

**NIGERIAN ELECTRICITY  
REGULATORY COMMISSION  
(NERC)**

**PUBLIC HEARING**

**ON**

**APPLICATION FOR A GENERATION LICENCE BY  
ALLIANCE ENERGY LIMITED**

**VERBATIM REPORT OF PROCEEDINGS  
HELD: MONDAY, 30<sup>TH</sup> OCTOBER, 2006.**

**PUBLIC HEARING BY**  
**NIGERIAN ELECTRICITY REGULATORY COMMISSION**  
**ON THE APPLICATION FOR A GENERATION LICENCE**  
**BY ALLIANCE ENERGY LIMITED**  
**HELD AT NERC BOARD ROOM, ADAMAWA PLAZA**  
**PLOT 1099, FIRS T AVENUE, OFFI SHEHU SH AGARI WAY,**  
**CEN TRAL BUS INESS D ISTRIC T, ABUJA**  
**ON MONDAY, 30<sup>TH</sup> OC TOBER, 2006.**

*The Commission met at 12.15 p.m.*

*(The Chairman presided)*

**PRAYERS**

**MEMBERS PRESENT:**

- |           |                                 |          |   |
|-----------|---------------------------------|----------|---|
| <b>1.</b> | <b>DR. RANSOME O WAN</b>        | <b>-</b> | <b>CHAIRMAN</b>   |
| <b>2.</b> | <b>MALLAM ABDU LRAHMAN AD O</b> | <b>-</b> | <b>VICE-CHAIRMAN</b>  |
| <b>3.</b> | <b>DR. ALIM I ABDULRAZAQ</b>    | <b>-</b> | <b>COMMISSIONER, LEGAL<br/>SUPPORT &amp; LICENSING.</b>         |
| <b>4.</b> | <b>DR. GRA CE EYOMA</b>         | <b>-</b> | <b>COMMISSIONER, GOVT .<br/>&amp; CONSUMER AFFAIRS.</b>         |
| <b>5.</b> | <b>PROF. O. C. ILOEJE</b>       | <b>-</b> | <b>COMMISSIONER,<br/>RESEARC H &amp; DEV.</b>                   |
| <b>6.</b> | <b>ENGR. ABIMBOLA ODUBIYI</b>   | <b>-</b> | <b>COMMISSIONER,<br/>ENGINEERING<br/>STANDARD &amp; SAFETY.</b> |

7. ENGR. M. B. G . BUNU - COMMISSIONER ,  
FINANCE & SUPPORT  
SERVICES.

**STAKEHOLDERS PRESENT:**

1. ALLIANCE ENERGY LIMITED - MR. AKINWOLE OMOBORIO WO  
II & 5 OTHERS;  
2. INTERESTED PARTY - DR. FEMI LANA.

**REPORTORIAL TEAM:**

1. MR. BONNIE E. ONYEMAECHE - EDITOR  
2. MRS. C. B. EMMA - CHIEF REPORTER  
3. MR. J. O. ADIGUN - REPORTER  
4, MS. FLORENCE ONU - REPORTER.

**THE CHAIRMAN:** Good afternoon; and you are all welcome. We appreciate everyone who had taken the time to come to the Commission in spite of the solemn nature that the country is yet witnessing. Before we begin, I would like us to observe a minute of silence for our country men and women that are departed as a result of the ill-fated ADC Flight. In our minds, we should pray for strength for their families to carry on.

*(A minute silence accordingly observed)*

Let me go over some minor house-keeping information for our own understanding. The purpose of this Public Hearing today is to allow us to gather some facts so that our records will be more complete as we decide on the matter before us. Parties have made written representations to us; and this oral portion would allow us to gather some information additionally to that. All information or discussions should be directed to the Chair; and we should not discuss pointing hands at others and to our colleagues. We would discourage cheering and clapping even if you have a supporting team.

The Rest Rooms are outside of the door, across another set of doors and the Hallway. The Exit is across the door immediately to the one in front of Stakeholders and to your left.

Let me, again, formally thank everybody who has come here today. This is our first Public Hearing; and it comes awfully close to our one year Anniversary. We were inaugurated on 31<sup>st</sup> October, 2005. The Commission has undertaken a number of activities in interacting with our stakeholders and those who wish to do business with us. As the first Public Hearing, it is important for us to understand a few other Rules and how we will proceed.

In this context, once we settle down, the staff will read a **Statement of the Facts** as we know it; the Staff will also find out the Parties to the Case and see if they are present and to make note of that. Also Parties who are here and wish to say something should make sure that their business cards and information are given to the Official Reporters so that they know who contributes what. This is to enable us have a good record of proceedings. We will also like to find out if those present are represented by their Counsel/Lawyer. If so, we would like to know as well as have it noted in the record.

There are supposed to be three parties to this Case. Unfortunately, we found out that other people were unable to make it. However, for those who are not or would not be here, we have a written representation of their views. The Commission has enough information from them if they choose not to give additional information.

Without further ado, the House is in session and we commence Hearing.

