



## **NIGERIAN ELECTRICITY REGULATORY COMMISSION**

**BEFORE THE NIGERIAN ELECTRICITY REGULATORY COMMISSION**

**HOLDEN AT ABUJA**

**CASE NO: NERC/10/0001/2011**

**IN THE MATTER OF:**

- 1. DISPUTED ELECTRICITY BILL IN THE SUM OF N32MILLION ADJUSTED TO N25 MILLION ON ACCOUNT OF CROWN ESTATE, LEKKI PENINSULA**
- 2. BREACH OF AGREEMENT REACHED BY PARTIES ON THE RESOLUTION OF BILLING DISPUTE**
- 3. LACK OF GOOD FAITH IN DEALINGS**
- 4. WRONGFUL DISCONNECTION OF CROWN ESTATES LEKKI PENINSULA FROM ELECTRICITY SUPPLY SINCE AUGUST 2011**

**BETWEEN:**

**PETITIONER..... CROWN REALTIES MANAGEMENT LTD**

**VS.**

**RESPONDENTS .....1. POWER HOLDING COMPANY OF NIGERIA PLC**

**2. EKO ELECTRICITY DISTRIBUTION PLC**

**BEFORE**

- 1. DR. SAM AMADI-----CHAIRMAN**
- 2. DR. STEVEN ANDZENGE, MON-----COMMISSIONER**
- 3. MR. EYO EKPO-----COMMISSIONER**
- 4. MRS. MARY AWOLOKUN-----COMMISSIONER**
- 5. MR. PATRICK UMEH-----COMMISSIONER**

**APPEARANCES:**

WUYI OGUNYINKA Esq.....For the Petitioner  
L.A. ORESANYA Esq with K.E. OSEMERE.....For the Respondents  
JAMES EMADOYE (PRESIDENT CEPORA)  
OMAJUWA AKPERI (VICE PRESIDENT CEPORA)..... For interveners

**RULING**

This is a ruling on the preliminary objection raised by the 2<sup>nd</sup> Respondent, Eko Electricity Distribution Company Plc challenging the jurisdiction of the Nigerian Electricity Regulatory Commission (the Commission) to entertain the petition brought against the Respondents by Crown Realities Management Ltd seeking an Order striking out the petition against the 2<sup>nd</sup> Respondent for lack of jurisdiction over the matter. The ground upon which the application was made is that:

The Commission lacks jurisdiction to entertain the matter by virtue of Regulation 6 of the Customer Complaints Handling Procedure which confers jurisdiction on the Forum to entertain customer complaints within the entire operational area of the distribution Licensee except offences as specified in S.93 and 94 of the EPSR Act.

**FACTS OF THE MATTER**

The Petitioner, Crown Realities Management Ltd through its solicitors TERRA MARINE ATTORNEYS, Legal Practitioners of 95 Awolowo Road, SW Ikoyi, Lagos filed two petitions both dated 30<sup>th</sup> day of September 2011, against the Respondents, Power Holding Company of Nigeria Ltd and Eko Electricity Distribution Plc.

The Petitioner, Crown Realities Management Ltd, managers of Crown Estate Lekki Peninsula Lagos had 3 grounds of complaints namely; wrongful disconnection of Crown Estates from electricity supply; disputed billing in respect of electricity supply to the estate and breach of the agreement between the Petitioner and Eko Distribution Company on the resolution of the disputed billing. The Petition was supported by a 29 paragraphed affidavit dated 6<sup>th</sup> of September 2011, sworn to by one Wole Ogungbola, a Consultant to the Petitioner.

The Petitioner averred that the electricity supply arrangement in Crown Estate including the metering and billing of the supply was governed by a contractual arrangement between the Petitioner and the 2<sup>nd</sup> Respondent whereby the estate was bulk metered with the Petitioner as the only customer known to the Respondents.



