



Terms of Reference for the Engagement of a Dispute Resolution Counsellor for the Nigerian Electricity Supply Industry (NESI)

1. Introduction

The Electric Power Sector Reform (EPSR) Act 2005 empowers the Nigerian Electricity Regulatory Commission (NERC) to issue licenses to persons who wish to participate in the electricity market. Pursuant to Section 71 (2) of the Act, disputes arising from the Market are to be referred to arbitration or determined by the Commission.

NERC encourages and promotes the use of dispute resolution mechanisms apart from the judicial method provided in the Constitution of the Federal Republic of Nigeria. In the Nigerian Electricity Sector Industry (NESI), various bodies/panels in addition to the Commission have been specifically vested with dispute resolution functions. One of these is the Dispute Resolution Counsellor, who in turn is expected to work very closely with the Dispute Resolution Panel.

As the NESI prepares for the entry of greater private participation in the generation and distribution sectors, the commencement of a management contract for TCN and the commencement of the Transition Stage of the Market as determined by the Market Rules, NERC considers that the time is appropriate for the operationalisation of the office of the Dispute Resolution Counsellor (DRC). The DRC will be a competent professional with extensive and deep experience of Alternative Dispute Resolution (ADR) and at least a very good understanding of the evolution and reform imperatives of the NESI and the role that NERC in general and the Market Rules in particular will play in that evolution.

2. Objectives

The assignment of the Dispute Resolution Counsellor is to evolve a system of alternative dispute resolution for Market Participants in the System and Market Operator-controlled Nigerian electricity market; thereby providing regulatory and commercial certainty in the fair and speedy resolution of disputes that arise amongst these Participants.

3. Scope of Work

Specifically, the Dispute Resolution Counsellor shall within the ambit defined within the Market Rules:

- a. Administer and ensure effective operation of the dispute resolution provisions of the Market Rules.
- b. Develop a comprehensive, fair and cost-effective dispute resolution process for Market Participants as well as specify templates for the formal documents that are to be exchanged during dispute resolution processes.
- c. Assist the Commission to develop the criteria and processes for the selection of members of the Dispute Resolution Panel.
- d. Applying the approved criteria and processes, identify and nominate competent, well-trained and experienced professionals with extensive experience in alternative dispute resolution and a good understanding of the NESI and the Market Rules as members of the Dispute Resolution Panel.
- e. Assign members of the Dispute Resolution Panel to arbitrate or otherwise facilitate the resolution of disputes amongst market players governed by the dispute resolution provisions of the Market Rules and the Grid Code.
- f. Review the dispute resolution process provided in the Market Rules vis-a-vis dispute resolution processes used in other electricity markets with a view to making recommendations to the appropriate industry bodies and the Commission on amendments that enhance the effectiveness of these processes.
- g. Organize in collaboration with the Commission, an education programme to acquaint appointed members of the Dispute Resolution Panel and other relevant parties with a comprehensive understanding of the NESI and especially the System and Market Operator-controlled Market and their operations.
- h. Submit an Annual Report and such other reports as may be required by the Commission.

In executing its responsibilities, the Dispute Resolution Counsellor shall comply with all applicable provisions of the Market Rules and the Grid Code.

4. Competency and Expertise Required

The Dispute Resolution Counsellor is expected to possess the following qualifications:

- Bachelors Degree with relevant professional qualifications in Law – with a minimum of second class lower degree. A relevant non-executive master's degree from a reputable tertiary institution obtained by thesis and/or by examination is not compulsory but will confer an advantage.

- Relevant working experience, not less than 20 (twenty) post-NYSC, obtained in the Nigerian Electricity Supply Industry (NESI) or in a Nigerian electricity sector reform agency or an academic institution, a Nigerian or foreign or international financial or commercial or industrial or regulatory institution, enterprise or NGO in a relevant sector or a multilateral development institution or consulting or professional services firm with demonstrable and extensive participation alternative dispute resolution proceedings, preferably in the disputes involving the energy or electricity sector.
- A detailed understanding of the NESI with particular expertise in regulation, regulatory law and economics, licensing and other regulatory practices, project finance, commercial transaction documentation and commercial contract management.
- A detailed understanding and experience of dispute resolution practice and procedures that do not involve civil litigation before the courts, such as mediation, arbitration, and other Dispute resolution mechanisms established by the Commission.
- No affinity, either for himself or his spouse or relative, with TSP, MO, SO, a Market Participant, **a licensee or affiliates** of any of these.

5. Familiarisation and Industry Analysis

The Dispute Resolution Counsellor should be familiar with all pertinent laws, regulations, policies and processes governing the NESI, particularly the Market Rules and the Grid Code. He should also have experience of energy sector project finance and commercial transaction negotiation, documentation and contract management. The Counsellor shall be required to be acquainted with all background documents and preparatory work conducted to date by the Commission, the various licensees and critical counterparties, such as the Bulk Trader, the Gas Aggregation Company of Nigeria and the World Bank.

6. Duration of Term

The DRC shall be appointed for a term of five (5) years (subject to a probationary period as determined by the Commission) and may be eligible for re-appointment for a second and final term of five (5) years.

7. Deliverables

The DRC shall deliver the following:

- An inception report detailing the action plan for implementing the scope of work and making relevant and necessary recommendations.

- A quarterly report on the assignments executed during the previous quarter. The report will indicate actual progress against the work plan and also report action taken in disputes brought before him and the DRP. The regularity and nature of this report may change in the course of the assignment.

8. Administrative Arrangements

The DRC will work closely with the Legal, Licensing & Enforcement Division as well as the Market Competition & Rates Division of the Commission (and any other Units of the Commission) in carrying out its activities. The DRC shall present its budget to the Commission for consideration three months before the commencement of the next financial year.

The successful candidate will be required to execute a contract that will contain the terms of engagement for the office of the Dispute Resolution Counsellor.

9. Conflict of Interest

The DRC shall not, during the term of the assignment and within two years after its expiration, disclose any confidential information relating to the assignment or act on behalf of any IPP or investor intending to invest in the Nigerian electricity industry without the prior written consent of the Commission.