## STATEMENT OF FACTS

**THE COMMISSION'S STAFF:** These are the Statement of Facts for Case No: NERC/CNO0306 in the matter of the Application for a Generation Licence by Alliance Energy Limited. These are the Facts :

*Alliance Energy Limited expressed interest for an off-grid 50 MW IPP at Onne Oil and Gas Free Zone and submitted an application in this regard to the Commission. Further to its application, Alliance Energy published notice of its intention for a generation licence in two dailies, namely: The Guardian of Sunday, 7<sup>th</sup> May, 2006, and Daily Champion of Wednesday, 10<sup>th</sup> May, 2006.*

### **Objections.**

*Following this publication, the Commission received objections to the Alliance Energy's application for licence from two entities namely:*

- 1. Oil and Gas Free Zone Authority, Onne; and*
- 2. Thames Energy Limited.*

*The Oil and Gas Free Zone Authority contended that it had not authorised Alliance Energy to handle electricity generation services in the Oil and Gas Free Zone at Onne and urged the Commission to reject the licence application since Alliance Energy was yet to comply with the statutory requirement of the Oil and Gas Free Zone Act No.8 of 1996 on obtaining a permit from the Oil and Gas Free Zone Authority.*

*Thames Energy contended that it had a subsisting generation licence issued by the Federal Ministry of Power and Steel on December 24, 2004, authorising it to construct a power plant at Onne and claims that the licence gives its exclusivity.*

***Reply by Alliance Energy.***

*Alliance Energy responded to the objections raised by Onne Oil and Gas Free Zone Authority and Thames Energy respectively as follows:*

***Thames Energy's contention that it has a subsisting licence***

*Alliance has this to say:*

- (a) That the overall objective of the on-going Government reform, the Electric Power Sector Reform (EPSR) Act is the development of a competitive electricity market, thus, an attempt to lay an exclusive right to power generation in Onne Zone for 20 years by a Company who was yet to commence power generation close to two years after the purported licence defeats the whole object of the Act and Government reforms.*
- (b) Section 82 of the EPSR Act vests the Commission with the responsibility to monitor the Nigerian electricity industry in regard to potential for additional competition. Thus, the power of the Commission to grant a fresh licence is not affected and thus the objection of Thames Energy is not in the public interest and should be disregarded accordingly.*

***On Thames Energy's contention that Section 98 of the EPSR Act applies to its licence:***

*Alliance Energy argued that for Section 98 of the EPSR Act to apply, Thames Energy must prove that its licence is still valid and issued under the Electricity Act or NEPA Act. Furthermore, Section 98 cannot be read in isolation; and the interpretation read into the Section by Thames Energy creates an absurdity and potentially will scuttle economic growth in a sensitive industrial area like Onne.*

***On Thames Energy's reference to issues like financial loss, duplication of licence and loss of investor confidence:***

*Alliance Energy stated that for these issues are largely unsubstantiated by any documentation and have no factual basis.*

***Onne Export Free Zone contention that Alliance Energy had not received approval to build a power plant in the Zone:***

*Alliance Energy stated that it would approach the Authority at the appropriate time for all necessary permits after the Commission has completed its assignment regarding issuance of this licence.*

*Finally, Alliance Energy requested the Commission to disregard the objections as baseless and lacking in merit and to proceed to consider the application.*

These were the facts of the case, Sir.

I have the authority of the Commission to request Parties present to indicate by show of hands. Alliance Energy is present, Sir. Is there any other Party, please? All right, we have an interested party as well, Sir.

**THE CHAIRMAN:** Thank you very much. Before we commence the formal responses or questioning from us, we would like Presenters to be sworn on Oath to ensure that they speak under Oath. Therefore, may I invite Chief Ikeonu, Notary Public, to formally swear in Alliance Energy's representative?

**CHIEF IKEONU (NOTARY PUBLIC):** Thank you very much, Hon. Commissioners. Would you like to swear or affirm?

**MR. AKINWOLE OMOBORIOWO II (REPRESENTATIVE, ALLIANCE ENERGY LIMITED):** I would like to Affirm.

*(Mr Akinwale Omobori owo II accordingly subscribes the Oath by Affirmation)*

**THE CHAIRMAN:** You now have the floor. You may wish to make a statement if you desire.

**MR. AKIN WOLE OMOBORI OWO II:** First, we want to apologise on behalf of Alliance Energy for coming late. I was inevitably delayed for two hours in Lagos by the first flight in an attempt to connect *Virgin*. We would seek the guidance of the Commission on a particular point that the Commission so wishes that we respond rather than speak in a vacuum.

**THE CHAIRMAN:** Thank you; but we would like to ask you to briefly summarise your case for the record.

**MR. OMOBORIO WO II:** Thank you very much, Sir. Alliance Energy is a Company registered and constituted under the Laws of Nigeria - approximately three years ago. We decided to pursue the possibility of generating power within the Onne Oil and Gas Free Zone. It was our understanding at the time, as it is now, that the Onne Oil and Gas Free Zone was largely a Zone that was off-Grid: there was no connection of the Power Holding Company of Nigeria (PHCN) transmission or distribution lines. So, the operators and those within the Zone had to generate their power very expensively through the use of diesel-fired emergency power plants.

We engaged the services of reputable firms - world class – and did put together Consortiums including SIEMENS (Nigeria) to undertake this venture. Since then, we have done extensive study on generation on load demand supply as well as on the spirit and letter of EPSR Act, 2005. Our understanding as of today is that any individual or company generating power above 1 MW would seek the approval for a Licence from NERC to undertake this activity. For us to be able to achieve our objective, having committed so



much resources: time, human, financial and what have you, we approached NERC in early part of 2006 to legalise our interest and our business objective within the Onne Oil and Gas Free Zone.

At the time of submission of our application, we deemed it fit that we had fulfilled all the terms and conditions that were expected of us to qualify for the issuance of power generation licence on a captive power basis for the Free Zone. It was also our understanding that NERC is also empowered to develop the electricity sub-sector of Nigeria, being a critical infrastructure for economic growth and development. Part of that empowerment also included competitive electricity sub-sector where consumers: private, governmental, commercial and individuals can have a choice through various power generating companies to purchase or contact to purchase the cheapest and the most reasonable power for them within the ambit of the Law.