The Petitioner further averred that there was a continuous hike in the Respondents' electricity bill generated from the bulk/main meter against the Estate. This continued until there were huge disparities between the amounts realized by the Petitioner through sale of tokens and the Respondents' electricity bill. It turned out that the Respondents' meter became dysfunctional and the Respondents resorted to issuing the Petitioner with estimated bills, the computation of which the Petitioner had challenged.

The Petitioner contended that after series of discussions on the disputed electricity bill, an agreement was reached between the parties on resolving the dispute which the Respondents had reneged on.

All attempts to resolve the dispute failed and the Petitioner consequently filed a Petition before the Commission seeking the following reliefs:

1. Restoration of electricity supply to Crown Estate pending the resolution and/or determination of the billing and amount in dispute between the parties.
2. Implementation of the terms of the agreement reached by the parties as reflected in the joint review of the average of the three months (May, June & July 2011) reading and use the monthly average derived to review the disputed bills and amount for the disputed period accordingly.
3. Any further Order that the Commission may deem fit to make in the circumstances.

In a second Petition, Case No: NERC/12/0004/11, between the same parties and also filed before the Commission on 30<sup>th</sup> September 2011, the Petitioner, Crown Realities Ltd, managers of Crown Estate Lekki Peninsula Lagos claimed that by virtue of a Deed of sublease executed between the Petitioner and each allottee of plot in the estate, management, administration and authority over Crown Estate resided in the Developer of the estate who is Crown Realities Management Ltd. This Petition was also supported by a 29 paragraphed affidavit deposed to by the same deponent, one Wole Ogungbola, the Petitioner's Consultant on the 6<sup>th</sup> of September 2011.

The Petitioner alleged that Crown Realities Property Owners and Residents Association (CEPORA) comprising some residents of the Estate had engaged in acts inimical to the peaceful coexistence of the residents of the estate as well as sabotaging the Petitioners development efforts in the Estate.

The Petitioner further averred that following a dispute on electricity bills between the Petitioner and the Respondents, a way of resolving the dispute was arrived at but was scuttled by the Respondent with the connivance of CEPORA.

All attempts made by the Petitioner to resolve the dispute failed consequent upon which this second Petition was filed urging the Commission to issue directives to the Respondents to:

1. Cease and desist from engaging with CEPORA or any person other than its customer the Petitioner on account of electricity matter in Crown Estate which is the Manager of Crown Estate.
2. Cease and desist from meddling in the internal affairs of Crown Estate or undermine the authority of the Management of the Estate in any manner whatsoever.
3. To issue a written apology to the management of Crown Estate and advise the residents accordingly.
4. Make any further Order that the Commission may deem fit in the circumstances including an interim order restraining the Respondents from dealing with anyone in the Estate other than the Petitioner

In addition, the Petitioner filed a Motion Ex parte dated 30<sup>th</sup> September, 2011 pursuant to chapter II, Section 21(2) and Section 34 of the Business Rules of the Nigerian Electricity Regulatory Commission praying the Commission for an Interim Order directing the Respondents to forthwith resume the supply of electricity to and reconnect electricity power supply to its customer, Crown Estate for which supply the Customer is willing and able to pay pending the hearing and determination of the Petitioner's pending petition.

The application was supported by a 29 paragraph affidavit also sworn to by one Wole Ogungbola, Consultant to the Petitioner who claims to manage Crown Estate through his Real Estate Firm, Wole Ogungbola & Co.

In its ruling dated 18 October 2011, after considering the arguments by the Petitioner/Applicant, the Commission ordered the immediate reconnection of Crown Estate to electricity supply at a cost the Petitioner is willing and able to pay pending the hearing and determination of the substantive Petition before the Commission.

The Respondents subsequently filed its statement of defence dated 18<sup>th</sup> November, 2011, supported by a 61 paragraph affidavit also dated 18<sup>th</sup> day of November, 2011, sworn to by one Ihuoma Chukwuka-Umekwe, female, and a Senior Legal Officer with the Respondent, urging the Commission to hold that the petition is frivolous and an abuse of process and that the petitioner is not entitled to any of the reliefs sought before the Commission.

