

**GUIDELINES ON SUBMISSION OF DATA AND PETITION FOR SETTING OR REVIEW OF TARIFF
BY STAKE HOLDERS IN THE
NIGERIAN ELECTRICITY SUPPLY INDUSTRY**

In exercise of the Powers to make Regulations conferred by Section 76 and 96 of the Act, and all other powers enabling it in that behalf, the Nigerian Electricity Regulatory Commission enacts the following guidelines for submission of data and petition for setting or review of tariff in the Nigerian Electricity Supply Industry.

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NIGERIAN ELECTRICITY REGULATORY COMMISSION

CHAPTER 1

GENERAL

1. Short Title and Commencement

- (a) These Guidelines may be cited as NERC Guidelines for Application for Rate Review 2014.
- (b) These Guidelines shall come into force on the date on which it is approved by a Resolution of the Commission
- (c) These Guidelines shall be signed by the Chairman who shall also cause the Seal of the Commission to be affixed thereon.

2. Interpretation

- (i) In these Regulations, unless the context otherwise requires:

“Act” means the Electric Power Sector Reform Act, 2005;

“Chairman” means the Chairman of the Nigerian Electricity Regulatory Commission;

“Contravention” means as the context requires, non-compliance with or infringement of any of the provisions of the Act, Regulations, Codes, Orders, License Terms and Conditions, and other Regulatory Tools of the Commission.

“Commission” means the Nigerian Electricity Regulatory Commission;

“Commissioner” means a person appointed as Commissioner in accordance with Section 34 of this Act;

“Competent Authority” means Chairman, Commissioner or such other Officer of the Commission designated from time to time for the purpose by the Commission in accordance with these Regulations;

“Days” means working days, excluding Saturdays, Sundays and public holidays declared by the Federal Government of Nigeria;

“Distribution Licence” means a Licence granted under section 67 of the Act;

“Distribution Licensee” means a holder of a Distribution License granted under Part IV of the Act.

“Generation Licence” means a Licence granted under section 64 of the Act;

“Generation Licensee” means a holder of a generation license granted under Part IV of the Act.

“Information” means any information required under these Regulations;

“Intervener” refers to interested groups or individuals who are not affiliated with the Licensee, but have been granted permission by the Commission to participate in a rate review process by the Commission;

“Licence” means a licence issued by the Commission under Part IV of the Act.

“Licensee” means any person who holds a Licence issued under Part IV of the Act;

“Major Review” means the tariff review required by the Multi Year Tariff Order every five (5) years;

“Minor review” means a review made once in every 6 months in the light of changes in limited numbers of parameters such as gas prices, inflation, exchange rate, etc;

“Month” means a Gregorian calendar month;

“Officer” means a staff or authorized representative of the Commission;

“On Record” includes documents that are filed and before the Commission submitted in support of an Application for rate review;

“Open Book Tariff Setting” means tariff setting carried out for all new generators who opted for generation tariff different from benchmark tariff set by the Commission in line with section 4 of the revised tariff methodology;

“Participant” means a Licensee Applicant or intervener in a hearing or proceeding for rate review application;

“Person” includes an individual, a company, partnership or any association of individuals whether incorporated or not;

“Receiving Officer” means the staff of the Commission authorized to receive and acknowledge receipt of Application for Rate Review, and perform other responsibilities assigned to it by the Commission and this Regulation;

“Regulations” means any regulation or guideline that has been published by the Commission pursuant to the Act;

“Schedule” means the schedule appended to this Guidelines;

“System Operation Licence” means a Licence granted under Section 66 of the Act;

“System Operation Licensee” means a Licence granted under Part IV of the Act;

“Tariff” means prices set in respect of any regulated activities of the electricity market;

“Retail Tariffs” means prices set for generation, transmission and distribution of electricity

“Trading Licence” means a Licence granted under Section 67 of the Act;

“Trading Licensee” means a holder of a Trading License granted under Part IV of the Act;

“Transmission Licence” means a Licence granted under Section 65 of the Act;

“Transmission Licensee” means a Transmission Licence granted under Part IV of the Act;

“Unauthorised” means an act or omission not within the scope of a licence, the Act or any subsidiary legislation;

“Unlawful” means any act or omission that is in contravention of the Act or any Regulations made there under, or any other law in force in Nigeria;

- (ii) All definitions in the Act shall have the same meanings and intendment in these Guidelines as in the Act.
- (iii) Words importing any one gender includes the other gender and the singular includes the plural and vice versa
- (iv) Words or expressions used in the Regulations but not defined, unless the context otherwise requires, shall have the same meanings respectively assigned to them in the Act

CHAPTER 2

APPLICATION FOR TARIFF SETTING AND REVIEW

3. Eligibility and Form of Application

(a) Pursuant to Section 76(2) of the Electric Power Sector Reform Act, the Commission adopted the Multi Year Tariff Order (MYTO) as the tariff methodology for the Nigerian Electricity Supply Industry (NESI). This methodology provides for a

- 1) Major review of retail tariffs
- 2) Minor review of retail tariffs
- 3) Open book tariff setting for generation

(b) At the commencement of the major review either at the instance of the Commission or acting on request by the stakeholder, the Commission shall prepare a consultation paper that shall indicate the issues to be covered.

