



CONSULTATION PAPER ON ELIGIBLE CUSTOMERS FOR THE NIGERIAN ELECTRICITY SUPPLY INDUSTRY

1. Background

On May 19, 2017, the Honourable Minister for Power, Works and Housing, invoked the declaration of Eligible Customer in accordance with the provisions of Part II Section 27 of the Electric Power Sector Reform Act 2005 (the Act). The declaration identified the under-listed four (4) classes of eligible customers.

- (i) A customer or group of end-use customers registered with the Commission for the purpose, whose consumption is more than 2 MWh/h over the course of a period of one month, that is connected to a metered 11kV or 33kV delivery point on the distribution network of a licensee under a distribution use of system agreement with such distribution licensee, for the connection and for the delivery of electrical energy;
- (ii) A customer, or group of end-use customers registered with the Commission for the purpose, that is connected directly to a metered 132kV or 330kV delivery point on the transmission network under a transmission use of system agreement for connection and for delivery of electrical energy;
- (iii) A customer or group of end-use customers registered with the Commission for the purpose, whose consumption is more than 2 MWh/h over the course of one month, that is directly connected to a metered 33kV delivery point on the transmission network of a licensee under a transmission use of system agreement for the construction, installation and operation of the distribution system used to connect the customer to the 33kV delivery point, with the distribution licensee licensed to operate in the location where the customer and the 33kV delivery point are located;

(iv) A customer or group of end-use customers registered with the Commission for the purpose, whose consumption is more than 2 MWh/h over the course of one month, that is directly connected, through a metered delivery point to the generation facility of a generation licensee it intends to purchase electrical energy from, and has entered a bilateral agreement for the construction, installation and operation of the distribution system used to connect the customer to the generation facility with distribution licensee licensed to operate in the location where generation facility and the customer are located;

The above classification is however subject to the provision that:

(i) The metering system at the delivery point is accessible online to the System Operator licensee;

(ii) The Commission is satisfied that the electrical energy the eligible customer intends to purchase from an existing or prospective generation licensee is not already being supplied to end-use customers through the transmission system or distribution system of an existing licensee; and

(iii) At least 20% of the generation capacity added by the existing or prospective generation licensee to supply the eligible customer is above the requirement of the eligible customer and is supplied under a contract with a distribution or trading licensee at a price that does not exceed the average wholesale price the Nigerian Bulk Electricity Trading Ltd charges the distribution companies in its vesting contracts, or any other such clearing tariff set by the Commission for the purpose.

(iv) The Minister further declared that, in line with Part II, Section 28 of the EPSR Act, 2005 which empowers him to issue further directives to the Commission on the collection of competition transition charges from consumers and eligible customers, the Commission should pursuant to part II, Section 29 and 30 from time to time set guidelines that limit the tariff chargeable by distribution licensees under such distribution use of system agreement and bilateral agreement to a reasonable percentage, not to exceed 20%, of the tariff payable by the eligible customer.

2. Purpose of this document

This Consultation Paper sets out for discussion the issues, options and implementation proposals for the eligibility of electricity customers as provided under

the EPSR Act 2005 and the consultation requirement of the Commission's rulemaking procedure.

3. Objective of the declaration

The declaration of eligibility of electricity customers is expected to facilitate competition in the supply of electricity, promote the rapid expansion of generation capacity and open up a window for improvement in quality of supply. The potential for promoting growth is to be enhanced through the provision of stable and secure electricity supply for industrial, manufacturing and large service enterprises that are typically and likely to benefit under the new window of eligibility. The declaration is expected to stimulate competition for the market and improvement in quality of service within the respective franchise areas.

Generation licensees may benefit from stable operation and efficiency due to the flatter load profiles of eligible customers and possible lower technical losses depending on the required interconnection. On the commercial imperatives, generation licenses may benefit from lower risks in payment based on the creditworthiness of the off-taker. Other identified objectives of the declaration were to allow successor GenCos with excess capacity over and above their contractual capacity with Nigeria Bulk Electricity Trading to access underserved customers thus improving the financial liquidity of the industry.

The direct purchase of electric power from generation licensees by consumers is underpinned by opening up third party access to transmission and distribution infrastructure and this is expected to be a precursor towards introducing full retail competition into the Nigerian electricity market.

