

**DRAFT REGULATIONS FOR INVESTMENTS IN ELECTRICITY NETWORKS IN NIGERIA
2014**

DRAFT

REGULATION NO: NERC – R – XXXX

NIGERIAN ELECTRICITY REGULATORY COMMISSION

In exercise of its powers to make Regulations conferred by Section 96 (1) & (2) (i) of the Electric Power Sector Reform Act 2005 (Act No. 6 of 2005), the Nigerian Electricity Regulatory Commission makes the following Regulations for Investment in Electricity Networks.

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CHAPTER I GENERAL PROVISIONS

1. Short Title

These Regulations may be cited as the Nigerian Electricity Regulatory Commission (NERC) Regulations for the Investment in Electricity Networks 2012.

2. Commencement

These Regulations shall come into force on the date on which they are approved by a resolution of the Commission, and signed by the Chairman who shall cause the seal of the Commission to be affixed thereto.

3. Interpretation

(1) In these regulations, unless the context otherwise requires:

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

“Business Plan” means a formal statement of a set of business goals, the reasons they are believed attainable, and the plan for reaching those goals. It will also contain background information as specified by NERC about such things as the organization or team attempting to reach those goals.

“Commission” means the Nigerian Electricity Regulatory Commission (NERC) established by the Electric Power Sector Reform Act 2005;

“Commissioning” means the process of bringing new, refurbished or disconnected projects into operation.

“Commissioning Certificate” means a legal approval issued by NERC to a licensee authorizing project connection to a network after passing prescribed technical tests as contained in the Commissioning Report.

“Commissioning Report” means the technical report of all network tests carried out according to prescribed standards for project commissioning.

“Distribution Code” means the code and guidelines for the Nigerian electricity distribution system as approved by the Commission;

“Distribution licence” means a licence granted under Section 67 of the Act;

“Distribution licensee” means a person licensed to distribute electricity under Section 67 of the Act;

“Entity” means an individual, corporate body, organisation, institution, or state agency whether licensed or not by NERC who may be permitted to invest in a network licensee’s network.

"Financial Leverage" means the fundamental analysis ratio of a company's level of long-term debt compared to its equity capital.

“Gearing” means the same as Financial Leverage.

“Generation licence” means a licence granted under Section 64 of the Act;

“Generation licensee” means a person licensed to generate electricity under Section 64 of the Act;

“Grid” means the transmission network maintained by the transmission licensee that is a successor company to the Power Holding Company of Nigeria plc;

“Grid Code” means instructions, rules, procedures, guidelines, etc for the operation and planning of an interconnected power system and accounting requirements relating thereto, as approved by the Commission;

“Independent electricity transmission network” or “Transmission network” means a transmission network other than the transmission network operated by the transmission licensee that is a successor company to the Power Holding Company of Nigeria Plc;

“Investment Plan” means a document detailing the investments to be made in the network by an investor including timelines and all other information as approved by NERC.

“Investor” means any person carrying out an investment in a network.

“Metering Code” means the Nigeria Metering Code approved by the Commission for use in measuring the flow of energy within the transmission and distribution systems in the Nigerian electricity supply industry as approved by the Commission;

“Mezzanine capital” means a subordinated debt or preferred equity instrument that represents a claim on a company's assets which is senior only to that of the common shares. Mezzanine financings can be structured either as debt (typically an unsecured and subordinated note) or preferred stock.

“Network Investment” means putting resources into a network for short term or long term returns.

“Network Licensee” means a Transmission Licensee or a Distribution Licensee.

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

“Regulated Activities” means engaging in licensed activities such as generation, transmission, systems operation, distribution and trading;

“RFP” means Request for Proposal

“RFQ” means Request for Quotation

“Schedule” means the schedule appended to these regulations;

“SPV” means Special Purpose Vehicle

“System operation” means the operation of one or more transmission network(s);

“System operation licence” means a licence granted under Section 66 of the Act;

“System operation licensee” means any person licensed to operate an electricity system under Section 66 of the Act;

“Trading licence” means a licence granted under Section 68 of the Act;

“Trading licensee” means any person licensed to trade electricity under Section 68 of the Act;

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

“Transmission licensee” means any person licensed to transmit electricity under Section 65 of the Act;

“Technical Codes” means Grid Code, Distribution Code, Metering Code, Health & Safety Code and other codes approved by the Commission for the technical regulation of the electricity supply industry in Nigeria

“User” means any person using the transmission network or distribution network of a transmission licensee or a distribution licensee respectively.

- (2) Unless otherwise specified, in these regulations:
- (a) words importing any one gender includes the other gender and the singular includes the plural and vice versa;
 - (b) words or expressions used in these regulations but not defined shall have the same meanings respectively assigned to them in the Act or relevant subsidiary legislation;
 - (c) any reference to a statute or statutory provision includes a reference to that provision as amended, re-enacted, or replaced and any regulations or orders made under such provisions from time to time; and
 - (d) if the date on which an event is scheduled to occur by these regulations is a day which is not a business day, then the event must occur on the next business day.