In fulfilment of the EPSR Act, and under the instruction of the Commission, we took two paid advertisements in the National Dailies expressing our interest. We received also, through the NERC, two objections. We believe that, legally and morally, we have responded to these objections. At this point in time, we seek the guidance of the Hon. Chairman and Members of the Commission on how we would proceed from here, and what it is that is required or requested of us to move forward?

Thank you, Sir .

**THE CHAIRMAN:** Thank you for your comments. We have series of questions to put across to you. If they require *yes* or *no* answers, we would let you know. If we want you to expand on them, we will let you know also.

**Q.** What is the size of the power plant that you propose to build in this Zone?

**A.** In the first phase, 50 MW.

- Q.** Is there a second phase?
- A.** Yes, Sir. We believe that the Zone currently operates *suppressed* demand. We estimated the power requirement based on the load study we did to be on/about 50 MW plus or minus 10 *per cent*. We believe that when there is qualitative and reliable power in the Zone, the power demand may well increase.
- Q.** Will that power be enough for everybody that would come to the Zone to operate?
- A.** As of early 2006, Sir, yes.
- Q.** Would you expect exclusive power generation right in the Zone, that is, that you should be the only one to generate and sell power within the Zone?
- A.** No! But that would be nice if we have it, Sir.
- Q.** What is your view of the objection of the Zonal Authority to your application?
- A.** As regards the Zonal Authority, we have not had the opportunity to review the Law that set them up; and, of course; the power that they have. It is clear that in matters of power generation, distribution and all electricity matter, NERC has the prerogative. We consider that it is an Export Free Zone, but it is still part of Nigeria. It is our belief that pursuant to actual physical construction of a power plant, we would inevitably secure the Permit of the Free Zone Authority to put this plant on ground. It is not just for the benefit of Alliance Energy for profit making but for the benefit of the Free Zone itself.

It is our summarised opinion that the Onne Oil and Gas Free Zone objection is premature. We think that they should be more concerned about the ability and competence of Companies willing to operate within the Zone. Since then, we have made several attempts to secure this Permit formally and informally. We have been promised that, at the right time, our Application would be looked at.

That is our case, Sir.

**Q.** Did you say that you had time to review their Law or not?

**A.** No, we have not, Sir.

**Q.** What is your view on the objections from the Thames Energy Limited?

**A.** As fellow entrepreneurs, we believe that they have every right to pursue their business. On a very elementary stage or level, we do not object to their wanting to obstruct all other power generation companies from coming to that zone as intended. But we believe that Thames Energy was aware of the enactment of the EPSR Act of 2005. As is with most of us, anyone who has any serious investment in the industry should follow the goings-on within the sector.

We also believe that when the good Commission requested expression of interest which was advertised in all the dailies requesting people who had interest of generating power to come forward to secure their licenses, we obtained a copy and took action. We believe that it was the right time for Thames, if they had any real claim, to come forward to NERC to request that that zone should be excluded from all future and present power generations licenses and issuance.

We do believe that every corporate citizen and individual has the right to apply to venture into legitimate businesses when a contract is constituted. We do not feel that Thames has any ground to object. We should not do the same.

**Q.** Does the zonal authority have the right to refuse to grant you permit to operate in that zone?

**A.** Sir, I am not sure I can answer that.

**Q.** Are you aware that in their enabling authorisation, that they have the enabling power to permit anyone who wishes to conduct any and all activities within that zone; and they stipulate the process for doing that?

**A.** Yes, Sir; and we are willing to comply with these procedures and processes. We believe, Sir, and at this stage, that NERC has the pre-eminence so far as that zone is still part of Nigeria. We feel that our Application could form a subject by NERC. Even the issue of a Licence could be made a subject towards perfecting all the processes and procedures within the area that we so wish to operate in.

In fact, the EPSR also provides for NERC to assist prospective Licensees to approach the good Commission for assistance in areas where there are difficulties in securing such plants or Licenses/Permit to operate within a legitimate geographical area.

**Q.** Does the Commission have the right to refuse a grant of application if all matters and facts have not been met to the satisfaction of the Commission?

**A.** Absolutely, Sir.

**Q.** In your opinion, can others generate power within the Commission - either for their own use or for excess evacuation?

**A.** Yes, Sir.

**Q.** Do you have permission of the landlord - if you know of a landlord - to conduct business in the zone?

**A.** Yes, Sir; we do. We filed the same papers with the Commission.

**Q.** Who is the landlord of Onne Zone?

**A.** I am not sure of whom the landlord of Onne Zone is. But we did secure the lease from a private company who had been granted land usage within the Zone.

- Q.** Do you sub-let?
- A.** Yes, Sir.
- Q.** Are you aware if sub-letting is approved or disapproved from that Zone?
- A.** No, Sir. We are not aware of the illegality of that.
- Q.** Are you aware that to operate in that Zone, you need a feasibility study for the use of that site?
- A.** No, Sir.
- Q.** Apart from your License, just to operate and construct in the Zone itself?
- A.** No, Sir; we were not aware that the Zone requires that. But we, on our own part, did our own feasibility study for the business to be conducted. We have since submitted a copy of same to the Commission.
- Q.** There is one reason for carrying out feasibility studies for your proposal before the Commission. Are you aware of any requirement as a feasibility study through the zonal authority separate from the application?
- A.** No, Sir; we are not.
- Q.** Are you aware that there may or may not be a requirement to perform a survey of the use of that feasibility that you intend to use?
- A.** Yes, Sir.
- Q.** Have you prepared such a survey to the zonal authority?
- A.** No; we have not prepared for the zonal authority.
- Q.** Do you plan to do one?
- A.** We have prepared one, Sir. But we can submit it to the zonal authority.
- Q.** I do not know if they require it or not. Like I said, if they do, are you aware of it?
- A.** No, Sir; we are not.