The Commission scheduled a date for hearing the matter for 12<sup>th</sup> December 2011 at the Commission's Hearing Room, Abuja.

At the hearing of the substantive petition on 12<sup>th</sup> December 2011, Counsel for the Respondent raised a preliminary objection challenging the Commission's jurisdiction to entertain the petition based on the provisions of Section 6 of the Customer Complaint Handling; Standard and Procedure(CCHSP) Regulations, which vests the power to hear customer complaints on the



Customer Complaints Unit (CCU) of the distribution company and thereafter the Customer Complaint Forum (the Forum) on appeal.

Counsel argued that pursuant to Section 96 of the Electric Power Sector Reform Act 2005, the Commission is empowered to make regulations for the performance of the Commission's functions, and in so doing, developed the **Customer Complaints Handling; Standard and Procedure Regulation**, which among other things provides for the process for handling of customer complaints which the Commission is bound to adhere to.

Counsel contended that if any of the parties was dissatisfied with the decisions of the CCU and the Forum, such a party can then have recourse to the Commission by way of appeal.

Counsel further submitted that the Petitioner had filed a complaint before the Forum, abandoned it and sent a petition to the Commission. He contended that by so doing, the Petitioner had not complied with the process provided for in the Customer Complaints Handling; Standard and Procedure Regulation. He further contended that the Petitioner misguided the Commission to make an Interim Order which he alleged was working hardship on the Respondents. He posited that the Petition before the Commission is therefore premature and urged the Commission to disregard it and redirect the matter to the Eko Forum for determination.

Furthermore, Counsel drew the Commission's attention to the use of the word "**shall**" in paragraph 6 of the Customer Complaints Handling; Standards and Procedure and argued that this was a mandatory provision and as such the Forum must first entertain the matter.

In his reply, the Petitioner's Counsel submitted that the Commission has jurisdiction to entertain the Petition by virtue of the power conferred on it by the enabling law, the Electric Power Sector Reform (EPSR) Act 2005 (the Act).

He submitted that Section 47 of the Act empowers the Commission to hold a hearing on any matter and contended that a regulation made by the Commission can not prevail over the Act. He posited that it is a misconception to hold that all disputes must first be heard by the Customer Complaints Units (CCU) and the Forum, and thereafter the Commission as an appeal. He drew an analogy with the regular courts where appeal courts act as courts of first instance in some cases.

Counsel further contended that the Act which empowers the Commission to make Regulations also empowers the Commission to entertain complaints and petitions. In this regard, he drew the Panel's attention to the provisions of Paragraph 36 of the NERC Business Rules which empowers the Commission to dispense with requirement of any of its regulation in specific cases and that indeed the Commission had in a previous case exercised original jurisdiction to entertain a matter without first referring it to the Customer Complaints Forum. He pointed out

that the Respondents' Counsel had not shown how his clients will be prejudiced if the matter was heard at first instance by the Commission.

Regarding the Interim Order made by the Commission, Counsel contended that the order was proper and that the Respondents had not shown the hardships they suffered by the Interim Order.

Following the address by Counsel to both Parties, the Commission reserved its Ruling on the preliminary objection.

### **ISSUES FOR DETERMINATION**

The Commission having listened to the arguments of both Parties identified the issues for determination as follows:

- (1) Whether the Commission has jurisdiction to hear the petition brought by Crown Realities Management Ltd, the Petitioner; and
- (2) Whether this matter falls within the ambit of Paragraph 36 of the NERC Business Rules enabling the Commission dispense with the requirement of any of its regulations.

On the first issue, Respondents' Counsel had argued that the matter had been filed before the Customer Complaints Forum in accordance with the NERC Regulation on Customer Complaints Handling; Standards and Procedure (CCHSP) and therefore by that act the Petitioner had conceded to the jurisdiction of the Forum.