4. Objectives

- a. These Regulations provide for the procedure for investing in electricity networks in Nigeria. The objectives of these Regulations are mainly to create strong incentives to encourage the TCN and the DISCOs to make appropriate and sustainable investments in capacity expansion. If achieved, this will:
- (i) Ensure the delivery of capacity at levels already projected in the revenue requirement (RR) for the sector, for the price control period of 2012 – 2017; and
 - (ii) Help to take up potential penalty costs, that may be associated with inability of relevant utilities to deliver under the current price control.
 - (iii) Ensure the optimal utilization of resources for the provision of electricity services;
 - (iv) Ensure consumer protection and satisfaction.

- b. To provide regulatory certainty by having a process that allows NERC to track the investments utilities make whilst still monitoring the mechanism it adopts for utilities to recover prudential costs they incur to maintain the technical safety, security and reliability of the transportation networks.
- c. Improve and streamline regulatory processes whilst leveraging on best practices from the jurisdictions of specific interest to the Commission, in designing options that are tailored to NERCs legislative requirements and the Nigerian operating environment.
- d. Facilitate transparency and accountability from all utilities ¹ and across all lines of business (LOB).
- e. Give the Commission opportunity to carry out periodic compliance evaluations of the patterns of capital expenditure (Capex) as well as the operations maintenance and administration (OM&A) costs the utilities incur to meet their license conditions.

5. Application of the Regulations

These Regulations shall apply to all types of investors interested in investing to further the growth of an electricity infrastructure in the **Nigerian Electricity Supply Industry (NESI)**

CHAPTER II INVESTMENT BY ENTITIES

6. Investments by Network licensees

- (i) Investment in electricity networks t may be undertaken by Network licensees as approved by NERC in the national grid, grid controlled distribution networks, independent transmission networks, independent electricity distribution networks and such other network configurations as may from time to time be specified by the Commission.
- (ii) The investments are subject to the provisions of all the Technical Codes, Regulations, Rules and Orders of the Commission on network planning, construction, operation, maintenance, and safety.
- (iii) The investments shall be subject to the provisions of the License Terms & Conditions, the **Market Rules**, the **Multi-Year Tariff Order (MYTO)** and the procedure approved by the Commission for a **tariff review** whenever the need arises.
- (iv) The licensee shall comply with the following procedure in its application for Commission’s approval to undertake investment in electricity network:
 - (a) Complete Application Form in Schedule “ A” of this Regulation;

- (b) Submit the **Investment Plan**, including the milestones as well as other relevant documents that may assist the Commission in the consideration of the application;
- (c) The Commission shall acknowledge in writing within seven (7) days of the submission of the application;
- (d) The Commission shall communicate to the licensee, with reasons its approval or refusal within thirty (30) days of the submission of the application;
- (e) Where the Licensee is not satisfied with the Commission's decision, the licensee may apply for a review of the decision in line with Section 50 of the EPSR Act;
- (f) Where the Commission has given its approval, the Licensee shall ensure strict compliance with the Commission's approval;
- (g) The Licensee shall obtain the Commission's approval prior to any deviation from the approved investment plan and milestone.

7. Investments by Non-licensees

- (i) Investments by Non-Licensees shall be made only in networks owned, operated and maintained by licensees.
- (ii) Non-licensees desirous of investing in a network shall enter into a **Project Agreement** with the licensee of that network.
- (iii) The **Project Agreement** shall cover the following areas:
 - (a) Nationwide electricity credit check and control in respect of the entity;
 - (b) Feasibility study;
 - (c) Planning and design;
 - (d) Construction standards;
 - (e) Capital contribution by the entity in comparison with MYTO provisions;
 - (f) Procurement procedure;
 - (g) Construction and Commissioning procedure;
 - (h) Formal hand over and connection of completed project;
 - (i) Payment/Amortization schedule; and
 - (j) Dispute Resolution
- (iv) All agreements for investment in networks shall be submitted by the Licensee to the Commission for approval.
- (v) The Commission may, where deemed necessary, request further documents from the applicant in support of the application;
- (vi) The Commission shall within 30 days of receipt of the application along with all other necessary documents communicate to the applicant whether or not the application is approved.
- (vii) If after thirty (30) days, the Commission's approval is not communicated to the Licensee, the agreement may be executed by the parties.