(c) The Commission shall inform those parties who shall be regulated by the review of the information it seeks from each of them. All regulated electricity operators will be the major source of information on the industry.

(d) Any electricity operator desirous of participating in the proceedings shall be required to provide verifiable information on a uniform reporting and accounting basis regarding their regulated operations as per schedule x of this regulation on matters such as :

- capital expenditure,
- actual and projected sales,
- operating costs,
- Plants technical characteristics
- fuel costs and
- taxes and other payments

(e) An Application for tariff Setting/ Review shall be made by a licensee or any stakeholder or group of stakeholders.

(f) Applications shall be made under any or all of the following heads:

- i. Revenue Requirement
- ii. Rate Design
- iii. Generation tariff

(g) An application for Tariff Setting/ Review shall be made in the Form specified in Schedule 1 of these Regulations and shall contain the information applicable to the applicant and relevant to the type of application as specified in Appendix 1 of Schedule 1.

(h) The application shall also contain a Report Summary in the form specified in Schedule 1, Appendix 2.

(i) An Application Form for Tariff Setting/ Review shall be obtained from the Commission's website, Head Office or any of the Zonal Offices.

(j) The application shall be completed, addressed to the Chairman of the Commission and delivered by hand, sent by regular mail or courier to the Commission's Head Office together with the supporting documents.

(k) An Application shall be signed and dated by the Applicant or his Authorized Representative, and submitted in three (3) hard copies and one (1) electronic copy in Microsoft Office format.

(i) An Application shall contain information that would enable the Commission make an informed and fair decision.

4. Affidavit in Support of the Application

(a) An Application shall be accompanied by an affidavit as in Schedule 2 which shall contain the following information amongst others:

- i. That the proposed/requested tariff is to ensure the recovery of all prudent costs of providing electricity services to customers including the following:
 - The costs and expenses associated with the capital investment,
 - Depreciation,
 - Interest paid on money borrowed for the purpose of the investment,
 - A fair return on the equity of shareholders,
 - Taxes associated with the investment, and
 - The costs and expenses incurred and approved by the Commission;
- ii. Forecasts of all necessary expenses over the next 5 years in respect of transmission tariff and distribution tariff are true and supported with relevant and credible studies and verifiable source documents
- iii. Forecasts or actual expenditure and plants characteristics in respect of generation tariff are true and supported with relevant verifiable source documents
- iv. That the proposed/requested tariff review/setting is just and reasonable; and
- v. That the proposed/requested tariff review/setting is not unduly preferential, arbitrarily or unjustly discriminatory or inconsistent with or in contravention of the Act, or any law in force in Nigeria.

(b) Every affidavit shall be drawn up in the first person and shall state the full name, age, occupation and address of the deponent and the capacity in which he is deposing. The affidavit shall be signed and sworn before a Commissioner for Oaths or Notary Public.

(c) Every affidavit shall clearly and separately indicate statements which are true to the –

- i. Knowledge of the deponent;
- ii. Information received by the deponent; and
- iii. Belief of the deponent

5. Filing Fees

(a) The Applicant shall upon submission of the Application Form, pay a non-refundable filing fee of Five Million Naira (N5,000,000.00)(non recoverable expense), or as may be prescribed by the Commission from time to time and a receipt for such payment shall be issued accordingly.

6. Acknowledgement of an Application

(a) Upon receipt of an Application, the Receiving Officer shall check the documents for completeness, acknowledge the application, assign a reference number to the application, and give the acknowledgement copy to the applicant.

(b) If the documents are incomplete, the Receiving Officer shall inform the Applicant accordingly, and refuse to acknowledge the application.

(c) If the documents are incomplete, the Commission shall inform and request the Applicant to submit the relevant outstanding documents.

(d) If an incomplete Application is submitted by mail or courier, the Commission shall inform the Applicant within 5 days of the receipt of such application, and request for the submission of the relevant outstanding documents.

(e) If a complete Application is submitted by mail or courier, the Head Tariff Regulation and Rates shall acknowledge same, assign a reference number to the Application, and forward the acknowledgement copy by mail, or courier to the applicant.

(f) An incomplete application shall not be acknowledged by the Commission.

