



NIGERIAN ELECTRICITY REGULATORY COMMISSION

**BEFORE THE NIGERIAN ELECTRICITY REGULATORY COMMISSION
HOLDEN AT ABUJA**

CASENO: NERC/10/0011/08

**IN THE MATTER OF A PETITION AGAINST THE UNLAWFUL POWER SUPPLY
ARRANGEMENT/SALE BEING CARRIED ON BY HFP PROPERTIES LTD IN IKOTA SHOPPING
COMPLEX, LAGOS-EPE EXPRESSWAY, LAGOS STATE.**

BETWEEN:

PETITIONER:

**PETADIS ENTERPRISES
SHOPS E-199-201,233-238
IKOTA SHOPPING COMPLEX
KM 22 LAGOS-EPE EXPRESSWAY,
LEKKI PENNINSULA, IKOTA-AJAH
LAGOS.**

AND

RESPONDENT:

**HFP PROPERTIES LTD
SHOP H58-61, IKOTA SHOPPING
COMPLEX,
KM 22, LAGOS-EPE EXPRESSWAY,
LEKKI PENNINSULA, IKOTA-AJAH,
LAGOS.**

DECISION

On the 10th day of November, 2008, the Petitioner through their Counsel Paul O. Abraham, Esq. presented a petition against the Respondent urging the Commission to grant the following reliefs:

1. A declaration that the power supply arrangement by the Respondent is contrary to the Electric Power Sector Reform Act, 2005, and therefore illegal.
2. A declaration that the Respondent's act of generating power over and above One Megawatts (MW) at a site for onward sale to the Petitioner and other shop owners for a price without the requisite licence is illegal.
3. A declaration that the Respondent's act of disconnection is illegal.
4. An Order directing the Respondent to refund forthwith all monies totalling N596,395.11 (Five Hundred and Ninety Six Thousand, Three Hundred and Ninety Five Naira Eleven Kobo) only, collected from the Petitioner under the said power supply arrangement and all other monies collected as generator connection/ contribution fees.
5. An Order directing the Respondent to desist forthwith from generating, distributing and trading in electricity power at Ikota Shopping Complex.
6. An Order directing the Respondent forthwith to hand over to the appropriate persons authorized to manage power supply within the Complex.
7. Any such Order or Orders as the Commission may deem fit to make in the circumstances.

On the 21st day of January, 2009, the Commission received the Respondent's Objection/ Reply to the Petition wherein the Respondent contends that the entire petition is unfounded, baseless, speculative and unmeritorious and that it be dismissed with substantial costs.

Pursuant to the power conferred on the Commission under Section 62 (4) of the Electric Power Sector Reform Act, 2005 and consistent with the provisions of Order 18 Rules (1) and (4) of the Business Rules of the Commission, the Commission on the 10th day of March, 2009, dispatched a highly professional team of its staff on a fact finding mission, and to dialogue with the feuding parties on the issues raised in the petition and Objection / Reply to the Petition.

At the close of deliberations at that meeting, the following decisions and or findings were made:

- (1.) That the Respondent (HFP Properties Ltd) adopts a new and clearer billing format that shows a clear distinction between the Bills from EEDC supply line and those emanating from the generators.
- (2.) That the Commission was to provide the Respondent with the sample of the new billing format.
- (3.) That since supply from EEDC and that from the generators cannot be easily distinguished as both use the same distribution network, the Respondent was enjoined to adopt a methodology for identifying which supply constitutes which proportion of any day's power supply, e.g. by keeping a Log book for the duration of supply from both sources, or in the alternative, consider metering the generator supply.
- (4.) That the generators have a capacity in excess of the threshold for Captive Generation. Consequently, the Respondent was advised to apply and obtain a permit from the commission in order to validate its operation in the complex.
- (5.) The Respondent appealed to the commission to prevail on the EEDC to calibrate the meters in the complex.
- (6.) That it is highly imperative to contact EEDC to give an explanation as to why the distribution network in the shopping complex was not being maintained by them.
- (7.) That there was need for the Ikota shopping complex Association to meet with the commission's representatives.

Another meeting was then scheduled by the Commission with HFP, Ikota Shopping Complex Association Members (ISCOA) and EEDC staff on the 28th, May, 2009, for an on-the-spot assessment of the electricity supply arrangement\ancillary matters in the Complex.

In the course of deliberations in that meeting, the following issues were raised:

- a) Excessive billing by the HFP from EEDC.
- b) High cost of running the generators
- c) Electricity theft
- d) Lack of proper communication between HFP and Shop Owners\Operators
- e) Discrepancy in the figures of diesel supply for the generators.
- f) The integrity of electricity meters being used to generate bills for the various units.