**Q.** Are you aware that, perhaps, the Commission/the Zonal Authority do require an environmental impact statement separate from requirement to generate electricity?

**A.** We are not aware, Sir. But we received from the Ministry of Environment statement of continuity of the environmental impact assessment currently undertaken by our company. We forwarded same to the Commission.

**THE CHAIRMAN:** In your opinion, will the grant of a License to you hamper other competitive activities in that zone?

**MR. AKINWOLE OMOBORIO WO II:** No, Sir. To the contrary, we believe that we will be a catalyst to more competitions in the zone.

**THE CHAIRMAN:** I will go around my Commissioners to see who has questions for you.

**PROF. O. C. ILOEJE:** You did say that you do not have a sub-lease. Are you at liberty to tell us the person that sub-let the land to you?

**MR. AKINWOLE OMOBORIO WO II:** Yes, Sir; it is PPI Limited.

**Q.** And you know the basis of PPI's title to the land that he sub-let to you?

**A.** Yes, Sir.

**Q.** Can you tell us, please?

**A.** We understand they have a five-year renewable lease with the authority to conduct energy businesses within the Free Zone.

**Q.** I hope you will avail yourself the opportunity and assurance of the legitimacy of the transaction?

**A.** Yes, Sir; we have taken that under Guidance.

**Q.** Though, I understand you saying that you had made some contacts with Onne Free Zone Authority.

A. Yes, Sir.

Q. And your negotiation with them is towards getting the Permit?

A. Yes, Sir.

Q. Was that since you submitted your Application to NERC or before?

A. It was before and after. It was intensified the more when we received the objection. We had since intimated NERC formally that we have commenced discussions with them; and we are hopeful that they will be able to resolve their situation.

Q. So, what is your response to the position of the Free Zone authority that they do not know you?

A. That position is correct because we are yet to register within the Zone.

Q. Are you experiencing any difficulties in your negotiations with the Free Zone towards getting the Permit and the certification you need?

A. I would say that there has been a bit of delay rather than expected. We would like that extract if it is possible.

Q. Can you tell us the basis or reason for the delay as you called it?

A. I really cannot speak on behalf of others. But we are yet to be granted what we can say is the required Permit even though we made several attempts. The Zone has also been communicating formally and informally; and we expect closure shortly.

**PROFESSOR ILOEJE:** Can you tell us whether there is a disagreement between you and the Free Zone?

**MR. OMOBORIO WO II:** No, Sir. In principle, there is no disagreement. The Zone has also expressed informally the importance of power to that Free Zone. Of course, the importance of the economic development the power will bring to that zone. So, we

believe that they are also keen to get that Zone properly electrified at far cheaper rate than it is right now.

**DR. ALIM I ABDULRAZ AQ :** Let us briefly go back to your earlier statement regarding the PPI and its five-year renewable lease. Can you tell us a bit more about this: who are the parties to this agreement?

**MR. AKIN WOLE OMOBO RIO WO II:** The parties are Alliance Energy on one part which I represent and PPI Limited - another indigenous company. We had, in fact, executed this sub-lease. As mentioned earlier, copies of this had been forwarded to the Commission for its information.

**Q.** What is the PPI's title to the said plot based upon?

**A.** We believe there is the statutory application that was made by PPI. And we believe that pursuant to PPI fulfilling the conditions of issuance of the land allocation, they were issued with proper document by the Nigerian Ports Authority.

**Q.** Regarding your proposed application to the Oil and Gas Free Zone, have you made any effort to apply?

**A.** Yes, we attempted to serve a formal appointment for the past three or four months. The management of the company always expressed informally the willingness to meet but the Managing Director had largely been unavailable for this period. We thought, given the objection that they raised, we should also treat them with courtesy by not just sending in an Application formally presenting it to the Chief Executive. Informally also, this had been requested of us to do.

**DR. ALIM I ABDULRAZ AQ:** Inform us more about the situation in Oil and Gas Free Zone. Is there any connection into the National Grid at the moment; or what is the source of supply of power?



**MR. OMOBORIO WO II:** As at 2006, my understanding is that there was no connection to the National Grid. If it happened, we are not aware of that. However, currently, it is our understanding that Free Zone users also have to engage in their own emergency power generation to be able to subsist.

**MALLAM ABDULRAHMAN ADO:** In what year was the PPI land assigned?

**MR. OMOBORIO WO II:** It was in 2002. I am sorry; let me just confirm that. Sir, can I come back to you on that? I do not have the specific document.

**Q.** Is your Application to Onne Zone or to the Free Zone? Was it to ratify this arrangement or for a fresh land?

**A.** It was our intention to ratify it. And where the Free Zone deems fit, that land is not suitable for that purpose. We intend to re-apply for whatever land they prefer.

**MALLAM ADO:** Is it to be assigned to you at the expiration or the initial lease or what?

**MR. OMOBORIO WO II:** Well, the lease that PPI has is renewable. It is more than norm within the Nigerian Ports Authority to operate land-scape. Most leases are renewed automatically unless the companies are found to be doing illegal businesses.

**DR. GRACE EYOMA:** There are so many questions; and I am sure that you probably consulted some Counsel on this matter. In anyway, you are here because you applied for a License. Are you aware of anything in that sub or head-lease that would have prevented you from having a sub-lease?

