



**NIGERIAN ELECTRICITY REGULATORY COMMISSION**

**RULES FOR THE INTERIM PERIOD BETWEEN COMPLETION OF PRIVATISATION AND THE  
START OF THE TRANSITIONAL ELECTRICITY MARKET (TEM) 2013**



**Regulation No: NERC-0113**  
**NIGERIAN ELECTRICITY REGULATORY COMMISSION**

In exercise of the powers to make Regulations conferred by Section 96 of the Electric Power Sector Reform Act 2005 (Act No. 6 of 2005), the Nigerian Electricity Regulatory Commission makes the following Rules for the Interim Period Between Completion of Privatisation and the Start of the Transitional Electricity Market.

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## GENERAL PROVISIONS

### Title

1. This instrument may be cited as Rules for the Interim Period between Completion of Privatisation and the Start of the Transitional Electricity Market of the Nigeria Electricity Supply Industry (hereinafter referred to as these "Rules").

### Commencement and Termination

2. These Rules shall come into force on the Effective Date and shall cease to have effect on the first day of the calendar month following the declaration by the Minister of Power that the Transitional Electricity Market (hereinafter referred to as "TEM") is operational pursuant to the Market Rules.
3. Notwithstanding the provisions of subsection 2 above, the Interim Period shall terminate on 1<sup>st</sup> March 2014 or such other date as the Commission may determine.

### Scope of the Interim Rules

4.
  - (a) These Regulations shall apply to energy produced and delivered, as well as associated services during the Interim Period.
  - (b) The Interim Rules are intended to cover all electricity taken from the transmission system by the distribution companies.
  - (c) The Existing Arrangements shall be maintained, save to the extent that they are modified by these Rules.

### Interpretation

5. The words, terms and expressions used in these Interim Rules shall have the same meaning as are assigned to them in the Act, the MYTO-2 Tariff Orders and the Market Rules for the Transitional Stage unless otherwise specifically defined herein. Where there is a conflict between a provision of these Rules and the MYTO-2 Tariff Orders or the Market Rules, these Rules shall prevail.
  - (a) **Act** means the Electric Power Sector Reform Act No. 6 of 2005, as may be amended from time to time;
  - (b) **Allowable revenue** means the proportion, for each recipient, of market funds (except Discos), to be used by the Market Operator (MO) in apportioning available market revenues to other market participants during the Interim Period;



- (c) **Baseline Remittance** means the average of the four (4) highest monthly payments made to the MO by a Disco under Federal Government ownership between July 2012 – June 2013 calculated as a percentage of the invoiced amount for the relevant month, which shall be the minimum monthly payment to the MO by a Disco during the Interim Period;
- (d) **Commission** means the Nigerian Electricity Regulatory Commission;
- (e) **Completion of Privatisation** means the physical handover of successor companies to the core investors, which occurred on 1<sup>st</sup> November 2013;
- (f) **Distribution Companies** (Discos) means successor distribution companies under Section 67 of the Act;
- (g) **Effective Contracts** means executed PPAs between an IPP and either NBET, a Disco or the defunct PHCN for which all conditions precedent (CPs) in the agreement have been met. Such PPAs shall remain effective during the Interim Period;
- (h) **Effective Date** means 1<sup>st</sup> November 2013;
- (i) **Existing Arrangements** means the established structures and procedures followed by market participants and Service Providers prior to the commencement of the Interim Period;
- (j) **Generation Companies** (Gencos) means successor generation companies and independent power producers under Section 64(3) of the Act;
- (k) **Imbalance Energy** means the difference between each Disco's allocation of available energy (according to MTYO 2) and the actual quantity of energy received by a Disco;
- (l) **Imbalance Price** means the price to be charged and the payments due for Imbalance Energy as described in the section on Generation Allocation Balancing Mechanism provided in the MYTO 2 Distribution Tariff Order;
- (m) **Interim Period** means the period between the completion of privatisation by handover of the successor companies to core investors and the start of TEM;
- (n) **Market Loan** means a financial arrangement to provide funds for the interim period, administered by the MO in the allocation of allowable revenue. Such loans are repayable at an agreed schedule determined by NERC in consultation with the relevant stakeholders;
- (o) **Market Rules** means the Market Rules for the Transitional and Medium Term Stages of the Nigerian Electrical Power Sector, 2010 approved under Section 26 of the Act;

