

NIGERIAN ELECTRICITY REGULATORY COMMISSION

BEFORE THE NIGERIAN ELECTRICITY REGULATORY COMMISSION

NERC/DIRECTIVE/158

COMMISSION'S DIRECTIVES ON THE ISSUE OF NON-COMPLIANCE OF PORT HARCOURT ELECTRICITY DISTRIBUTION PLC (PHED) WITH THE ELECTRICITY POWER SECTOR REFORM (EPSR) ACT, 2005, NERC ELECTRICITY INDUSTRY (ENFORCEMENT) REGULATIONS 2014, TERMS AND CONDITIONS OF DISTRIBUTION LICENCE AND OTHER REGULATORY INSTRUMENTS ISSUED BY NIGERIAN ELECTRICITY REGULATORY COMMISSION (NERC)

To:

The Managing Director,
Port Harcourt Electricity Distribution Plc
No.1 Moscow Road,
Port Harcourt.
Rivers State.

BACKGROUND:

Pursuant to Section 62 (7) and 75 of the Electric Power Sector Reform (EPSR) Act 2005 and Regulation 5(1) (a) and 11 of the NERC Electricity Industry (Enforcement) Regulations 2014, the Commission commenced Enforcement Actions against Port Harcourt Electricity Distribution (PHEDC) Plc vide a Notice dated August 18, 2016, for non compliance with the provisions of the Electric Power Sector Reform (EPSR) Act, 2005, NERC Electricity Industry (Enforcement) Regulations, 2014, Terms and Conditions the Distribution Licence issued PHEDC and other Regulatory instruments issued by the Commission.

A. STATEMENT OF FACTS

1. To achieve its mandate to maximize access to electricity services by promoting and facilitating consumer connections to distribution systems in both rural and urban areas, the Commission granted and issued PHEDC with Electricity Distribution Licence, effective from October 1, 2013.
2. Condition 6 (7) and 23 (1) of the Distribution Licence Terms and Conditions granted PHEDC by the Commission requires PHEDC to prepare and furnish the Commission with yearly Audited Annual Reports and Financial Statements, which ought to be sent to the Commission not later than three (3) months following the end of the financial year.
3. Following PHEDC's failure or negligence to comply with this requirement, the Commission wrote PHEDC via a letter dated April 15, 2015, with Reference No: NERC/MCR/15/082, on the need to furnish the Commission with PHEDC's Audited Annual Reports and Financial Statement for the year 2013 and 2014, on or before April 24, 2015.
4. A follow up letter dated February 16, 2016, with Reference No: NERC/MCR/16/062 was written to PHEDC on the need to furnish PHEDC Audited Annual Reports and Financial Statement for the year 2013 and 2014. This letter also lapsed on March 11, 2016, and PHEDC failed or refused to furnish the Report.
5. Again, the Commission wrote a final reminder on May 25, 2016, with Reference No: NERC/MCR/16/137, requesting PHEDC to submit its Audited Annual Reports and Financial Statement for the year 2013 to 2015, on or before, June 24, 2016, and PHEDC either failed or refused to submit same.
6. Following PHEDC's persistent failure or refusal to comply with the Commission's request, and in line with the Enforcement powers of the Commission, the Commission issued a Notice of Intention to Commence Enforcement (NICE) dated August 18, 2016, (NERC/ENFAC/PHEDC/16/77) to PHEDC, to "SHOW CAUSE" within Ten (10) days, why Enforcement Action should not be taken against PHED for violating:
 - **Condition 6 (7) of the Distribution Licence Terms and Condition** granted PHED by the Commission, which provided that; "For the purposes of this Condition, the Regulatory Accounting Report shall be due not later than 3 months following the end of the Licensee's financial year provided that if the Licence be first issued less than three (3) calendar months to the end of the Licensee's current financial year, the first regulatory accounting report shall be due at the end of the following financial year".

- **Condition 23 (1) of the Distribution Licence Terms and Condition** granted PHED by the Commission, which provided that; “The Licensee and its affiliate business must each appoint an independent auditor to perform an audit, composed of an independent examination of the Licensee or the affiliated business for the purpose of expressing an opinion”
 - **Condition 4 of the Distribution Licence Terms and Conditions** granted PHEDC by the Commission, which provides that; “*The Licensee shall furnish to the Commission, in such manner and at such times as the Commission may require, such information and shall provide and furnish to it such reports as the Commission may consider necessary in the light of the conditions or as it may require for the purpose of performing the functions assigned or transferred to it by or under the Act*”.
 - **Section 63 (1) of the EPSR Act 2005**, which provides that; “*A licensee shall comply with the provisions of his licence, regulations, codes, and other requirements issued by the Commission from time to time.*”
7. The NICE lapsed on August 28, 2016, and PHEDC still failed or refused to comply with the Commission’s Directives.