(7) Notice of the Application

(a) The Commission shall within 14 days from the date of acknowledgement, cause a Notice of the Application to be published in two (2) newspaper, one circulating in the area in which the applicant provides electricity services or the location of its plant, and the other in a national newspaper, as well as the Commission's website.

(b) The Notice issued by the Commission shall inform the public about the existence of such application before the Commission.

(c) For Generation and Transmission tariff within 30 days issue a consultation paper and invite comments from persons, associations, corporate bodies, stakeholders, and other possible interveners.

(d) For Distribution and Retail tariff within 30 days issue a consultation paper and invite comments from persons, associations, corporate bodies, stakeholders, and other possible interveners.

(e) Comments shall be submitted to the Commission within twenty-one (21) days from date of publication of such Notice.

(f) The Commission shall not take a decision on an application until all objections or representations received by the Commission have been considered.

8. Notice of Intention to Participate

(a) Any person(s) that intends to participate in the proceedings must register within twenty-one (21) days from the date of publication of the Notice by completing and submitting to the Commission, a Statement of Intent to participate as in the form specified in Schedule 3

(b) The Statement of Intent to Participate shall be in three (3) hard copies, and an electronic copy in Microsoft Office format. The submission shall include the following:

- i. An explanation of the person's interest in the proceeding and how the party would be affected by the outcome;
- ii. A description of the party's concerns, observations or objections to the application; and
- iii. An indication as to whether the party supports or objects to the Application.

(c) The Statement of Intent to Participate must be supported by an affidavit and any other document in support.

(d) The Commission shall inform an applicant of its decision and reasons within 7 days of receiving the application based on the documents submitted.

(e) All documents submitted by Applicants or by other interested persons On Record are deemed to be public documents except or otherwise made confidential by any law in force, an agreement or an order of the court and the Applicant shall indicate those documents that are confidential at the point of submission.

9. Circularization of Comments

(a) Upon the grant of approval to participate, the Commission shall within Seven (7) days circulate the Statement of Intent and accompanying documents to the applicant and other approved Interveners as in Schedule 4.

(b) The list of approved Interveners shall be published in the Commission's website, as well as in 2 National Newspapers.

10. Authority to Represent

(a) An Applicant may appoint a representative to represent him in the conduct of the hearing.

11. Composition of the Hearing Panel

(a) Except where the Commission determines otherwise, the Commission shall conduct the hearing of an Application for Tariff /Setting Review in Panel of four (4) Commissioners one of whom shall serve as the Chairman. The Chairman shall be appointed by the Commission and shall have a casting vote.

(b) The Commission shall make a decision on an application based on both oral and documentary evidence tendered before it by the applicant, staff of the commission and/or Intervener in the Commission's records.

(c) Decisions of the Panel shall be on the basis of simple majority of the Members of the Panel.

(d) The Commission shall not be bound by the Rules of Evidence in Courts in the conduct of Proceedings in a Tariff Setting/ Review Hearing.

12. Hearing of the Application

(a) The Commission shall fix the date for Hearing of the application not later than thirty (30) days from the expiration of the day fixed in the Notice for receipt of comments from the public.

(b) The Commission shall determine the place and time of the Hearing of the application.

(c) The Commission may proceed to Hearing in the absence of comments from the public and/or interveners, and any decision reached in such a situation shall be final.

(d) The Commission may allow the Applicant, staff of the Commission and Intervenors to give oral evidence during the Hearing.

(e) Interlocutory applications may be made by the applicant or intervener during Hearing, only in the form of submission of additional information to the Commission before a decision.

13. Burden of Proof

(a) The burden of proof to show that the proposed tariff is just and reasonable is on the Applicant.

14. Decision of the Commission

(a) The Decision of the Commission shall be in the form of an Order which shall be issued in writing and shall contain the basis for the Decision.

(b) The Order shall be signed by the members of the Panel.

(c) The Decision of the Panel is enforceable from the date the Order was issued.

15. Reviewing of the Decision of the Commission

(a) Any persons aggrieved by the decision of the Panel may apply to the Commission for a review of the decision.

(b) The Commission may on its own review its decision.

(c) An Application for Rehearing by any person or party, shall be filed in the same manner as a Petition under Chapter II Section 15 of the NERC (Business Rules of the Commission) 2006.

(d) The Commission may reconsider, vary or rescind its decision before issuing a final decision within sixty (60) days from the date of such request.

The Commission shall only consider additional evidence not presented during the initial proceedings including facts arising after the original proceedings.

(e) The Commission may conduct a rehearing, and the procedure and composition of the Panel for a Rehearing shall be mutatis mutandis with the initial proceedings.

(f) Except as may be ordered by the Commission, Appeal shall not act as a stay of the enforcement of the Decision of the Commission.