- (viii) Where the Commission has given its approval, the Licensee shall ensure strict compliance with the Commission's approval;
- (ix) The Licensee shall obtain the Commission's approval prior to any deviation from the approved Project Agreement and milestone.
- (x) All signed agreements for investment in networks shall be forwarded to the Commission by the licensee for filing.
- (xi) Upon completion of any network investment project, the licensee shall send the following details to Commission:
 - (a) Notice of completion of project and date of completion;
 - (b) As-built single line diagrams and geographical drawings;
 - (c) Commissioning Test Reports and date of commissioning;
 - (d) Schedule of actual investment costs with explanatory notes; and
 - (e) Any relevant information.

8. Investments by Persons for projects less than N50,000,000

Individuals may invest in electricity distribution networks provided there is a project agreement that shall cover the following areas in addition to Clause 7 (iv) - (x):

- (k) Feasibility study;
- (l) Planning and design;
- (m) Construction standards;
- (n) Capital contribution in comparison with MYTO provisions;
- (o) Procurement procedure and quality standards;
- (p) Construction and Commissioning procedure;
- (q) Formal hand over and connection of completed project;
- (r) Payment schedule; and
- (s) Dispute Resolution

9. Appeals

Where a Licensee is not satisfied with the Commission's decision, the licensee may apply for a review of the decision in line with Section 50 of the EPSR Act.

CHAPTER III

TECHNICAL PLANNING FOR CONNECTION OF NETWORK SYSTEM

10. Distribution Network

- a) The Distribution Licensee shall, inter alia, be responsible for:-
 - i. Forecasting the future demand on the distribution system
 - ii. Analyzing the impact of the connection of new facilities
 - iii. Planning the expansion of the distribution network to ensure adequacy to meet forecast demand and the connection of new facilities.
 - iv. Identifying and correcting problems on , power quality, quality of supply and system losses in the network
 - v. Distribution System Studies
- b) The Distribution Licensee shall conduct an annual system plan which shall be approved by the Commission indicating the capacity requirement over a (5) year period.
 - i. The Distribution Licensee shall assess the need for expansion of the distribution network system.
 - ii. The Distribution Licensee shall provide technical information to those intending to connect new facilities to the distribution network.
- c) Distribution System Performance Analysis.
 - i. The Distribution licensee shall comply with service performance standard provided in part 2 of the Distribution Code
 - ii. The Distribution Licensee shall forward to the Commission the periodic performance information required by the regulations of the Commission.
 - iii. The Distribution Licensee shall forward network information to the System Operator for system planning purposes as required by the Grid Code.
- d) Metering.
 - i. All Distribution customers must be metered as required by the Commission's service standards.
 - ii. The Distribution Metering Code shall apply to distribution networks

- iii. Appropriately located statistical metering shall be planned and installed for energy accounting in the distribution network.

11. Transmission Network Planning.

- a) The System Operation shall be responsible for planning of the network including:-
 - i. Forecasting of Load
 - ii. Carrying out power system studies in accordance with the Grid Code
 - iii. Analysis of impacts of new connections
 - iv. Planning for power system adequacy to balance supply and demand.
 - v. Planning to eliminate system constraints in the transmission network.
- b) The System Operator shall use system network data to produce an annual system plan which shall be approved by the Commission in accordance with the provisions of the Grid Code
- c) The System Operator (SO) shall assess the needs for expansion of the transmission network including information from the Transmission Service Provider (TSP), Distribution Licensee and all entities who intend to connect to the transmission system.
- d) The TSP and SO shall provide relevant technical information to those intending to connect new facilities to the transmission network
- e) The TSP licensee shall periodically forward to the Commission its performance information as specified by the regulations of the Commission
- f) All connection points as defined in the Connection Agreement shall be metered in accordance with the Grid Metering Code.

CHAPTER IV

12. CONSTRUCTION AND COMMISSIONING PROCEDURE

- a) All network constructions shall be according to an approved plan and in compliance to the Electric Networks Construction Standards Regulation of the Commission.
- b) All network connections shall be tested and commissioned according to the standards established by the Commission.
- c) The Commission shall be notified and shall be represented for all connection tests and commissioning of technical plans for which it has issued approval.
- d) The notification for connection tests and Commissioning shall be sent by the Distribution Licensee or Transmission Licensee as applicable and received by the commission 30 days before the date planned by the Licensee. Failure by the Commission to be present as required shall not deter testing and commissioning. Where this occurs, Section 7(vii) of this Regulation shall apply.
- e) The Commission shall issue a Commissioning Certificate authorizing project connection to the network. This is after verifying that the project was carried out according to the applicable standards approved by the Commission.
- f) The network Licensee shall ensure that an up -to -date maintenance plan for its network is kept and shall make available to the Commission on request an up to date maintenance record of the network.
- g) g)** The Commission reserves the right to order the disconnection and isolation of any part of the network, if such action is deemed necessary in the public interest. In taking such an action, the Commission shall publish a public notice in two National Newspapers not later than five business days after disconnection explaining the reason for its action.