The CCHSP clearly articulates the matters that can be entertained before the Customer Complaints Unit (CCU) and the Forum. Section 3(1) of the CCHSP states "Every Distribution Licensee shall establish Customer Complaints Unit within its premises. The Unit shall have responsibility of receiving and resolving customer complaints as in Section 2 subsection (6) of these Regulations". Section 2(6) defines "complaints" as any allegation in writing made by a complainant, which may include but not restricted to the following:

- (iii) the Distribution Licensee has for the electricity services mentioned in the complaint, charged a price in excess of the price fixed by the Commission for supply of electricity and allied services;
- (v) recovery of expenses incurred in excess of charges approved by the Commission in providing an electricity line or plant;



(vi) any other act that affects the fulfillment of the contractual relation between the customer and the Distribution Licensee; or is in contravention of the provisions of any Order of the Commission or law for the time being in force.

Section 3(9) of the CCHSP states: “Any customer dissatisfied with the outcome of the handling of his complaint(s) by the Customer Complaints Unit or encounters delay/failure in the handling of such complaint(s) may refer his complaint(s) to the Forum”.

From the above, it is clear that this case which has to do with disputed electricity bill and breach of agreement between a customer, Crown Estate Realities Management Limited and Eko Electricity Distribution, being a Licensee of the Commission falls within the ambit of Section 2 of the CCHSP being a matter in which the CCU and the Forum can adjudicate. This indeed was not controverted by the Petitioner’s Counsel who had conceded in his affidavit that he had approached the Forum after attempting unsuccessfully to resolve the dispute at the CCU but was advised by the Chairperson of the Forum that the Forum was yet to take off. The Commission acknowledges this admission by the Petitioner’s Counsel that the Forum is the right avenue for entertaining the complaint.

Having filed the Petition before the Commission in line with Rules 11-14 of the NERC Business Rules, this leads the Panel to the second issue as to whether this matter is one that falls within the contemplation of Section 36 of the NERC Business Rules. The section states “The Commission shall have the power to dispense with the requirements of any of the Regulations in a specific case or cases subject to such terms and conditions as may be specified; provided notice is given to the affected Parties”. The question here is whether this matter falls within those “specific cases”.

“Petition” is defined in Black’s Law Dictionary, Eight Edition as “a formal written request presented to a court or other official body”.

Burton’s Legal Thesaurus, Third Edition at page 404 defined “Petition” as “adjuration, application, bid, call for aid, demand, earnest request, entreaty, formal writing embodying a request, formal written plea, formal written request..... written application for relief”. The same Burton’ Legal Thesaurus at page 98 defined “complaint” as “accusal, accusation, allegation.....formal allegation, grievance....petition...” It is interesting to note here that the definition of “complaint” actually includes “petition” even though a “petition” from its definition above seems to sound slightly more formal. The difference seems so thin that only the instrument prescribing their usage can state categorically when each is used.

The NERC Business Rules defines “Petitions” as “All petitions, applications, appeals, replies, rejoinders in respect of Petitions and supplemental pleadings in respect of any matter before the Commission”. Unlike the provisions of CCHSP which cites examples of cases over which the CCU and Forum can preside, no such provision exists for Petition in the Business Rules.

However, the Electric Power Sector Reform (EPSR) Act 2005 mentions certain instances where the Commission may conduct hearing.

Section 47 (1) of the EPSR Act 2005 states “The Commission may hold a hearing of any matter which under this Act or any other enactment is required or permitted to conduct or on which is required or permitted to take any action and the Commission shall hold public hearing on matters which the Commission determines to be of significant interest to the general public”.

In addition, Section 50 of the EPSR Act 2005 states that any person aggrieved by a decision of the Commission not to issue a licence; any term or condition of a licence issued to him, refusal by the Commission to renew, amend a licence; a decision of the Commission with respect to prices or tariffs, may apply to the Commission for review of the decision, order or refusal.

