

**REGULATIONS ON PROCEDURE FOR TARIFF REVIEWS IN THE NIGERIAN ELECTRICITY
SUPPLY INDUSTRY**

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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 Regulations on the Procedure for Tariff Reviews in the Nigerian Electricity Supply Industry.

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NIGERIAN ELECTRICITY REGULATORY COMMISSION

CHAPTER 1

GENERAL

1. Short Title and Commencement

- (a) These Regulations may be cited as NERC Regulations on Procedure for Tariff Reviews in the NESI2014.
- (b) These Regulations shall come into force on the date on which it is approved by a Resolution of the Commission
- (c) These Regulations shall be signed by the Chairman who shall also cause the Seal of the Commission to be affixed thereon.

2. Objective

These Regulations provide detailed procedures to be followed in conducting tariff reviews in line with the Act and the MYTO Methodology. Included herein are the responsibilities of tariff review applicants, timelines, costs, submission requirements and detailed guidelines.

3. Interpretation

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

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

“Applicant” means the Licensee applying to the Commission for a Tariff review under these Regulations.

“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 a Commissioner of the Commission in accordance with Section 34 of the Electric Power Sector Reform Act of 2005;

“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.

“Expert Witness” means a person invited by the Commission, a Licensee or an Intervener to provide specialised information relevant to the application before the Commission.

“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 data or facts required under these Regulations;

“Intervener” means an interested individual(s), or group(s) not affiliated with the Licensee or the Commission, but who have been granted permission by the Commission to participate in a tariff review process upon application to 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 MYTO every five (5) years;

“Minor Review” means a minor adjustment to the tariff made once every 6 months to reflect the variation in generation capacity, gas price, inflation and the exchange rate;

“Month” means a Gregorian calendar month;

“MYTO” means the Multi Year Tariff Order in force at that time;

“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 tariff review;

“Open Book Tariff Setting” means tariff setting carried out for a new generation licensee who has opted for an approved tariff different from the tariff set by the Commission in line with section 4 of the tariff methodology in force at the time;

“Participant” means an Applicant or Intervener in a hearing or proceeding pursuant to a tariff review application;

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

“Tariff Review” means the application for a review of the current tariff of a Licensee outside the scheduled Minor and Major Reviews under the MYTO;

“Receiving Officer” means the staff of the Commission authorized to receive and acknowledge receipt of Application for Tariff Review, and perform other responsibilities assigned to him by the Commission pursuant to these Regulations;

“Regulation” or “Regulations” means any Regulation that has been approved by the Commission pursuant to the Act;

“Retail Tariffs” means the final tariff to be paid by consumers. It includes the generation, transmission, distribution and all other associated cost;

“Schedule” means the schedule appended to these Regulations;

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

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

“Tariff” means prices approved by the Commission in respect of any regulated activities of the electricity market;

“Tariff Review” means the application for a review of the current tariff of a Licensee outside the scheduled Minor and Major Reviews under the MYTO;

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

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

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

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

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

“Unlawful” means any act in contravention of the Act or any Regulation made there under, and/or any other law in force in Nigeria;

- (ii) All definitions in the Act shall have the same meanings and intendment in these Regulations 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.
- (v) These Regulations are meant to supplement the provisions of the MYTO methodology. Where there exists any inconsistencies between the two documents, the provisions of the MYTO methodology shall take precedence

CHAPTER 2

PROCEDURE FOR MAJOR REVIEWS OF TARIFF

4. **Notice of Intention to Commence Major Reviews of Tariff**

- (a) One year prior to the termination of the MYTO Order in force, the Commission shall issue a notice to all Licensees about its intention to commence the process for a Major Review of the existing tariff.
- (b) The Notice shall request for the submission of Audited Financial Statements, Budgets, Investment Plans (in line with schedule 2) , and proof of consultation with customers and consumers concerning their proposed tariff review and any other information as deemed necessary by the Commission.
- (c) The submissions must be received by the Commission within ninety (90) days after the Notice is issued.