- (p) **Shadow Trading** means the process to be undertaken during the Interim Period for full scale testing of registration, meter data collection and aggregation, invoicing, collection and payments systems to be implemented at the commencement of TEM.
- (q) **Service Providers** means the Market Operator (MO), the System Operator (SO) and the Transmission Service Provider (TSP)

## Objectives

- 6. The objectives of these Rules are to:
  - (a) Establish a framework to govern trading arrangements during the Interim Period (tentatively November 1, 2013 – February 28, 2014) when PPAs between the the privatised PHCN successor generation companies and NBET and Vesting Contracts between NBET and the privatised PHCN successor distribution companies will not be effective;
  - (b) Manage the probable revenue shortfall in the industry by determining the revenue allowable to market participants and service providers during the Interim Period;
  - (c) Establish the payment arrangements and flow of funds from Discos through the MO to all beneficiaries;
  - (d) Establish the sources of funds required to ameliorate the probable shortfall in revenues collected by the Discos during the Interim Period. These sources include Federal Government Subsidy provided under MYTO-2 for the 2013 – 2014 Tariff Year, part of the privatisation proceeds from the sale of Egbin Power Plc already allocated to NBET (to be used to augment payments to IPPs with Effective Contracts), funds due to NELMCO from settlement periods before the Interim Period and any other sources of revenue accruable to the MO during the Interim Period.

## DUTIES OF MARKET PARTICIPANTS AND COORDINATION OF THE MARKET UNDER THE INTERIM RULES

- 7. The MO shall:
  - (a) Issue settlement statements to all market participants;
  - (b) Invoice distribution companies for capacity and energy consumption;
  - (c) Invoice distribution companies for regulatory charges;
  - (d) Invoice distribution companies for the charges of Service Providers;
  - (e) Invoice distribution companies for Imbalance Energy;
  - (f) Make payments to Gencos, Service Providers, NBET and the Commission.



8. The SO shall:
  - (a) Schedule generation in such a manner as to minimise total cost to consumers;
  - (b) Conduct capacity tests as required to establish available capacity for each Genco;
  - (c) Allocate energy to Discos according to the MYTO 2 load allocation.
9. Gencos shall issue invoices to the MO for available capacity and energy delivered to the grid in accordance with SO instructions in line with the effective MYTO 2 prices or effective contracts.
10. Discos shall be obliged to promptly pay all invoices issued by the MO in full in accordance with the MO's payment calendar but no lower than the minimum payment set out in Rule 18. Any Disco that defaults shall make all its bank accounts and financial records open for inspection by the MO and the Commission to establish the reasons for default.
11. Prior to the start of TEM, the Commission shall in consultation with the Discos concerned, determine the schedule for repayment by each Disco of the market debts that have been incurred during the Interim Period.

## **SETTLEMENT, BILLING AND PAYMENT**

### **Settlement Statements**

12. During the Interim Period, PPAs and Vesting Contracts executed by the Successor Companies shall not be effective.
13.
  - (a) During this period, Gencos and IPPs will continue with the Existing (pre-TEM) Arrangements whereby the PHCN successor Discos shall receive invoices from them through the MO and will make payments to the MO for power received from them accordingly.
  - (b) The Discos shall also be required to make payments to the MO for regulatory charges due to the Commission as well as NBET and Service Providers' charges.
14. The MO shall prepare a monthly settlement statement in compliance with MYTO 2 and existing contracts covering:
  - (a) Monthly energy sent out from Gencos;

- (b) Hourly capacity from Gencos;
- (c) Monthly energy and capacity off-takes by Discos;
- (d) Imbalance Energy quantities;
- (e) Monthly payments due:
  - for ancillary services
  - to the Commission
  - for Imbalance Energy to the Market Operator
  - to NBET
  - to the System Operator
  - to the Transmission Service Provider

15. The MO shall submit monthly all documents on settlement and payments to the Commission and NBET.
16. In line with the Existing Arrangements, Discos shall provide meter readings to the MO on the agreed date and time as stipulated in the MO's payments calendar. The MO shall audit these figures for the purpose of preparing the invoices.
17. The Payment Calendar shall remain unchanged during the interim period, and for the avoidance of doubt is as prescribed by the MO.

