



NIGERIAN ELECTRICITY REGULATORY COMMISSION

NERC/DIRECTIVE/162

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

To:

The Managing Director,
Eko Electricity Distribution Plc (EKEDC),
Obafemi Awolowo Way,
Alausa, Eko Lagos 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 Eko Electricity Distribution Plc (EKEDC) for failure to submit its 2013 and 2014 Financial Audited Accounts, which is a breach or violation of the provisions of the EPSR Act, 2005, the Terms and Conditions of EKEDC Distribution 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 Distribution Licence is required to comply with the Terms and

Conditions of the Distribution Licence, Regulations, Codes, and other Directives as issued by the Commission from time to time.

2. Condition 6 of the Terms and Conditions of the Distribution 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 EKEDC to submit the Company's Audited Financial Accounting Statements for the Year 2013 and 2014.
4. Following EKEDC'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/EKEDC/63, to SHOW CAUSE within Seven (7) days from the date of the receipt of the NICE, why EKEDC should not be sanctioned by the Commission for failing to submit the 2013 and 2014 Audited Financial Accounting Statements.
5. EKEDC responded to the Commission's NICE via a letter dated November 25, 2016, stating that:
 - a) EKEDC had forwarded its 2013 Audited Financial Accounting Statement to the Commission via a letter dated November 15, 2016, which was duly acknowledged with the Commission's stamp dated November 18, 2016.
 - b) Following EKEDC's request to the Commission, the Commission granted EKEDC extension via a letter dated September 1, 2016, to submit the 2014 Audited Financial Accounting Statement on or before November 30, 2016.
 - c) EKEDC's 2014 Audited Financial Accounting Statement will be presented to EKEDC's Board Audit Committee on November 29, 2016, for it



concurrence, following which it will then be submitted to the Financial Reporting Council on November 30, 2016 for approval – Thereafter, it will be submitted to the Commission.

6. However, EKEDC indeed did not submit the 2013 Audited Financial Accounting Statement until November 18, 2016, thereby submitting the Statement out of time, and has also failed to submit the 2014 Audited Financial Accounting Statement before the November 30, 2016, deadline as stipulated by the Commission, and till date.
7. The Commission finds these responses highly unacceptable.

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 EKEDC’s Terms and Conditions of the Distribution 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 EKEDC’s Terms and Conditions of the Distribution Licence**, which stipulates the Licensee’s requirement to submit Audited Financial Reports to the Commission, as detailed in EKEDC’s Distribution Licence.



IT IS HEREBY DIRECTED THAT:

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

1. **EKEDC shall submit the 2014 Audited Financial Accounting Statements within Fourteen (14) Days from the date of receipt of this Directive.**
2. For violating the provisions of **Section 63 (1) of the EPSR Act, 2005**, the Commission hereby Fines EKEDC Ten Thousand Naira (₦10, 000.00) per day from April 1, 2014, being the deadline for the submission of the 2013 Audited Financial Accounting Statements, till the date of this Directive.
3. For failing to comply with **Condition 4 (1) of the Terms and Conditions of the Distribution Licence** within the stipulated timeline, the Commission hereby Fines EKEDC Ten Thousand Naira (₦10, 000.00) per day, from April 1, 2014, being the deadline for the submission of the 2013 Audited Financial Accounting Statements, till the date of this Directive.
4. For failing to comply with **Condition 6 of the Terms and Conditions of the Distribution Licence** within the stipulated timeline, the Commission hereby Fines EKEDC Ten Thousand Naira (₦10, 000.00) per day, from April 1, 2014, being the deadline for the submission of the 2013 Audited Financial Accounting Statements, till the date of this Directive.
5. For violating the provisions of **Section 63 (1) of the EPSR Act, 2005**, the Commission hereby Fines EKEDC Ten Thousand Naira (₦10, 000.00) per day from April 1, 2015, being the deadline for the submission of the 2014 Audited Financial Accounting Statements, till the date of this Directive.
6. For failing to comply with **Condition 4 (1) of the Terms and Conditions of the Distribution Licence** within the stipulated timeline, the Commission hereby Fines EKEDC Ten Thousand Naira (₦10, 000.00) per day, from April 1, 2015, being the


deadline for the submission of the 2014 Audited Financial Accounting Statements, till the date of this Directive.

7. For failing to comply with **Condition 6 of the Terms and Conditions of the Distribution Licence** within the stipulated timeline, the Commission hereby Fines EKEDC Ten Thousand Naira (₦10, 000.00) per day, from April 1, 2015, being the deadline for the submission of the 2014 Audited Financial Accounting Statements, till the date of this Directive.
8. This gives a total Fine of **Forty-Eight Million, and Ninety Thousand Naira (₦48, 090, 000.00)**, which shall be paid by EKEDC within **Fourteen (14) days** from the date of this Directive.
9. Failure to pay the Fines within the stipulated time shall attract additional interest of **5% per day**, until the total Fine is paid.
10. 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
Chairman/CEO


Mrs. Olufunke Dinneh
General Manager
Legal, Licensing & Enforcement