**MR. AKINWOLE OMOBORIO WO II:** I am not aware.

**Q.** There is a survey attached to that sub-lease. Of course, you want to place a power plant in this location; and you have applied. The sub-lease must have some

requirements of rectification or consent of the Zone. Is that the effort you are making at this point?

**A.** That is exactly the effort. We would have ratified this earlier. But going through all these processes also cost money, time and effort. Of course, we do not have a business here until we have a license. Whilst the land lease perfection is not mundane, however, we were to go ahead and incur this additional cost without a firm direction as the issuance of this L license is premature.

**Q.** To the best of your knowledge, do you know where Thames are located; that is, where the power plant is to be located?

**A.** Yes.

**Q.** What is the proximity of the proposed plant?

**A.** We are not aware of Thames or any other plant. Maybe, it includes the point where you received the objection.

**Q.** You saw the License issued to them because you alluded to the point of competition. What do you have to say about that?

**A.** Sorry for the interruption. We have not seen the License issued to Thames.

**DR. GRACE EYOMA:** What was annexed to the objection, in your opinion, was not the License that was issued from the Ministry of Power and Steel?

**MR. AKINWOLE OMOBORIO WO II:** Yes, Madam, we did not receive a copy of that.

**ENGR. ABIMBOLA ODUBIYI:** Just one question. Can you inform this Hearing the nature of attempts you made to get Permit or Approval from Onne Licensing Authority: is it just by casual phone call? Did you follow the due process with Onne in getting their Permit?

**MR. AKINWOLE OMOBORIO WO II:** Pursuant to receiving the objection of the Onne Free Zone Authority, we made physical visits to their offices in Port Harcourt, the Representative's office in Abuja. As a matter of fact, we have small number of staff to be going between Abuja and Port Harcourt offices almost on weekly basis.

Severally also, we made telephone calls to management staff. I, particularly, had been speaking to the Managing Director of the organisation. We requested that they forward to us the procedure, processes and, perhaps, the terms and conditions for being issued this Permit. Every time we go to the Zone, we, unfortunately, cannot force them to give us the Form. The staff would tell you to wait for the Chief Executive whose responsibility it is to do to achieve your objectives.

At this stage, save for forceful actions, we literally were lost as to what we are expected to do on a Free Zone. Perhaps, if they give us the Forms to fill, we will begin the process.

**ENGINEER M. B. G. BUNU:** Do you mean that it is the Chief Executive that should give out the Forms or what? I seem not to understand.

**MR. OMOBORIO WO II:** It is the same situation that we are faced with. We are not sure how to go about it.

**MALLAM ABDULRAHMAN ADO:** Was there any formal Application by your organization to Onne Zone?

**MR. OMOBORIO WO II:** No; there was no formal Application.

**Q.** Did you write formally to explain what you wanted to do such as receiving guidance or what process to follow to secure a plot of land for this business?

**A.** What we had done so far was to copy the authority on our response to NERC. In that, we requested to meet with them to review and seek for a way forward.

**Q.** In other words, there was no formal Application from Alliance?

**A.** There was none.

**Q.** So, you did not apply?

**A.** We did not apply because we did not even know how to apply.

**MALLAM ABDULRAHMAN ADO:** If you have written to say that you were applying for guidance on A, B, C and D; or that you have intention of doing the business and you formally applied, if there was any other thing you needed to be done, I suppose that they would have advised.

**MR. OMOBORIO WO II:** That is correct, Sir.

**ENGINEER BUNU:** I just want to understand what you said. Was it that NPA leased to PPI, and that Onne Free Zone also is within the same complex? Secondly, how do the two authorities work; that is, if NPA leases a land to a Company to do business, is it normal or possible for Onne Free Zone to come and say: *Look, since you have not registered with us, we are not going to allow you to do business there.* How do the two authorities relate and/or work?

**MR. OMOBORIO WO II:** Sir, we are not really sure how the two co-exist or function. Initially, it was our understanding that securing a piece of land within the Zone directly from the authorities - either NPA or the Free Zone - and securing your statutory generating license from NERC may well be sufficient to firmly register your interest within that Zone. Given the level of effort and time to be put into this investment, if we had an inclination that NPA was distinct and a separate entity from Onne Free Zone, and that whatever land one secures from NPA has no legal standing, perhaps, we would have pursued a different course of action. But as it stands, what Onne Free Zone said, basically, is that irrespective of whatever relationship one may or may not have within the free zone, without

any formal registration with the Zone. That is Onne Free Zone authority's grounds of objection.

**ENGR. BUNU:** So, based on your discussion with Onne Free Zone, do you see the possibility of you being registered; or has there been any example of objections in the past?

**MR. AKIN WOLE OMOBORIOWO II:** I believe the Onne Free Zone will, invariably, register us because the business we seek to pursue in that Zone is a very legitimate thing that should be encouraged. I see more of the itinerary of the executives given the many commitments which is the reason for this time lag. Invariably, I believe that we will pick up the required Form and will be registered.

**PROF. ILOEJE:** It just struck me a little unusual that all this while, according to your earlier testimony, Alliance Energy had not tried to brief itself truly about the law setting up the Onne Free Zone Authority and the extent of their responsibilities and powers with respect to companies coming to do business there. This would have helped to clarify the distinction between NPA, the Free Zone and the limits of their authorities. Is there any particular reason for that?

**MR. OMOBORIOWO II:** We had, in fact, reviewed the laws setting up the Free Trade Zone Authority; and it is our understanding that this same law applies to other Zonal Authorities - be it in Calabar, Lagos or in Onne. However, be that as it may, I thought that Onne Free Zone could have its own regulation given the distinct entity; and that there may be separate Forms; for instance, the Free Zone in Calabar.

