

BEFORE THE NIGERIAN ELECTRICITY REGULATORY COMMISSION HOLDEN IN ABUJA

CASE NO NERC.....

IN THE MATTER OF A PETITION AGAINST
BREACH OF ELECTRICAL POWER SUPPLY OBLIGATIONS TO THE TERRITORY
AND PEOPLE OF LAGOS STATE OF NIGERIA

AND

WRONGFUL INVOICING OF THE GOVERNMENT OF LAGOS STATE

BETWEEN

PETITIONER: LAGOS STATE GOVERNMENT OF NIGERIA

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

RESPONDENTS' OBJECTION TO THE PETITIONER'S PETITION
BROUGHT PURSUANT TO SECTION 251 (1) (r) OF THE CONSTITUTION
OF THE FEDERAL REPUBLIC OF NIGERIA AND SECTION 1 (2), 2, 4 AND 5
OF THE ARBITRATION AND CONCILIATION ACT 1990

TAKE NOTICE, that this Honourable Commission will be moved for an Order striking out this Petition against the Respondents for lack of jurisdiction of this Honourable Commission to adjudicate over this matter or **IN THE ALTERNATIVE** for an Order of this Honourable Commission staying further proceedings in the present Petition pending referral of the dispute between the Petitioner and the Respondents to arbitration.

GROUNDS UPON WHICH THE OBJECTION IS BROUGHT

1. That the subject matter of this Petition is a breach of contract and does not fall within the contemplations and purview of the provisions of Section 32 of the Electric Power Sector Reform Act Cap E7, Laws of the Federation of Nigeria 2004.

2. This Petition involves a dispute between a Federal Government Agency and a State government, as such, this Commission is not the appropriate forum for the adjudication of the dispute involving them.
 3. There is an arbitration clause contained in the Agreement dated 30th June 2000, between the Petitioner and the Respondents.
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TAKE FURTHER NOTICE, that the Respondents will at the hearing of this Objection, rely on the Petitioner's Petition and other processes filed before this Honourable Commission, legal authorities and points of law in arguing this application.

DATED THIS

DAY OF

2008



.....
JULIA UTULU (MRS.)
RESPONDENTS' COUNSEL
WALI-UWAIS & CO
PLOT 2669, AGUIYI IRONSI STREET
MAITAMA, ABUJA

FOR SERVICE ON

FOR SERVICE ON

THE PETITIONER

LAGOS STATE GOVERNMENT

C/O OLASUPO SHASORE (SAN)

PETITIONER'S COUNSEL

ATTORNEY GENERAL AND HONOURABLE COMMISSIONER FOR JUSTICE

LAGOS STATE SECRETARIAT

ALAUZA, IKEJA

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ALAUJA, IKEJA

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**RESPONDENTS: 1. POWER HOLDING COMPANY OF NIGERIA PLC
2. IKEJA ELECTRICITY DISTRIBUTION COMPANY PLC
3. EKO ELECTRICITY DISTRIBUTION COMPANY PLC
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AFFIDAVIT IN SUPPORT OF APPLICATION

I, Godwin Tyoka'a male, Adult, Christian and Nigerian citizen of Afri-Investment House, Plot 2669, Aguiyi Ironsi Street, Maitama Abuja do solemnly swear as follows:

1. That I am the Litigation Clerk in the Law Firm of Wali-Uwais & Co and by virtue of which I am conversant with the facts of this case.
2. That I have the consent and the authority of the Respondents in this case and my employer to depose to this Affidavit.
3. That I have been informed by Mrs Julia Utulu, Counsel to the Respondents which I verily believe to be true, that the Petitioner's claim is not within the jurisdiction of this Honourable Commission, in view of the subject matter and reliefs sought for in the Petition.
4. Furthermore, that the Petitioner's action before this Honourable Commission is premature because the Arbitration Clause at paragraph 9 of the Agreement between

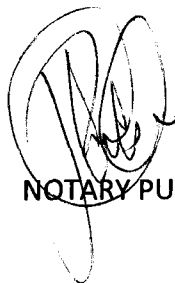
the Parties dated 30th June, 2000 is valid and binding on the Parties. A copy of this Agreement is annexed hereto and marked Exhi R1.

5. That the said Arbitration Clause being valid and binding, the terms thereof must be exhaustively exercised before recourse to this Honourable Commission, and the Respondents are willing and ready to submit to Arbitration in accordance with the said Agreement.
6. That it will serve the interest of justice if this Honourable Commission grants this Application and gives effect to the intentions of the Parties herein.
7. That the Petitioner's Petition is lacking in merit being an abuse of court process and should be accordingly struck out.
8. That I make this oath conscientiously believing same to be true and in accordance with the Oath Act 1990.


DEPONENT

20th October
SWORN TO THIS ----- DAY OF 2008

BEFORE ME



NOTARY PUBLIC

NENE CHAMBERS
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