4. Legal Context

It is noteworthy that Section 27 of the Electric Power Sector Reform Act 2005 provides that ***"the Minister may issue a directive to the Commission specifying the class or classes of end-users that, from time to time, shall constitute eligible customers"***. An eligible customer is defined in the EPSR Act as ***"a consumer that is eligible, pursuant to a directive issued by the Minister under Section 27, to purchase power from a licensee other than a distribution licensee"***. These sources of generation capacity would in principle comprise of generation licensees (successor GenCos and IPPs) and any wholesale electricity trader licensed to buy and sell power.

5. Impact on incumbent network operators

One of the unintended consequences of the declaration of eligibility is the potential of loss of some customers of the incumbent operator to a third-party supplier. To the extent that this may lead to increased efficiency and service delivery, this would be a positive development for the Nigeria Electricity Supply Industry.

It is noted that captive power generation and third party power supply for customers requiring higher quality of supply than the current norm has continued to be a significant proportion of Nigeria's aggregate supply of electricity. This has, over time, translated into bilateral relationships within the context of special ring-fenced 'industrial parks' or stand-alone basis. It is expected that the introduction of eligibility would serve to deepen existing arrangements with additional capacity derived outside the current contractual commitments of generation licensees with NBET. The incumbent network operators are expected to derive additional revenues from the usage of the associated assets and through other regulatory interventions that may be approved by the Commission.

6. Issues for Consultation

It is expected that the declaration of eligibility would have a profound impact on the Nigeria Electricity Supply Industry with significant opportunities for all stakeholders. It is in this context that the following issues, amongst others that may be raised by stakeholders, are put forward for comments:

6.1 Third Party Access to networks

Under the proposed relationships, generation licensees and eligible customers would have contracted energy delivered through transmission and distribution networks owned by the Transmission Company of Nigeria Plc, DisCos or dedicated networks built to facilitate the transaction. A regulated access to the network by third parties would have terms and conditions set by the Commission granting eligible customers a right of access, on the basis of published tariffs for use of transmission and distribution networks. The Multi Year Tariff Order as issued by the Commission currently provides for a Transmission Use of System (TUoS) and Distribution Use of System (DUoS) charge. Where the Commission commits to a negotiated approach for third party access to networks, it shall be non-discriminatory and all discussion based on the premise of good faith. Where disputes exist or the network operator appears to impede competitive supply to such customers, the Commission shall intervene to resolve the situation.

In all scenarios, the technical feasibility of the flow of energy must be ascertained, with the incumbent operator benefitting from a compensation taking into account cost-based pricing or any other methodology approved by the Commission. Eligible customers connected to the network are required pay a fair and equitable charge for utilizing the network under clear and transparent payment rules.

6.2 Loss of Customers and Revenue

The potential for loss of some customers may result in lower revenues for the incumbent regulated utilities. This is particularly more so, if there is a significant loss of customers resulting in a customer consumption profile heavily weighted towards the lower end of the tariff class. However, it is expected that, with the current grossly inadequate supply of power, the exit of some eligible customers may provide an opportunity for the DISCOs to significantly improve the quality of service to other customers that are currently under-served. As a means of enhancing the financial viability of distribution licenses, the declaration of eligibility further provides that, at least 20% of any new generation must be made available to the incumbent operator at a tariff that is no more than the average wholesale price in the industry.

6.3 Tariff Rebalancing

In a situation where the impact of the exit of some eligible customers significantly impacts on the recovery of approved revenues, there may be a need for the Commission to consider tariff rebalancing and the restoration of the conditions for upholding the performance obligation of licensees under their respective Performance Contracts. The impact of the rebalancing may require a slight revision of tariffs for some classes of customers.

6.4 Competition Transition Charge

Section 28 of the EPSR Act 2005 provides that ***"If the Minister determines, following consultation with the President, that a directive under section 27 will result in decreasing electricity prices to such an extent that a trading licensee or a distribution licensee would have inadequate revenue to enable payment for its committed expenditures or is unable to earn permitted rates of return on its assets, despite efficient management, the Minister may issue further directives to the Commission on the collection of a competition transition charges from consumers and eligible customers; the distribution of the funds collected to the trading licensee***

described in section 25 (a) and to the distribution licensees; and the duration of the competition transition charge.”

The declaration of the Minister further provides a policy directive that such a competition transition charge be capped at no more than 20% of the tariff being paid by the eligible customer.

6.5 Metering Requirements

The restructuring of the Nigerian electricity market and the design of the market settlement system requires proper metering at all trading points – this is even more significant with the introduction of eligibility in which energy is delivered to customers over a network not owned by third parties. It is proposed that appropriate metering with remote reading capability be provided for the measurement of reactive power, peak demand the profiling of real load.