5. **Review of Submissions and the development of the Consultation Paper**

- (a) The Commission shall, within five (5) days of receipt of the submissions, send acknowledgment letters to the Licensees.
- (b) The submissions shall be reviewed by the Commission and a Consultation Paper highlighting the need for the Order, including its objective(s), goals, and contents shall be prepared.
- (c) The Review of the submissions shall be conducted for a period not exceeding three (3) months from the date the Notice was issued.
- (d) The Consultation Paper containing the conclusions of the Commission regarding the submissions shall be developed and approved for presentation to stakeholders 6 months after the Notice was issued.
- (e) The Consultation Paper shall be published on the official website of the Commission, and request for comments from the public for a period of twenty-one (21) days.

- (f) The comments and observations received from the public shall be collated and relevant amendments made before the Draft Tariff Order is prepared.

6. Approval of the Tariff Order after a Major Review

- (a) The Commission shall within three(3) months of publishing the Consultation Paper, develop the draft Tariff Order and carry out all necessary consultation with stakeholders
- (b) A Notice of Proposed Rulemaking (NOPR) shall be published by the Commission informing the public of the draft Tariff Order, and the date for the workshop on the said Order.
- (c) The NOPR shall be published in the Official Gazette, and at least two National newspapers, directing the public to download the draft Order from the official website of the Commission and forward their comments within fourteen (14) days.
- (d) The Commission shall collate and incorporate relevant comments, observations, and decisions received due to the publication and from discussions at the stakeholders' workshop.
- (e) The Final Tariff Order shall be prepared and approved by the Commission within thirty (30) days from the date of the stakeholders' workshop.
- (f) The Tariff Order shall be published in the Official Gazette, two national newspapers, downloadable from the Commission's official website, and also sent to all licensees by mail, courier, or electronic mail.

CHAPTER 3 PROCEDURE FOR MINOR REVIEW OF TARIFF

7. Notice of Intention to Commence a Minor Reviews of Tariff

- (a) The existing tariff shall be reviewed bi-annually and changes may be made thereto if any or all of the generation wholesale contract price fuel costs, the Nigerian inflation

rate, United States dollar exchange rate, daily generation capacity and accompanying capex and opex requirements have varied materially from that used in the calculation of the tariff.

- (b) Six Weeks prior to the end of the six (6) month Minor Review period, the Commission shall issue a Notice, in two (2) national newspapers and on the official website of the Commission, of its intention to commence the process for a minor review of existing tariff.
- (c) Comments from the public must be submitted to the Commission within two (2) weeks after the publication of the notice.

8. Review of Submissions /Relevant Data, and Public Consultation

- (a) The Commission shall review submissions to the notice, and also request for the requisite information necessary for the adjustment from the relevant organizations, including the Transmission Company of Nigeria (TCN) National Bureau of Statistics (NBS) and Central Bank of Nigeria (CBN).
- (b) A Stakeholders workshop shall be convened for consultation with the public following approval of the Commission within One (1) month from the date of the publication.

9. Approval of the Tariff Order after a Minor Review

- (a) The comments obtained from the workshop shall be collated, adjustments made to the tariff, and the amended Tariff Order submitted to the Commission for approval.
- (b) The amended Tariff Order shall be approved by the Commission within ten (10) days from the date of the workshop, and published in the Official Gazette, two (2) national Newspapers, and downloadable from the Commission's official website, and also sent to all licensees by mail, courier or electronic mail.

CHAPTER 4
APPLICATION FOR EXTRAORDINARY TARIFF REVIEW

9. Eligibility and Form of Application

(a) These Regulations shall not be applicable to the reviews provided for in the Multi Year Tariff Order (MYTO), namely Major Reviews, Minor Reviews, and Open Book Tariff Setting.

(b) These Regulations shall only be applicable to Licensees whose proposed additional investments into their facilities or networks have not been factored in their existing approved tariff, including emergency expansions, and replacements

- i. Licensees requesting review in line with section 6.3 of the MYTO methodology
- ii. Licensees whose proposed additional investments into their facilities or networks have not been factored in their existing approved tariff, including emergency expansions, and replacements
- iii. Licensees who have encountered significant unforeseen operational, legal or regulatory costs which can be reasonably passed on to consumers.