B. FINDINGS

1. PHEDC wrote to the Commission via a letter dated June 10, 2016, with Reference No: PHED/NERC/ANNR/LET/2016/J.9, in response to the Commission’s letter of May 25, 2016. In the said letter, PHEDC stated that, PHEDC is in the process of sending the Commission the Unaudited Financial Statements for the financial year ended, December 31, 2013, and it was expected that the Commission should receive the report before June 17, 2016. PHEDC further stated that the firm of Ernst and Young had been appointed as Auditor for PHEDC, and PHEDC has a firm arrangement with the Company to ensure the completion of the audit for the years ended December 31, 2013 and 2014, before the end of August 2016. PHEDC further maintained that the financial statements for 2015 will be processed immediately after the completion of the Audit exercise of the preceding years.
2. PHEDC wrote another letter dated July 19, 2016, with Reference No: PHED/NERC/ANNR/CC/LET/2016/J.19, stating and confirming that, the Financial Statement that was forwarded to the Commission, via a letter dated June 14, 2016, was NOT in fact the 2013 to 2015 Audited Financial Statements

as was erroneously stated. PHEDC however pleaded for more time to submit the Report, stating that, the Report had been further delayed due to the completion of the Asset Valuation.

3. PHEDC wrote the Commission via a letter dated September 5, 2016, with Reference No: PHED/NERC/LEG/ENFC/REP/2016/S.6, stating amongst others that its 10 months audit of January 2013 to October 2013 as prepared by Pricewater House Coopers (PWC) could not be relied upon by Ernest & Young, when the latter engaged to complete the 2013 audit. PHEDC therefore resorted to forward a draft report of its fixed assets verification and revaluation across various locations to the Commission.
4. Upon a careful review of all PHEDC's responses, the Commission finds these responses inadequate, unsatisfactory, insufficient and therefore not acceptable to the Commission.

C. PENALTY

In view of the above findings, the Commission is convinced that PHEDC is in violation of the provisions enumerated above, and hereby directs as follows:

1. For failing to comply with the Licence Terms and Conditions, and other Regulatory Instruments, **which is a breach under Section 63 (1) of the EPSR Act, 2005, PHEDC is hereby fined Ten Thousand Naira (N10, 000) per day, from April 1, 2014** (being the date the first Financial Report was due (The Audited Financial Report is due not later than three (3) months following the end of the financial year) till the date of this Directive.
2. For failing to comply with Condition 6 (7) of the Distribution Licence terms and Condition granted PHED by the Commission, **PHEDC is hereby fined Ten Thousand Naira (N10, 000) per day, from April 1, 2014** (being the date the first Financial Report was due (The Audited Financial Report is due not later than three (3) months following the end of the financial year) till the date of this Directive.
3. For failing to comply with Condition 23 (1) of the Distribution Licence terms and Condition granted PHED by the Commission, **PHEDC is hereby fined Ten Thousand Naira (N10, 000) per day, from April 1, 2014** (being the date the first

Financial Report was due (The Audited Financial Report was due not later than three (3) months following the end of the financial year) till the date of this Directive..


4. For failing to provide the Commission with the requested information, **which is a breach under Condition 4 of the Distribution Licence Terms and Conditions, PHEDC is hereby fined Ten Thousand Naira (₦10, 000) per day from April 1, 2014** (being the date the first Financial Report was due (The Audited Financial Report is due not later than three (3) months following the end of the financial year) till the date of this Directive.
5. This gives a total Fine of Thirty Seven Million, Five Hundred and Twenty Thousand Naira (₦37, 520,000.00), which shall be paid by PHEDC within two (2) weeks from the date of this directive.
6. Failure to pay the fines within the stipulated time shall attract additional interest of 5% per day, until the total fine is paid.
7. The imposition of these Fines is without prejudice to other Enforcement powers of the Commission, as contained in extant Laws.
8. The Fines imposed notwithstanding, PHEDC shall comply with all the Directives of the Commission.

BY DIRECTIVE OF THE COMMISSION

Dated this 24th day of October, 2016



Dr. Anthony Akah, mni
Ag. Chairman/CEO



Mrs. Olufunke Dinneh
General Manager
Legal, Licensing & Enforcement