These issues were later referred to the Electricity Committee constituted by the Shop Owners with the mandate to investigate and report back to the commission.

Meanwhile, the result of the Commission's on-the-spot findings shows that:

- 1) EEDC installed maximum demand meters on every transformer, while the Respondent (HFP Properties) has "check meters" installed alongside each EEDC meter; a practice which the EEDC claim they did not consent to, neither were they aware of.
- 2) Two shops were visited to confirm the functionality of the meters. While one of the shops has a properly functional meter, the meter in the other shop was not reading even when all electrical appliances were on; presupposing that it may probably have been tampered with.
- 3) Generators were not metered.
- 4) Some facilities were also not metered which may be responsible for the huge losses and high bills.

The outcome of that committee's report and or finding submitted to the Commission and the respondent respectively, is summarised as follows;

- 1) That the 75,000 litres of diesel quoted by HFP Properties in their April, 2009, bill to the petitioner and shop owners/operators, only 56, 800 litres was countersigned by the authorized signatories. The difference of 18,200 litres is unaccounted for by the Respondent.
- 2) Glaring errors were discovered in the reading information appearing in the bill sent by the HFP to Shops, as it was obvious that not all the shops were billed according to their consumption rate as is the case with the shops whose meters were not reading although all the appliances were on.
- 3) The respondent was discovered not to be paying bills for all the consumption in their offices.
- 4) Some shops like those used by the United Bank of Africa and Intercontinental Bank receive bills from generator service even when they are not connected to the generator, as both operate private generators
- 5) Some shops were wrongly listed as inactive e.g. CIS Properties, whereas they are active.
- 6) Although the Respondent maintains a procedure of monetary sanctions against shops caught in fraudulent activities, such monies are usually not accounted for by the Respondent to the Shop Owners.
- 7) The Respondent refused to avail the Committee with a copy of the generator receipt which the Shop Owners actually contributed money for them to purchase for verification.

The recommendations of that Committee was duly forwarded to the Commission and the Respondent, respectively. And on the 27th of July, 2009, the Commission wrote to the Respondent seeking its comments and or objections to the findings and recommendations of the Committee, if any, but no objection was received from the Respondent.

Accordingly the Commission after a careful review of the facts and circumstances of the case hereby issues the following directives/ Orders:

1. Pursuant to Section 69(1) of the EPSR Act, 2005, and consistent with the decision of the Commission in Case No: NERC/H/03/07 and the findings of the Commission, the Commission hereby declares the electricity distribution arrangement in the Ikota Shopping Complex illegal, as such transfer or delegation from the EEDC to the Respondent is tantamount to the Respondent engaging in regulated activities without a licence.
2. EEDC is bound by the terms and conditions of its licence, by virtue of Section 69 of the EPSR Act 2005, not to, without the consent of the commission, transfer, assign or cede to any person, all or any part of the licensed business.

Accordingly, in order to regulate and legitimize the electricity distribution arrangements between EEDC and the Respondent in the Complex, EEDC has the option of applying to the commission within 30 days from the date of this order for its consent to enter into the electricity distribution arrangement envisaged with the Respondent.

In the event that EEDC fails to apply for consent within the 30 days time frame herein stipulated, the EEDC should forthwith takeover the electricity distribution network in Ikota Shopping Complex.

3. The nine 500KVA Generators being used in the Estate with about a total generating capacity of 4.5MW is in excess of the 1MW in aggregate at the site for which a licence is required, as envisaged by Section 62 of the ESPR Act, 2005.

Being Captive Generation, the Respondent requires a Captive Generation Permit from the commission since the generating capacity falls within the threshold of the requirement for a Permit. Accordingly, the Respondent is hereby ORDERED

- to within 30 days of the receipt of this decision, apply and obtain a Captive Generation Permit
4. The Respondent is hereby, subject to the commission's approval of the electricity arrangement with EEDC, directed to within 30 days from date from the date of receipt of this decision comply strictly with the billing format issued to it in the meeting of 10th march, 2009, and revert back to the commission. The format should conform to the installation, calibration and operation check meters as stipulated in the metering code.
 5. Electricity bills should be clearly separated from and not joined with generation consumption. This will obviate the incessant complaints by the petitioner and the Shop Owners of the discrepancies associated with the previous billing system.

THE OFFICIAL SEAL OF THE COMMISSION IS HEREBY AFFIXED THIS 28th DAY OF DECEMBER 2009.

SIGNED:
MALLAM IMAMUDDEEN TALBA
ADMINISTRATOR/CEO