CHAPTER V

NETWORK INVESTMENT FEASIBILITY AND PLAN

13. Network Investment Structure.

- a) The project investment planning process shall be open and transparent.
- b) The investment shall be cost-effective and in conformity to MYTO provisions

- c) Investments may be funded from the equity and debt capital markets subject to the terms and conditions of licensing.
- d) There shall be appropriate risk allocation between parties whenever non-licensees are involved in a project.
- e) The execution risk shall be well defined in terms of achievability and timing showing milestones.

14. Project Financing Structure.

- a) The Licensee may enter into an investment agreement directly with an individual or corporate body.
- b) The Licensee may enter into an agreement with an organization or public institution only through a Special Purpose Vehicle (SPV)
- c) The investment gearing, cash flow and amount of mezzanine capital shall be well defined and reflected in the project Business Plan to be submitted to the Commission.
- d) The sources of funds shall be declared backed with a secured Shareholders Agreement and Debt Repayment Agreement where applicable.
- e) A provision shall be made for contingency funding in the event of delays and cost overruns for projects in excess of N50 million.

15. Contractual Framework.

- a) A competent consultant or contractor shall be engaged through a transparent procurement process for the network project design or execution.
- b) While the consultant or contractor is responsible for timely delivery of the project under the contract, the Commission holds the licensee accountable for efficient completion of the project in compliance with the MYTO, Grid Code, License Terms and Conditions and all other regulations. ..
- c) It is the responsibility of the Licensee to mitigate technology risk in project execution by adopting proven technologies.

- d) Contract awards shall be backed with secured Direct Agreement with an EPC contractor where applicable. The direct agreement shall include the terms for the disbursements of funds in line with the EPC milestones.

CHAPTER VI APPROVALS AND EVALUATIONS BY THE COMMISSION

16. The Roles of the Commission

- (i) It shall be the responsibility of the Commission to approve the long-term **expansion and refurbishment plans** of licensees in accordance with the provisions of Part 2 of the Grid Code.
- (ii) All Investment Plans shall be approved by the Commission prior to implementation by the Licensee.
- (iii) The Commission shall carry out an analysis of the Investment Plans in accordance with the provisions of the Multi Year Tariff Order (MYTO).
- (iv) The Commission shall ensure that the planning, construction, operation and maintenance of the expanded or refurbished network are in compliance with the Codes, Regulations and Rules of the Commission.
- (v) The Commission shall approve draft agreements developed between investing entities and licensees which shall include planning, technical appraisal, construction, handover of projects to licensees and reimbursement of investment.

CHAPTER VII

PROCUREMENT PROCESS

17. The Commission shall review the procurement process to ensure compliance with best practices and transparency. As a minimum, the procurement process for the investment must conform to the requirements of the Public Procurement Act 2007 and its Procurement Guidelines or any other regulations released by the Commission in that regard. The processes shall include:
- a. Advertisement of Tenders in at least two National Newspapers
 - b. Competitive bidding process involving preparation of RFP or RFQ for bidders
 - c. Technical Evaluation of Bids Submitted in line with prescribed Procurement Guidelines
 - d. Public Opening of the Financial Bids, announcement of bid figures and selection of the most competitive bid from the evaluation of both the Technical and Financial submissions; and Negotiation of the best terms before engagement of contractors for the projects.

CHAPTER V

OFFENCES AND PENALTIES

17.

Any person who violates any provision of these regulations commits an offence and is liable to penalty in line with the Act, the Commission's Enforcement Regulations and any other regulatory instruments of the Commission.

CHAPTER VI

MISCELLANEOUS

18. Amendment or Repeal of Regulations

The Commission may amend or repeal the provisions of these regulations

19. Citation

These Regulations may be cited as the Nigerian Electricity Regulatory Commission (NERC) Regulations for the Investment in Electricity Networks 2012.

NIGERIAN ELECTRICITY REGULATORY COMMISSION

Adamawa Plaza

Plot 1099, First Avenue, Off Shehu Shagari Way, CBD, P.M.B 136, Garki – Abuja

Website: www.nercng.org

APPLICATION FORM FOR APPROVAL TO UNDERTAKE INVESTMENT IN ELECTRICITY NETWORK

SECTION A

1	Name of Applicant	
2.	Nature of Proposed Investment	

.....
Name, Signature of Applicant’s Representative/date

SECTION B

An Application shall be accompanied with:

- a. Copy of Certificate of Incorporation
- b. Tax Clearance Certificate for the latest three years
- c. Proposed Project Agreement with the Licensee

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SCHEDULE OF FEES FOR INVESTMENT IN ELECTRICITY NETWORK

SECTION A

1	Nature Investment	Fees Payable (N)

SIGNED BY THE ORDER OF THE COMMISSION

On this-----day of -----, 2012

Dr. Sam Amadi
Chairman/CEO

