



IN THE MATTER OF THE ELECTRIC POWER SECTOR REFORM ACT 2005

BEFORE THE NIGERIAN ELECTRICITY

REGULATORY COMMISSION

HOLDEN IN LAGOS.

CASE NO: NERC/03/000004/08

IN THE MATTER OF THE WRONGFUL INVOICING OF THE LAGOS STATE
GOVERNMENT AND BREACH OF THE BARGE POWER PURCHASE AGREEMENT

BETWEEN

PETITIONER: ATTORNEY – GENERAL OF LAGOS STATE ON BEHALF OF THE
PEOPLE AND GOVERNMENT OF LAGOS STATE

AND

RESPONDENTS: 1. POWER HOLDING COMPANY OF NIGERIA PLC
2. IKEJA ELECTRICITY DISTRIBUTION COMPANY PLC
3. EKO ELECTRICITY DISTRIBUTION COMPANY PLC
4. TRANSMISSION COMPANY OF NIGERIA PLC

NOTICE OF HEARING

WHEREAS the Petition submitted by the Petitioner against the Respondents for wrongful invoicing and breach of the Barge Power Purchase Agreement was registered by the Commission on the 16th day of September, 2008;

WHEREAS by Regulation 14(6) of the Business Rules of the Commission, **Regulation No: NERC-R-0306 of 2006**, the Petition was to be scheduled within 45 days from the date of registration.

WHEREAS by reason of the need to ensure that the issues raised in the Petition are handled in such a manner as to meet the ends of justice, the Commission in accordance with **Section 47 (2) EPSR Act** is considering the technical and professional questions that arose in the course of reviewing the Petition for hearing and has in accordance with Regulation 14(6) of the Business Rule of the Commission extended the time within which to hear the Petition.

TAKE NOTICE THEREFORE that a Hearing Panel constituted pursuant to the Electric Power Sector Reform Act 2005, will be moved on the **17th day of November 2008** at the hour of 9 o'clock in the forenoon or so soon thereafter at the courtroom of the **Investment & Securities Tribunal** Plot 821 Samuel Manuwa Street, Off Aboyade Cole, Victoria Island, Lagos, as parties or their respective counsel on their behalf, and interested parties may be heard in the complaint of wrongful invoicing of LASG and the breach of Barge PPA by the Petitioner.

SUMMARY OF FACTS:

The Attorney General of Lagos brought a Petition on behalf of Lagos State Government and the people of Lagos state for wrongful invoicing and breach of Barge Power Purchase Agreement entered into between the Petitioners and the Respondents.

The Petitioner avers that the Respondents have not complied with their power supply obligation under the Barge Power Purchase Agreement (BPPA) entered into between the Petitioner and Respondents.

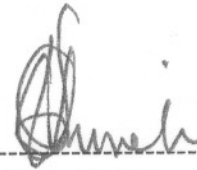
The Petitioner further avers that power being produced by AES, an Independent Power Producer (IPP) which was to be supplied by NEPA (PHCN) to the territory of Lagos state and which was to be *'In addition to, not in substitution for'* any electricity that is generated otherwise by the IPP, was not devoted to customers in the state.

The Petitioner further avers that in clear breach of these supply obligations, the Federal Ministry of Finance continued to make direct debit on the states statutory allocations inspite of its instructions to the Federal Ministry of Finance to stop the debits.

ISSUES FOR DETERMINATION:

Issues for determination at the Hearing include:

1. Whether the 1st Respondents, and or the 2nd, 3rd and 4th Respondents are in breach of their electricity supply obligation under the BPPA and EPSR Act to the Government and people of Lagos state.
2. Whether it is possible for the Respondents to provide the contracted power under the BPPA in addition to the entitled power of the state generated other than the IPP.
3. Whether the technical condition of the infrastructure available in the power sector in Nigeria has made it impossible for the agreement to be implemented.
4. Whether the continued direct debit of the Lagos state statutory allocation by the Federal Ministry of Finance is in line with the BPPA?



Mrs. O. Dinneh
DGM (Legal, Licensing & Enforcement)

ON NOTICE

- (1.) TO THE PEOPLE AND GOVERNMENT OF LAGOS STATE
c/o Olasupo Shasore (SAN)
Petitioner's Counsel
c/o Attorney-General and Honourable Commissioner for Justice of Lagos State
Lagos State Secretariat,
Alausa – Ikeja.

1st -4th Respondents

- (2.) POWER HOLDING COMPANY OF NIGERIA (PHCN)
- (3.) IKEJA ELECTRICITY DISTRIBUTION CO. PLC
- (4.) EKO ELECTRICITY DISTRIBUTION COMPANY PLC
- (5.) TRANSMISSION COMPANY OF NIGERIA

c/o Their Solicitor
Wali-Uwais & Co.
Plot 2669 Aguiyi Ironsi Street,
Maitama, Abuja.

(6.) HON. MINISTER,
FEDERAL MINISTRY OF FINANCE,
ABUJA.