Really, I am not sure that the laws enforced in Onne are different from the laws that set up the actual Free Trade Zone Authority supervised by the Commerce Ministry. But why we hesitated in confirming to you that we do know all the Rules and Regulations in force in the Onne Free Zone itself is that we felt that there may well be other peculiar

requirements that the authorities of the Free Zones may have issued to those operating within such Zones; or may have been part of the decision precedent for those who want to enter the Zone. We have not had the opportunity to receive these other conditions.

**THE CHAIRMAN:** Let me do a kind of follow-up. We will provide you with a copy of the Objection Letters from Thames Energy including the attachments just as you stated that you do not have that document. Could you check your record and confirm that you have what we gave out today. Please, confirm that you have it.

**MR. OMOBORIO WO II:** I confirm that I have one for Free Zone: **The basis of their objection.**

**Q.** What about Thames Energy that has a copy of their claimed Tariff or License from the Ministry of Power and Steel: do you have that?

**A.** Yes, I have here an Approval from the Federal Ministry of Power and Steel in favour of Thames Energy.

**Q.** Is there a copy of a License to that document: and would this be the first time you are seeing that document?

**A.** Yes; it is the first time that I am seeing the document.

**THE CHAIRMAN:** Before we continue, we had a guest walk in here. Gentleman, are you part of Alliance Energy Limited?

**MEMBER, ALLIANCE ENERGY LIMITED:** I am, Sir.

**THE CHAIRMAN:** You are quite welcome.

Mr. Omborowo, is it true, from your statement that the reason you have not pursued formal contact with the Zone is because you are awaiting a decision from the Commission?

**MR. OMOBORIO WO II:** Yes and No. Yes because we are waiting for the final decision from this Commission given that we felt that the license being a subject to perfecting our relationship with the Free Zone Authority.

**Q.** You did introduce, as it appears, another party that may have some interest in the land use of that Zone; namely, the Nigerian Ports Authority (NPA). You identified them as the Landlords that initially gave the right to use that land to a Company called PPI. Is that correct?

**A.** That is correct, Sir.

**Q.** Subsequently, you received a sub -lease agreement with PPI?

**A.** Yes, Sir.

**Q.** Following that it is a Zonal contention that regardless of your sub-lease - whether they are aware of it or not, you needed to register as your own entity planning to do business in the Zone. Is that correct?

**A.** That is correct, Sir.

**Q.** Was it an oral representation to you or in writing?

**A.** They wrote to the Zonal group.

**Q.** Did the zonal group ask that you register with it?

**A.** It was an oral communication.

**Q.** Part of the mandate of the Oil and Gas Export Free Zone on page 160 of the Act of 1996, No. 8, Section 9(1) reads as follows:

*Any enterprise which proposes to undertake an approved activity within the Export Free Zone shall apply to the authority in writing for permission to do so; and shall submit such documents and information in support of the application as the authority may require from time to time.*

Section 9(2) states as follows:

*Subject to the provisions of this Decree, the authority may grant, subject to such terms and conditions as it deems fit, approval for an enterprise to undertake the approved activity specified in each application brought under Section 1 of this Section.*

On the Power to Grant License, I will read two parts of it under Section 10(1) which states:

*The authority may grant a license for any approved activity in the Export Free Zone to an individual or business concern whether or not the business is incorporated in the Custom's territory.*

Section 10(2) reads:

*The grant of a license by the authority shall constitute registration for the purposes of company registration within the Export Free Zone.*

Now, I ask you, of the Permit that you may be seeking from the Zonal Authority, would that constitute permission to use that space or license to generate electricity?

**A.** I believe it would be a License to generate electricity.

**Q.** Were you anticipating getting more than one License to generate electricity in the same location?

**A.** No, Sir.

**Q.** Should the License to generate electricity, in your opinion, come from the Zonal Authority or from someone such as the Nigerian Electricity Regulatory Commission?

**A.** I think it should come from the Nigerian Electricity Regulatory Commission (NERC).

**Q.** I thought I heard you say that the application to the Zone was also to give you a License to generate electricity?



**A.** From what I said, I meant that by the objection of the Free Zone to our operation in the Zone, it was to our understanding that what they required us to do is to seek another Permit to generate electricity within that Zone.

**Q.** In what I read from Section 9(1) thus, that any enterprise simply has to apply to the authority in writing for that permission. Do I understand that you made a formal Application in writing?

**A.** No, Sir; we have not.

**Q.** Are you aware that they may or may not provide any Form for this process?

**A.** We are not aware of any of the processes, Sir.

**Q.** Again, I understand that you are not aware that, in fact, sub-letting is not prohibited.

**A.** We are not aware, Sir.

**Q.** Are you aware that it is allowable?

**A.** Yes, Sir; and we were given some examples from within the Zone of people who, informally, operated in the Zone and who, as we know, were, in fact, not original natives of these lands.

**THE CHAIRMAN:** I thank you for your testimony this morning.

**MR. AKINWOLE OMOBORI OWO II:** Thank you, Sir.

**THE CHAIRMAN:** The Commission will like to know if any one in the audience wishes to make any representation or observation for the consideration of the Commission?

*(A stakeholder approaches the bench)*

Thank you. You should be sworn in.

*(Dr. Femi Lana accordingly subscribes by swearing)*

**THE CHAIRMAN:** Thank you very much. Welcome. Who do you represent today at this Hearing?

**DR. FEMI LANA:** I am an interested party.

**THE CHAIRMAN:** For what purpose do you appear here today?

**DR. LANA:** In the first instance, it is to help the Commission. Secondly, it is to clarify issues so that we can have correct focus and avoid waste of time on what is not important.

