draft Regulation for Licence and Operating Fees. The Draft Regulation was published for comments and observations of the public. Comments and observations received were reflected in the said Draft Regulation. Following the approval of the Commission, the Regulation for Licence and Operating Fees 2006 came into force by Order of the Commission dated February 14, 2006

Clause 4(1) of the said NERC Regulation for Licence and Operating Fees 2006 states that  
“Upon approval by the Commission of an application for a licence, the Commission shall inform the applicant of such approval and be informed of the *licence fee* required to be paid by the applicant before the grant of licence.”

Clause 4(2) further provides that:

“The *licence fee* to be paid shall be as specified in the Schedule.”

Schedule A of the Regulation lists the licence fees payable for grid-connected operations.

In compliance with the provisions of the Act, the Commission granted interim licences to the 18 successor companies on July 1<sup>st</sup>, 2006. The interim licences were for a period of twelve months, and with an expiration date of June 30, 2007.

Through letters dated October 13, 2006 and December 11, 2006, the Commission reminded the successor companies to submit their applications for regular licences by December 31, 2007, six months after the grant of their interim licences. This is to comply with the provisions of Section 23 (2) of the Act, as stated above.

Thereafter, the 18 successor companies submitted their applications to the Commission. An initial check for completeness was done by staff of the Commission. The applications were found to be complete. The Companies were requested to publish the mandatory Statutory Notice in two national newspapers. The publications were made. Thereafter, the Commission conducted a legal, financial and technical evaluation of the licence applications, after which some applications were found to have complied with the requirements for the grant of licences. The two companies that have not been granted licences due to various issues raised by their applications are Jos Distribution Company and Kainji Hydro Electric Plc.

It was then recommended that licences should be issued to the following companies after payment of the fees as follows:

1. Transmission Company of Nigeria	\$250,000.00 or the Naira equivalent
2. Egbin Power Plc	\$200,000.00 or the Naira equivalent
3. Sapele Power Plc	\$200,000.00 or the Naira equivalent
4. Afam Power Plc	\$100,000.00 or the Naira equivalent
5. Ughelli Power Plc	\$100,000.00 or the Naira equivalent
6. Shiroro Hydro Electric Plc	\$100,000.00 or the Naira equivalent
7. Kano Electric Distribution Company	\$50,000.00 or the Naira equivalent
8. Kaduna Electric Distribution Company	\$50,000.00 or the Naira equivalent
9. Yola Electric Distribution Company	\$50,000.00 or the Naira equivalent



10. Enugu Electric Distribution Company	\$50,000.00 or the Naira equivalent
11. Abuja Electric Distribution Company	\$50,000.00 or the Naira equivalent
12. Ibadan Electric Distribution Company	\$50,000.00 or the Naira equivalent
13. Eko Electric Distribution Company	\$50,000.00 or the Naira equivalent
14. Ikeja Electric Distribution Company	\$50,000.00 or the Naira equivalent
15. Port Harcourt Electric Distribution Company	\$50,000.00 or the Naira equivalent
16. Benin Electric Distribution Company	\$50,000.00 or the Naira equivalent

Based on the recommendations of staff, the Commission approved the grant of applicable licences to the companies subject to the payment of the prescribed licence fees. The letters informing the companies of this approval were sent to them on September 17 & 28, 2007. The companies are yet to comply with the directive of the Commission to pay the licence fees, despite repeated demands through letters dated October 19, 2007, and November 9, 2007.

It is important to note that since June 30, 2007, the companies have been operating illegally without licenses, a clear violation of Section 62(1) of the EPSR Act. A meeting between the Commission and the CEOs of the successor companies was held on February 26, 2008, during which the issue of non-payment of their licence fees was discussed. The successor companies were reminded to make the payments, but in response, the CEOs stated their inability to make the required payments. Their requests for derogation were considered by the Commission, and rejected.

**UPON** due consideration of the powers conferred on the Commission under **Section 32(2) (d), 62(1) and 96(2)(h)**, of the Electric Power Sector Reform Act, 2005, and all other powers enabling it in that behalf,

**AND UPON** further consideration of the provisions of **Clause 4(1), 4(2) and Schedule A** of the Regulation for Licence and Operating Fees 2006, as amended.

**IT IS HEREBY ORDERED** that, within 21 days from the date of this Order, the above listed successor Companies shall effect the payment of their respective licence fees, in US Dollars or its Naira equivalent, in compliance with the provisions of the EPSR Act 2005, and the Regulation for Licence and Operating Fees 2006, as amended.

**BY ORDER OF THE COMMISSION**

Signed this 13<sup>th</sup> day of OCTOBER, 2008.

  
**Dr. Ransome Owan**  
 Chairman/CEO