(c) An Application for Tariff Review shall only be made by a Licensee under any or all of the following heads:

- i. Revenue Requirement;
- ii. Tariff Design; and
- iii. Generation tariff.

(d) An application for Tariff Review shall be made in the Form specified in Schedule 1 of these Regulations and shall contain the details of the applicant and required information based the type of application as specified in Schedule 2.

(e) The application shall also contain a Report Summary in the form specified in Schedule 3.

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

(g) The Application Form shall be completed, addressed to the Chairman of the Commission and delivered by hand or courier to the Commission's Head Office together with the supporting documents indicated in section 10(a) below.

(h) 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) Each hard copy of the application shall be submitted in duly indexed ring binders and the soft copy shall be properly cross referenced for ease of review by the Commission.

(j) Each Application shall be accompanied by supporting evidence that would enable the Commission take a decision.

(k) Applicants should understand that all proposals made will be inserted into NERC's MYTO Financial Model to establish the effect of the proposed changes to the Revenue Requirement and retail tariff schedules in the affected Discos.

10. Supporting Documentation

(a) Each application must comply with requirements of schedule 2 and also include the following components:

- i. Evidence that the proposed/requested change to the tariff will ensure the recovery of all prudent costs of providing electricity services to customers including:
 - A. The costs and expenses associated with the capital investment
 - B. Depreciation
 - C. Interest paid on money borrowed for the purpose of the investment
 - D. A fair return on the equity of shareholders
 - E. Taxes associated with the investment
 - F. The costs and expenses incurred and approved by the Commission;
- ii. A statement that the forecast of all proposed expenses in respect of transmission tariff and distribution tariff are true and support same with relevant and credible studies and verifiable source documents;
- iii. A statement that the forecast or actual expenditure and plants characteristics in respect of generation tariff are true and supported with relevant verifiable source documents; and

11. Filing Fees

(a) The Applicant shall upon submission of the Application Form, pay a non-refundable filing fee of Two Million Naira (N2, 000,000.00), or as may be prescribed by the Commission from time to time.

(b) This fee shall only be recoverable if the Tariff Review is approved by the Commission.

12. Acknowledgement of an Application

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

(b) If the submissions are not in compliance with the requirements of these Regulations, the Receiving Officer shall inform the Applicant accordingly, and refuse to receive the application.

(c) If an incomplete Application is received 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 within ten (10) working days.

(d) The Commission shall only acknowledge an application when it is found to be complete.

13. 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) newspapers, one with wide circulation in the area where 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 shall request for comments, objections or representations in connection with the Application.

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

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

14. Request 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 Request to participate as in the form specified in Schedule 4

(b) The Request to Participate shall be in an electronic copy in Microsoft Office format or by e-mail, and 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 of the Application;
- ii. A description of the party's concerns, observations comments and/or objections to the application; and
- iii. An indication as to whether the party supports or objects to the Application.

(c) The Request to Participate must be substantiated by other documents.

(d) The Commission shall, within 7 days of receiving the request, inform the interested person(s) and the Applicant about its decision and reasons.

(f) An Applicant or other interested persons shall indicate those documents that are confidential at the point of submission.

15. Circularization of Comments

(a) Upon granting approval to participate, the Commission shall within Seven (7) days circulate the Request to Participate and accompanying documents to the applicant and other approved Interveners.

(b) All Interveners shall be published on the Commission's website within 7 days of the approval.

(c) All documents submitted by Applicants or by other interested persons On Record are deemed to be public documents except otherwise made confidential by any law in force, an Agreement or an order of the court.

(d) The confidential documents must be identified at the point of submission.

16. Authority to Represent

(a) An Applicant may appoint a representative to stand in his stead during the hearing.

(b) Where an applicant appoints a representative, the Notice of Representation shall be served on the Commission at least seven days to the scheduled hearing date.

(c) The Applicant shall file a Notice of Representation to the Commission in the Form in Schedule 5 stating the name and contact details (Home Address, Work Address and Email address) of the representative.

17. Composition of the Hearing Panel

(a) The Commission shall conduct the hearing of an Application for Extraordinary Tariff Review in Panels of Three (3) Commissioners, one of whom shall serve as the Chairman appointed by the Commission.