#### Payment Process under the Interim Rules

- 18.
- (a) The MO shall issue the Discos with invoices for energy and capacity delivered, regulatory charges and services provided in each month during the Interim Period.
  - (b) Invoices relating to the Pre-Interim Period shall be processed as provided in Rule 27 herein.
  - (c) Discos shall make payments which are equal to or greater than the Baseline Remittance for invoices related to the Interim Period as stipulated below:

Disco	Baseline Remittance (as a percentage of the MO's invoice)
Abuja	53.50%
Benin	37.88%
Eko	97.65%
Enugu	41.24%
Ibadan	65.37%
Ikeja	87.55%
Jos	20.70%
Kaduna	33.16%
Kano	62.97%

A-U



PH	47.45%
Yola	0%

19. Where all Discos pay the MO invoices in full for a particular month, Gencos, Service Providers, NBET and the Commission will receive the revenue due to them in full. These payments will be equal to the sum of the relevant charges on all MO invoices to all Discos.
20. Where a Disco fails to pay the MO invoices in full, the MO will, in accordance with the MO's payments calendar, determine the Allowable Revenue due to market participants (excluding Discos) and the Commission based on MYTO 2 provisions adjusted as follows:
- (a) Gencos
    - Energy charge (100%)
    - Capacity charge (45%)
    - In the case of Gencos that have effective PPAs during the Interim Period, NBET shall make up for any difference between the amount received from market funds and the amount due according to the relevant PPA.
  - (b) TSP – 70% of its expected MYTO 2 revenue
  - (c) The Commission – 70% of its expected MYTO 2 revenue
  - (d) MO – 60% of its expected MYTO 2 revenue
  - (e) SO – 60% of its expected MYTO 2 revenue
  - (f) NBET – 20% of its expected MYTO 2 revenue
21. All entities in the market shall be remunerated based on the ratio of the participant's allowable revenue and the aggregate allowable revenue for the market multiplied by the aggregate Disco remittance for the month plus other available funds in the month represented in the equation below:

$$\frac{PAR}{AMAR} \times (TDMR + OF)$$

Where

*PAR* refers to the participant's allowable revenue  
*AMAR* refers to aggregate monthly allowable revenue  
*TDMR* refers to total Disco monthly remittance  
*OF* refers to other funds (in accordance with Rule 22)  
*Pi*



22. The MO shall utilise funds from various sources stated below to ensure that the allowable revenues for the market are met. Sources of these funds will include the following:
- i. Remittances by Discos
  - ii. MYTO 2 subsidy
  - iii. Loans made to the market such as:
    - any part of the proceeds from the sale of Egbin Power Plc;
    - pre-Interim Period funds due to NELMCO;
  - iv. Any other source of temporary funds provided by the Federal Government.
23. Any funds other than MYTO 2 subsidies used by the MO to meet market obligations to the Gencos, the Commission, NBET and Service Providers shall be repaid by the MO through funds obtained from Disco remittances after the commencement of TEM.
24. The existing practice of deducting gas costs from Gencos' receivables by MO for onward payment to gas providers, shall cease from the start of the Interim Period and the Gencos shall thereafter be responsible for making payments to their respective gas providers.
25. The process for the disbursement of the Federal Government subsidy for the electricity tariff under MYTO-2 shall be as follows:
- (a) The MO submits a request every three months in advance to the Ministry of Finance for the release of subsidy budgeted for the next three months to the MO's account with CBN;
  - (b) Ministry of Finance authorises CBN to release budgeted subsidy funds to MO's account with CBN;
  - (c) CBN releases budgeted subsidy funds to MO's account;
  - (d) MO releases monthly settlement statements including allocated subsidy to Discos;
  - (e) MO disburses subsidy calculated based on each Disco's collection to settle bills due to Gencos and service providers on behalf of each Disco.
26. Subsidy allocations to Discos as provided in MYTO-2 shall be applied by the MO to pay specific Disco obligations to Gencos and Service Providers. The balance (if any) shall be paid to the relevant Disco.
27. Discos shall maintain the existing bank accounts for revenue collection which have the escrow mandates to collect payments for energy delivered prior to handover. Bank mandates under the Existing Arrangements shall be adjusted to enable Discos to transfer all such collections to the MO after the amendment of the Deed of Assignment of Pre-Completion Receivable Agreements accordingly.

The MO shall then transfer 20% back to the Discos in accordance with the same agreement.

28. Where Discos choose to open new collection accounts to receive payments made for energy delivered in the Interim Period, the Existing Arrangements shall be transferred to such new accounts, unless as prescribed by the Commission. Discos shall notify the Commission and MO before opening new collection accounts; provided, however, that the opening of new accounts shall not be permitted until NERC gives final approval to the Directors and management appointed for the successor Discos.
29. Embedded generators shall directly invoice respective Discos for energy supplied.
30. No payments whatsoever shall be made to any party that is not a market participant without specific instructions from the Commission issued during the Interim Period.