**THE CHAIRMAN:** I shall be asking you one question at a time so as to put our record straight.

Can you state your business address?

**DR. LANA:** Ewudiabor Road, Onne, Rivers State.

**Q.** Do you have an interest, business or otherwise in the aforementioned Onne Oil and Gas Free Trade Zone?

**A.** 100 *per cent*, yes.

**Q.** Can you state, for our records, the nature of your business in that area?

**A.** I have two scenarios to paint here. The first one is that we were granted licence to construct the Refinery at Onne. That was my first interest. My second interest is that we find it very proper to generate our own electricity for two reasons. One is to feed the Refinery and two the Nigerian people. We have been very quiet.

It was a very serious surprise to us when we got your notice. And since we are on the side of legality, we need to respect the Law. That is why I came to re-focus, give proper clarification and to help understand each other. Those are the two reasons why I am here.

**Q.** Would you like to make a brief statement either about what you heard or regarding other purposes that make you arrive with us today?

**A.** Yes, I can. Basically, I will create two scenarios. One, I thank Mr. Omoboriwo. I say, God bless you. I see your motive as genuine and not profit based.

**Q.** Please, direct your comments to the Commission.

**A.** With due respect, let me thank his spirit first, and thereafter, I will face the Commission. I have heard you; your motive is not for profit; and you are not a charitable organisation.

**Q.** We would also ask you to, please, direct your comments to the Commission. Thank you.

**A.** We got this Licence for the Refinery by following due process based on the new scenario in Nigeria of today. One, you need to get and understand who the proper landlord at Onne is. We did that research; and quietly, we understood the concept of the Free Zone as established in 1976. It took time before the legal status of Onne was established. Who truly is the legal landlord? It took us a battle, like the young man really said. He told you the truth. There was Stakeholders meeting at the Villa that enabled us to establish the true legal status at Onne. It was resolved that the Nigerian Ports Authority is the legal landlord. That pushed away the exigencies of the Free Zone Authority by regulating them to the normal exigencies of what is applicable regarding the Law establishing it.

We approached the Authorities at the NPA and wrote to them officially. We also wrote to the then Minister, Dr Abiye Sekibo, and things were done in normal humanly possible way. We got the consent and approval of the Ministry of Transport and were issued with a letter. I have a copy of the letter here with me. We were given closed to 100 hectares of land at Onne: about 52 hectares for the Refinery, about 45 hectares of land for the Thermal and another 15 hectares of land

for Accommodation which we classified as Camp Site for our Engineers when we started operation. Those were the two objectives: the Refinery and the Therma 1.

The next leg regarding due process is to approach Onne Free Zone with an Application. We even directed it to their supervisory Ministry which is the Ministry of Commerce. The Minister wrote them and they replied and copied NEPA stating that so and so company made application to it. I have it in writing which could be tendered to the Commission at its indulgence.

The Onne Free Zone replied their Minister that they had contracted a Consultant to let them have an over-view of the energy needs of Onne Free Zone to reduce the chaotic madness that went on at Onne. It was in writing. They copied the MD of NEPA, wrote to their Minister and copied me. Onne gave me a Form to complete. In that form, there was an accompanying letter with it asking that I submit certain documentations in writing. We did all that. As I said before, we worked in a very quiet way; we did not have to be too noisy about anything. This is because our children would benefit from majority of the situation. The objective was to take the children off the streets by keeping them busy. We knew that we shall achieve that. Those are the little clarifications that I would like to put at your disposal. Everything we did was within due process scenario that is on-going.

Whatever that happen afterwards, I would like to go to the second leg of the argument. I heard that one Thames objected to their Application. If I am wrong, someone should, please, correct me.

**Q.** By *the young man*, were you referring to Alliance Energy Limited?

**A.** Yes; to Alliance Energy. That is, the young man that left a few minutes ago.

**Q.** Could Alliance Energy be the name?

A. Yes, Alliance Energy is the name. Please, I do not know if I heard properly. It was said that Thames objected to their application to the Commission.

**THE CHAIRMAN:** That would be correct.

**DR.FEMI LANA:** God bless you, Sir. I would tell you also, in great details, that I will now say here that since God said, if you cannot help a drowning man, leave him with his fate. I never objected to any of them. Everybody born of a woman has a right to aspire. *The more the merrier.*

Let me go the memory lane. In 1917, Lenin did two things when he said: *I will give the people of Russia electricity, and other things will follow.* Between 1970 and now, Russia was there. We must encourage, motivate and pray for whoever will give us electricity. This is because none of us will eat electricity. It is our children that will utilise it for technology and for everything that we need. Russia which is there got it right. Since I heard correctly now that someone objected to Alliance Energy, maybe, that is the purpose of my invitation here. I will, with due respect to Mr. Chairman, put it in writing to you indicating my objection to Thames.

**DR. GRACE EYOMA:** You have not applied to us yet?

**DR. FEMI LANA:** It is not important. But I have made presentation to this Commission which is on record.

**THE CHAIRMAN:** He objects to the objections.

**DR. LANA:** I have reasons to say that here; and I will say it clearly before I put it into pen and paper. Since they did it first, I would do it. We must encourage every Nigerian because we all have the right to life. I know a little about Thames; that was before NEPA was debunked and replaced by PHCN. I do not even know the name they now bear. There was a correspondence from Thames to NEPA where they made a claim that the Federal

Ministry of Power and Steel gave them a Licence which we investigated. A Memo was raised which copy I have here. I will give it to you after this Public Hearing. In that Memo, NEPA debunked that they do not even know who Thames is.