(b) The decision of the Panel shall be based on both oral and documentary evidence tendered before it by the applicant, staff of the Commission and/or Intervener(s).

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

(d) The Panel shall not be bound by the Rules of Evidence in the conduct of Proceedings.

18. Hearing of the Application

(a) The Panel shall conduct the Hearing of the application not later than sixty (60) days from the expiration of the day fixed in the Notice for receipt of comments from the public.

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

(c) The Panel may proceed to Hearing in the absence of comments from the public and Interveners, and issue its final decision.

(d) The Panel may allow the Applicant, staff of the Commission, or Interveners to give oral evidence during the Hearing.

(e) The Panel may allow the Applicant, Staff of the Commission, or Interveners to invite expert witnesses to give further evidence which may throw more light on topical issues in the application.

(f) An expert witness shall only be admitted by the Panel if the Notice of the Intention to Invite an Expert Witness is received at least 14 days before the scheduled hearing date.

(g) The Commission shall notify all parties to the application about the participation of the expert witness within 7 days of receipt of such notification.

(h) 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 is pronounced.

(i) The Submission of additional information shall be made not later than 7 days before the date of the hearing.

(j) In the event that the Panel is unable to conclude the Hearing on the set date, the Panel may adjourn to reconvene on another date.

19. Burden of Proof

(a) The burden of proof is on the Applicant to prove that the proposed tariff is just and reasonable and based on prudent cost.

20. Decision of the Commission

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

(b) The order of the Commission shall be issued on or before 30 days after the Hearing Date.

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

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

21. Review of the Decision

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

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

(c) An Application for Rehearing by the Applicant 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 Panel may reconsider, vary or rescind its decision within thirty (30) days from the date of receipt of such request.

(e) The Panel shall only consider additional evidence not presented during the initial proceedings including facts arising after the original proceedings.

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

(g) Except where the Commission orders so, an Appeal for Judicial Review pursuant to Section 49 of the Act shall not act as a stay of the enforcement of the Decision of the Panel.

CHAPTER 5

OPEN-BOOK TARIFF SETTING PURSUANT TO SECTION 5 OF THE MYTO METHODOLOGY (As Amended)

22. Submission of an Application

(a) An applicant for a generation licence may request for a tariff which is higher than the approved tariff as stated in the MYTO in force at the time as provided by section 5 of the MYTO methodology (as amended)

(b) The applicant shall submit such a request with its application for a generation licence.

(c) The request shall be accompanied by the Power Purchase Agreement (PPA), Fuel Supply Agreement (FSA), Equipment Planning and Construction contract (EPC) and the

Operations & Maintenance (O&M) Agreement and all information and documents enumerated in schedule 2 to these Regulations.

23. Review of the Application

- (a) The Commission shall review the submissions and take a decision on whether to approve the requested tariff, or any tariff as determined appropriate by the Commission.
- (b) The Commission shall cause the applicant to issue a Notice, in two (2) national newspapers and on the official website of the Commission, of its request for an open-book tariff review.
- (c) Comments from the public must be submitted to the Commission within two (2) weeks after the publication of the notice, and all must be considered by the Commission prior to taking a decision.
- (d) A Stakeholders workshop shall be convened for consultation with the public following the approval of the Commission within One (1) month from the date of the publication.

24. Decision of the Application

- (a) The comments obtained from the workshop shall be collated, adjustments made to the requested tariff, if any, and the recommended tariff submitted to the Commission for approval.
- (c) The recommended tariff shall be approved by the Commission within ten (10) days from the date of the workshop, and published on the Commission's official website, and also sent to all licensees by mail, courier or electronic mail.

**CHAPTER 6
MISCELLANEOUS PROVISIONS**

25. Proceedings before the Commission

All proceedings before the Commission under these regulations shall be governed by the Business Rules of the Commission, and any amendments thereto.

26. Amendment or Repeal

The Commission may amend or repeal, in whole or in part, the provisions of these Regulations.