### **Imbalance Energy**

31. Where a Disco takes more than its MYTO 2 load allocation, allowing for transmission losses, it shall pay the Imbalance Price for such excess, and where less is taken, it shall be paid the appropriate Imbalance Price.
32. The Imbalance Price for the Interim Period shall be 60% of the charge set by the Commission under MYTO 2.
33. The Imbalance Payment due shall be the Imbalance Price times the difference between energy delivered and energy due under the MYTO allocation represented in the equation below:

$$IPY = IPR \times (AEDM - EDMA)$$

Where

<i>IPY</i>	refers to Imbalance Payment
<i>IPR</i>	refers to Imbalance Price
<i>AEDM</i>	refers to Actual Energy Delivered in the Month
<i>EDMA</i>	refers to Energy Due under the MYTO Allocation

### **Disco Remittance Shortfall**

34.
  - (a) Discos shall register their collection accounts with the MO and the Commission and any changes shall be immediately communicated to them.



- (b) The accounts shall be open for audit by the MO and the Commission where a Disco fails to pay any invoice in full and on time.
35. In the event that a Disco fails to pay the MO's invoice in full and on time in any given month, it shall be penalised for any payment lower than the established Baseline Remittance as defined in Rule 5 of these Rules in that month.
36. The penalty referred to above shall include the following:
- (a) Interest (at NIBOR plus 7.5%) shall apply on the amount owed based on the MO's invoice. Interest payments made to the MO (either during or after the Interim Period) will be distributed to Gencos and service providers in proportion to the liabilities owed.
  - (b) The shortfall shall be repaid by the defaulting Disco within three months of the commencement of TEM without any support through tariff adjustment.

**Liabilities accumulated by each Disco. .**

38. Liabilities accumulated by each Disco during the Interim Period shall be repayable to the MO during TEM according to the schedule agreed as per Rule 11. These funds shall be used by the MO to pay outstanding revenue due to Service Providers, Gencos, NBET and the Commission as well as any market loans. The MO shall release monies due in proportion to outstanding shortfalls.

**Tariff Review for TEM**

39. The Commission shall adjust tariffs to be implemented at the start of TEM as follows:
- (a) The adjustment shall take into consideration revised MYTO 2 assumptions including ATCC losses, customer numbers, energy delivered to Discos and any other aspect of the tariff the Commission deems appropriate.
  - (b) The adjustment shall compensate for the shortfalls in market revenues during the Interim Period that are due to inadequate estimates of relevant assumptions in MYTO 2 prior to validation. This will include interest on the shortfall.
  - (c) The adjustment will also enable the repayment of loans made to the market (as per Rule 22). R.O

### **Payment of bills by international customers and special customers**

40. International customers and special customers (customers connected at 330/132kv) who do not pay their bills in full shall be disconnected by TSP on MO's instruction.

### **Novation of Contracts**

41. In the event of novation of contracts from PHCN to NBET during the Interim Period, the associated billing and payment responsibilities will remain with the MO while any shortfalls shall be addressed in line with Rule 20(a) above.

### **Pre-Interim Period Billing and Collection**

42. All revenue collected in November for energy delivered in October shall be transferred 100% to the MO.
43. Any Monies retained by the MO in accordance with Rule 27 shall be treated as an interest-free loan by NELMCO to the MO.
44. The balance of any remaining monies shall be transferred to NELMCO after the Interim Period.
45. The Discos and MO shall keep detailed records of accounts to ensure repayment of amount due to NELMCO during TEM.

### **DISPUTE RESOLUTION**

46. Disputes arising during the Interim Period between market participants and/or Service Providers shall be resolved in accordance with the Dispute Resolution provisions of the Market Rules.

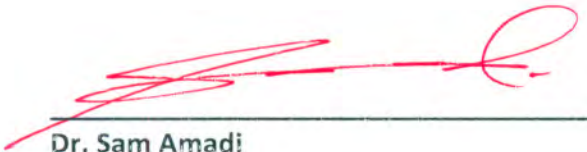
### **AMENDMENT OR REPEAL OF RULES**

47. The Commission may amend or repeal the provisions of these Rules in accordance with its Business Rules. K.O



SIGNED BY THE ORDER OF THE COMMISSION

On this 3rd day of December 2013



Dr. Sam Amadi  
Chairman/CEO