Secondly, they do not even believe that the Federal Ministry of Power and Steel can or will ever issue a Licence without a written evaluation. So, from day one, there was a written objection on Thames. Third, in that Memo, they even made reference to Index Thermal interest at Onne which the Minister and everybody in the Ministry had been working on for the past 14 months. A letter was issued to us in December 17, 2003, from the Minister's Office directing the Managing Director of NEPA to start negotiation of PPA with Index Thermal. We all know that since God is greater than man, human beings can always try to obstruct, distant or do whatever they need to but cannot stop the race. We are moving.

What happened was that Thames came in 2005 or so whereas we have officially and quietly been existing at Onne since 2003. The letter came out officially from the Ministry of Power and Steel in December 17, 2003, that we should commence negotiation with PPA and NEPA. We got to that point before the evaluation process came again after which your Commission was born hence we have to start all over. You can see my reluctance since you were born. But I always wish the Commission well. At the appropriate time, we will do what the female Legal Officer said.

I will still ask the Commission for one big favour; that is that if there is any opportunity, they should get hold of Thames and bring them here. This is because you can only lie against the dead and not against the living. The Commission can do that through the powers of the Act. As you bring them, they should bring what they have; and let them be tested through due processes. But if they miss due process, that would be fine. But since they

started what is not important, they should not ever stop anybody's aspiration. It is not good to start a fight because no one knows how it would end. They started one with Alliance Energy. I urge the Commission to bring them here while they bring whatever they have; and let us put the two to the test of due process. If it comes through and Alliance Energy is right, I will tell them to carry on. That is my challenge to the Commission. I am still ready to give you time. I make that pledge that I will come.

Thank you, Sir .

**THE CHAIRMAN:** Thank you very much. Would that conclude your comment or observation?

**DR. FEMI LANA:** Yes, Sir.

**Q.** From your comment, shall we take it that you do not object to the Application of Alliance Energy for the grant of a Licence to operate in Onne Zone?

**A.** Never!

**THE CHAIRMAN:** We wish to tell the Witness that Thames had not yet made any Application to the Commission.

Thank you very much for your contribution.

**DR. FEMI LANA:** Thank you, Sir .

**THE CHAIRMAN:** Alliance Energy, you have the opportunity to reply if you so wish.

**MR AKINWOLE OMOBORIO WO II:** Sir, I just want to make an additional comment. It is not a reply.

**THE CHAIRMAN :** You have the floor.

**MR. OMOBORIO WO II:** I have just been reminded that we did, in fact, between the space of 2004 and 2005, formally apply to the Ministry of Commerce regarding our

interest within the Onne Oil and Gas Free Zone. Copies of these Applications can be made available to the Commission. At the time, the contents of the Application were a request to the Minister to give us guidance as to how to register our interest within the Zone. The informal understanding that we had was that we had to get the permission of the supervising Ministry itself before operating. So, Sir, our understanding was that the Permit we were to secure from the Free Zone was not a Permit to generate electricity but to actually operate as an entity within the Zone. I just wanted to add that.

**THE CHAIRMAN:** Thank you for your additional comments.

**PROFESSOR ILOEJE:** Was the Application that you sent to the Ministry of Commerce copied to the Oil and Gas Free Zone Authority?

**MR. OMOBORIO WO II:** No, Sir; we did not. Given the structure of the bureaucracy, it was our expectation that the Minister will, invariably, minute on the said Application to the relevant authorities for action; and that we would be so informed subsequently.

**THE CHAIRMAN:** In your subsequent interactions with the Onne Free Zone, did you draw attention to the fact that you had earlier on communicated with the Ministry?

**MR. OMOBORIO WO II:** No, Sir. This is because we, in fact, were yet to have any formal interaction with the Free Zone authority,

**PROFESSOR ILOEJE:** Is it now clear to you as to who should give you the License to generate electricity in the Zone?

**MR. OMOBORIO WO II:** It has always been clear, Sir, that NERC will give the License to generate electricity. However, we will require the Permit of the Free Zone or the supervising Ministry to operate within that Zone.



**DR. GRACE EYOMA:** In 2003/2004 when you applied to the Ministry of Commerce, did you have electricity generation in mind?

**MR. OMOBORIO WO II:** Yes, Madam.

**Q.** Did you approach any other authority before NERC was in place for the purpose of generating electricity?

**A.** Yes, we did, at the time, approach the defunct NEPA organisation; and we also participated in the open tender by the Ministry of Power and Steel for the expression of interest by those who wanted to generate power all around the country.

**Q.** And what was the outcome?

**A.** We are yet to receive any formal communication on that.

**DR. EYOMA:** Would you say that it was overtaken by your Application to NERC?

**MR. OMOBORIO WO II:** Absolutely, Madam.

**THE CHAIRMAN:** Thank you. You are free to withdraw.

**MR. OMOBORIO WO II:** Thank you, Sir.

**THE CHAIRMAN:** We convened this meeting this afternoon to gather additional facts that will add to written presentations regarding the Application of Alliance Energy Limited to generate power within the foot-prints on Onne Zone.

We took oral presentations today including additions from among the audience. The Commission is now a little bit more informed by our records than we earlier had.

We thank everybody for taking time to come on this most difficult of circumstances, and a day for which the country is mourning.

The Commission would like to make it known that we will take all the information that we have - written and oral - including a transcript that we created from proceedings this

afternoon and will make a decision on this matter. A decision will be ready on 2<sup>nd</sup> November, 20 06, by 5.00 p.m.

This Public Hearing stands adj ourned.

*The meet ing accordingly adjourned sine die by 2.40 p.m.*