SIGNED BY THE ORDER OF THE COMMISSION

On this _____ day of _____, 2014

Dr. Sam Amadi
Chairman/CEO

FINAL DRAFT

SCHEDULES

Schedule 1 – Application Form

Schedule 2 - Form for submission of information

Schedule 3 – Report Summary Form

Schedule 4 – Form for Request to Participate

Schedule 5 - Notice of Representation

FINAL DRAFT

SCHEDULE 2 – REQUIRED DOCUMENTS AND INFORMATION

| Generation Tariff Information | | | |
|--|-------------|---------------|--|
| Description | Unit | Amount | |
| Generator type | | | |
| Generation Capacity | | | |
| Capital cost | | | |
| O&M cost (fixed) | | | |
| O&M cost (Variable) | | | |
| Capacity factor | | | |
| Auxiliary Requirement | | | |
| Fuel Costs | | | |
| Economic life of the Plant | | | |
| Construction period | | | |
| Sent-out efficiency | | | |
| Availability factor | | | |
| Ancillary consumption | | | |
| Load Factor | | | |
| Capacity degradation | | | |
| Applicants must attach supporting evidence to their claims and state the type of evidence they are submitting in the last column | | | |
| All expenditure should be expressed in Naira (N) | | | |

| | |
|------------------------|--|
| Reporting date: | |
|------------------------|--|

| | | | | | | | | | |
|--|-------------|-------------------|-------------------|---------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| Applicant: | | | | | | | | | |
| Transmission Major review application | | | | | | | | | |
| | Unit | Period t-2 | Period t-1 | Year t | Year t+1 | Year t+2 | Year t+3 | Year t+4 | Year t+5 |
| Transmission | | | | | | | | | |
| Fixed Assets Register | | | | | | | | | |
| Schedule of Depreciation | | | | | | | | | |
| O&M cost (fixed) | | | | | | | | | |
| O&M cost (variable) | | | | | | | | | |
| CAPEX Projection | | | | | | | | | |
| Fixed Cost (admin) | | | | | | | | | |
| Transmission loss | | | | | | | | | |
| Transmission Capacity | | | | | | | | | |
| Transmission length | | | | | | | | | |
| Ancillary Services Cost | | | | | | | | | |

NOTE:

1. Applicants must attach supporting evidence to their claims and state the type of evidence they are submitting in the last column
2. All expenditure should be expressed in Naira (N)
3. **t** refers to the initial regulatory year in the five-year regulatory period

4. All requested data must be broken down to customer classes , physical location , business units where applicable
5. Data for period t-2 and t-1 must be the actual amount spent

| SCHEDULE 1: APPENDIX 3 | | | | | | | | | |
|---------------------------------------|------|------------|------------|--------|----------|----------|----------|----------|----------|
| Reporting date: | | | | | | | | | |
| Applicant: | | | | | | | | | |
| Distribution Major Review Application | | | | | | | | | |
| | Unit | Period t-2 | Period t-1 | Year t | Year t+1 | Year t+2 | Year t+3 | Year t+4 | Year t+5 |
| Cost of Power | | | | | | | | | |
| Fixed Assets Register | | | | | | | | | |
| CAPEX | | | | | | | | | |
| Distribution Capacity | | | | | | | | | |
| Actual Sales | | | | | | | | | |
| Projected Sales | | | | | | | | | |
| O&M cost (fixed) | | | | | | | | | |
| O&M cost (variable) | | | | | | | | | |
| Fixed Cost (admin) | | | | | | | | | |
| Distribution /Technical loss | | | | | | | | | |
| Non technical losses | | | | | | | | | |
| Number of Customers | | | | | | | | | |
| Residential | | | | | | | | | |
| Commercial | | | | | | | | | |
| Industrial | | | | | | | | | |
| Special | | | | | | | | | |

NOTE:

1. Applicants must attach supporting evidence to their claims and state the type of evidence they are submitting in the last column
2. All expenditure should be expressed in Naira (N)
3. **t-** refers to the initial regulatory year in the five-year regulatory period
4. All requested data must be broken down to customer classes , physical location , business units where applicable
5. Data for period t-2 and t-1 must be the actual amount spent

FINAL DRAFT