6.6 System Operations

Arising from the expectation of a better quality of service by eligible customers, the System Operator may be at the risk of being under pressure to dispatch power plants that are not in alignment with the requirements of merit order or system stability. The imperative for overall grid stability and economic dispatch shall prevail under all circumstances.

7. Proposed phasing of implementation

The Commission is proposing a phased approach to the introduction of all declared classes of eligible customers as a precursor to the eventual introduction of retail competition and the licensing of traders in NESI. In this regard, the following phasing is being proposed:

7.1 Phase I (immediate, following Rulemaking)

(i) A customer or group of end-use customers registered with the Commission for the purpose that is connected directly to a metered 132kV or 330kV delivery point on the transmission network under a transmission use of system agreement for connection and for delivery of electrical energy;

(ii) A customer or group of end-use customers registered with the Commission for the purpose, whose consumption is more than 2MWhr/hr over the course of one month, that is directly connected, through a metered delivery point to the generation facility of a generation licensee it intends to purchase electrical energy from, and has entered a bilateral agreement for the construction, installation and operation of the distribution

system used to connect the customer to the generation facility with distribution licensee licensed to operate in the location where generation facility and the customer are located.

(iii) A customer or group of end-use customers registered with the Commission for the purpose, whose consumption is more than 2 MWh/h over the course of one month, that is directly connected to a metered 33kV delivery point on the transmission network of a licensee under a transmission use of system agreement for the construction, installation and operation of the distribution system used to connect the customer to the 33kV delivery point, with the distribution licensee licensed to operate in the location where the customer and the 33kV delivery point are located

7.2 Phase II (9 months following successful takeoff of phase I)

A customer or group of end-use customers registered with the Commission for the purpose, whose consumption is more than 2 MWh/h over the course of one month, that is connected to a metered 11kV or 33kV delivery point on the distribution network of a licensee under a distribution use of system agreement with such distribution licensee, for the connection and for the delivery of electrical energy.

8. Contracting parties

It is noteworthy that only new generation outside the contracted capacity with NBET shall be available for procurement by eligible customers thus ensuring that available supply to distribution licensees is not impaired by the declaration of the Minister. The counterparty to the eligible customers shall be successor GenCos, IPPs, with a minimum of 20% of the new generation capacity made available to the associated network operator at a price that does not exceed the average wholesale price NBET charges the distribution companies in its vesting contracts, or any other such clearing tariff set by the Commission for the purpose.

9. Issues for Consideration

In view of the foregoing and in particular the issues identified under para. 6 above, the Commission hereby requests for input and contributions to this Consultation Paper from all stakeholders. Contributions are also expected on, but not limited to the following issues:

- (i) Appropriateness of the threshold and the implementation timelines;
- (ii) Appropriate process for exit, notification and switching rules;
- (iii) Minimum stay period before exit and re-entry can be approved;

- (iv) Factors that may be considered in the determination of stranded costs, exit fees and standby charges?
- (v) In determination of consumption threshold for eligibility criteria, the appropriateness of single load site or an aggregation of multiple load sites;
- (vi) Provider of last resort, in the event of third party failure be addressed;
- (vii) Proportion of new generation capacity that may be contracted by eligible customer;
- (viii) Other criteria that may be applied in the determination of competition transition charges;

10. Response to Consultation

The Commission has prepared this document in order to facilitate wide consultation by all stakeholders. The document has attempted to bring to the fore some of the issues that may arise and has indicated the policy direction, consistent with the EPSR Act 2005, towards mitigating the unintended impacts of the declaration of eligibility in the Nigeria Electricity Supply Industry.

In line with the provisions of Section 76(9) of the EPSR Act 2005, the Commission hereby fixes 21 days from the publication of this notice for comments, objections and representations from all stakeholders and the general public, on the Consultation Paper for Eligibility Customers in the Nigerian Electricity Supply Industry. Respondents may propose either a modification or an alternative to the proposals in the documents for further consideration by the Commission. A public hearing on the proposed review will be held at the expiration of the response period. All comments received from this public consultation will be considered and reviewed by the Commission. The Commission's final decision as contained in a "Regulation for Eligibility of Customers" would be published in an Official Gazette and shall fix the date on which the Regulation shall come into operation in accordance with the provisions of Section 76(8) and (10) of the EPSR Act 2005.

11. All reactions, comments, queries and further enquiries should be sent for consideration by the Commission to info@nerc.gov.ng with copies to:

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