



NIGERIAN ELECTRICITY REGULATORY COMMISSION

NERC/DIRECTIVE/163

COMMISSION'S DIRECTIVE ON THE ISSUE OF NON-COMPLIANCE OF AFAM POWER PLC WITH THE ELECTRIC POWER SECTOR REFORM (EPSR) ACT, 2005, GENERATION LICENCE TERMS AND CONDITIONS, AND OTHER REGULATORY INSTRUMENTS ISSUED BY THE NIGERIAN ELECTRICITY REGULATORY COMMISSION (NERC)

To:


The Managing Director,
Afam Power Plc
Afam Power Station Complex,
Afam, Rivers State.

BACKGROUND:

Pursuant to Section 62 (7) and 75 (1) of the Electric Power Sector Reform (EPSR) Act 2005 and Regulation 11 of the NERC Electricity Industry (Enforcement) Regulations 2014, the Commission issued a Notice of Intention to Commence Enforcement (NICE), dated November 17, 2016, against Afam Power Plc, for failing to submit its 2014 Audited Financial accounting Statements, which is a breach or violation of the provisions of the EPSR Act, 2005, the Terms and Conditions of Afam's Generation Licence, and other Regulatory Instruments of the Commission.

SUMMARY OF FACTS/FINDINGS

1. In accordance with the provisions of Section 63 (1) and (2) of the EPSR Act, 2005, the holder of a Generation Licence is required to comply with the provisions of the Generation Licence, Regulations, Codes, and other requirements issued by the Commission from time to time.

2. Condition 6 of the Terms and Conditions of the Generation Licence requires the Licensee to submit Audited Financial Accounting Statements prepared in accordance, and with respect of each financial year, to the Commission as at when due.
3. Notwithstanding, the Commission wrote several reminders/requests for Afam to submit the Company's Audited Financial Accounting Statements for the Year 2014.
4. Following Afam's persistent refusal or neglect to comply with the Commission's written requests, the Commission issued a Notice of Intention to Commence Enforcement (NICE), dated November 17, 2016, with Reference Number: **NERC/ENFAC/16/APLC/99**, to SHOW CAUSE within Seven (7) days from the date of the receipt of the NICE, why Afam should not be sanctioned by the Commission for failing to submit the 2014 Audited Financial Accounting Statements.
5. Afam Plc responded to the Commission's NICE via a letter dated November 25, 2016, wherein it forwarded a draft copy of the audit exercise for 2014 financial year conducted by Sada Idris & Co. (Chartered Accountants), and undertook to forward the final copy to the Commission soonest.
6. However, the Commission notes that what Afam Plc submitted was a draft and cannot be relied on by the Commission, as it is subject to change, as evidenced by Sada Idris & Co. letter to Afam Plc, dated 26th October, 2016, .
7. Moreover, Afam Plc did not indicate the timeline within which it intends to submit the Report, which would have assisted the Commission in deciding whether or not to grant the extension.
8. The Commission finds these responses inadequate and unsatisfactory. 

VIOLATIONS:

The following are the violations/infractions:

- **Section 63 (1) of the EPSR Act, 2005** which provides that; *“A licensee shall comply with the provisions of his license, regulations, codes, and other requirements issued by the Commission from time to time”*.
- **Condition 4 (1) of Afam’s Generation Licence**, which provides that; *“the Licensee shall furnish to the Commission information, in such manner and at such times as the Commission may require, and shall provide and furnish such reports as the Commission may consider necessary in the light of the Conditions or as the Commission may require for the purpose of performing the functions assigned or transferred to it by or under the Act”*.
- **Condition 6 of Afam’s Generation Licence**, which stipulates the Licensee’s requirement to submit Audited Financial Reports to the Commission, as detailed in Afam’s Generation Licence.

IT IS HEREBY DIRECTED THAT:

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

1. **Afam Plc shall submit the 2014 Audited Financial Reports within Fourteen (14) Days from the date of receipt of this Directive.**
2. For failing to comply with **Section 63 (1) of the EPSR Act, 2005**, the Commission hereby fines Afam Plc Ten Thousand Naira (₦10, 000.00) per day from April 1, 2015, being the deadline for the submission of the 2014 Audited Financial Report, till the date of this Directive.
3. For failing to comply with **Condition 4 (1) of the Generation Licence**, the Commission hereby fines Afam Plc Ten Thousand Naira (₦10, 000.00) per day, from April 1, 2015, being the deadline for the submission of the 2014 Audited Financial Report, till the date of this Directive.

4. For failing to comply with **Condition 6 of the Generation Licence**, the Commission hereby fines Afam Plc Ten Thousand Naira (~~₦~~10, 000.00) per day, from April 1, 2015, being the deadline for the submission of the 2014 Audited Financial Report, till the date of this Directive.
5. This gives a total Fine of Eighteen Million, Five Hundred and Ten Thousand Naira (~~₦~~18, 510, 000.00), which shall be paid by Afam Plc within Fourteen (14) days 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. Take Note that, this Directive is without prejudice to other enforcement powers of the Commission, as contained in its extant Laws, Rules and Regulations.

THE OFFICIAL SEAL OF THE COMMISSION IS HEREBY AFFIXED

BY DIRECTIVE OF THE COMMISSION

Dated 9th Day of DECEMBER, 2016


Dr. Anthony Akah, mni
Acting Chairman/CEO


Mrs. Olufunke Dinneh
General Manager
Legal, Licensing & Enforcement