Sections 47 and 50 of the EPSR Act 2005 cited above give an indication of matters which may be entertained by the Commission being matters which are of public interest, for example issues relating to licensing functions of the Commission and issues relating to price setting and tariffs e.g the Multi Year Tariff Order (MYTO).

The procedure for conducting the proceedings in Sections 47 and 50 of the EPSR Act 2005 is articulated in Section 10 of the NERC Business Rules.

Having regard to the foregoing, it does seem that the issues in this Petition fall within Section 2(6) of the CCHSP on which the CCU and the Forum have jurisdiction.

On the appropriateness or otherwise of the Interim Order issued by the Commission, we note from the Petitioner’s claim that electricity to the Crown Estate had been disconnected since August 2011. Paragraph 10(1)(d) of the NERC Regulation on Connection and Disconnection Procedures for Electricity Services states that a Distribution Company shall not disconnect a customer’s supply of electricity for non-payment where the Customer has made a complaint concerning the unpaid bill in accordance with the Commission’s Customer Complaint Procedure and the complaint remains unresolved. The affidavit submitted with the Petition indicates that electricity supply to the Estate had been disconnected since August 2011 while the unpaid bill was being contested.

This informed the Commission’s decision to grant the Interim Order that “Éko Distribution Company Plc immediately resumes and reconnects electricity power supply to Crown Estate, Lekki peninsula, Lagos-Epe Expressway, Lagos State for which the Petitioner is willing and able to pay pending the hearing and determination of the substantive petition before the Commission.” We find that no hardship will be suffered by the Respondent by virtue of this Order.

Regarding the petitioner’s contention that the Commission, like an Appeal Court can hear matters at first instance and that the Commission can also suspend the provisions of the CCHSP



and entertain the matter, the Commission is of the view that the petitioner having commenced the process of having his complaint addressed in accordance with the CCHSP, it no longer falls within the category of cases which the Commission can hear as such.

Also, suspending the provisions of the CCHSP would be tantamount to the Commission destroying a regulatory regime for the power sector which the Commission is at the forefront in championing; more so as no special circumstance has been made out for such extraordinary action to be taken.

It is incumbent on the Commission to ensure compliance with its regulations and give clarity on the procedure for handling disputes, disagreements and complaints arising from the day to day dealings of customers with the Licensees of the Commission.

As a regulatory body, the Commission cannot allow its procedures to be overreached. To do so would be tantamount to opening a floodgate to inundate the Commission with complaints which are statutorily meant to be channeled to the CCU or Forum for redress.

Without going into the merit of the Petitions, the Commission is of the view that the Petitioner has a complaint and is therefore advised to exhaust the redress mechanism he commenced before approaching the Commission on appeal if dissatisfied with the outcome at the Forum.

The Commission is of the view that the Petitioner's complaints deserve to be considered and resolved but holds that the proper medium for resolution at this stage is the Eko Forum where the matter was initially taken to. We understand that when the Petitioner initially approached the Forum with the complaints the Forum had not commenced operations. The Forum has subsequently been properly constituted and commenced operation. Petitioner's Counsel may therefore submit the complaint to the Eko Forum accordingly.

The preliminary objection is therefore upheld and the petition hereby struck out.

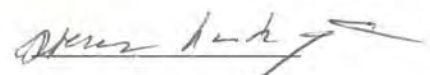
THE OFFICIAL SEAL OF THE COMMISSION IS HEREBY AFFIXED

THIS 16<sup>th</sup> DAY OF March 2012

SIGNED



Dr. Sam Amadi  
Chairman



Dr. Steven Andzenge, MON  
Commissioner  
(Legal, Licensing & Enforcement)

Eyo Olagoke Ekpo  
Commissioner  
(Market, Competition & Rates)

Engr. Mrs. Mary Awolokun  
Commissioner  
(Engineering, Safety & Standards)

Patrick Umeh  
Commissioner  
(Finance & Management Services)