



Stakeholder Consultation on Draft Business Continuity Regulation For The Nigerian Electricity Supply Industry ("NESI")

September, 2017

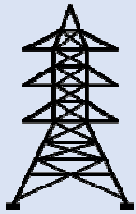


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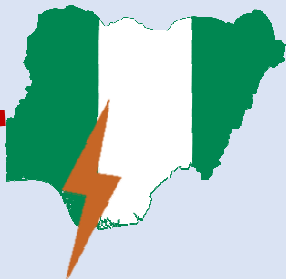


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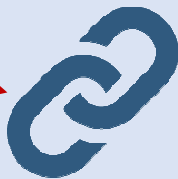
Background



The commencement of the Transitional Electricity Market (“TEM”) necessitated the establishment and operation of additional industry contracts and market rules that formalize the responsibilities, relationships and roles of various entities across the NESI



It is against this, that the Business Continuity Regulations (“BCR”) is been proposed by the Nigerian Electricity Regulatory Commission (“NERC”) to ensure continuous delivery of critical electricity Generation, Transmission and Distribution services in the NESI



The BCR is designed to prevent operational and financial contagion and to facilitate business continuity within the NESI and ensure that the power sector value chain is sustained through the performance of critical obligations of the market participants

Regulatory Authority



...Section 32 (1) of the EPSRA 2005:



To create, promote, and preserve **efficient** industry and market structures, and to ensure the **optimal utilization of resources** for the provision of electricity services;



To ensure the safety, security, reliability and quality of service in the production and delivery of electricity to consumers;



In exercise of the powers conferred by Section 96 (1) of the EPSR Act 2005, the Commission may make regulation prescribing all matters which by the ACT are required or permitted to be prescribed or which in the opinion of the Commission, are necessary or convenient to be prescribed for carrying out or giving effect to the ACT;



Objectives of the Regulations

01

To monitor the operational and financial health of licensees in order to ensure stability in the NESI

To prevent financial contagion and to facilitate business continuity within the NESI

02

03

To prevent Market Instability

To create, promote, preserve an efficient and adequately regulated NESI

04

05

To ensure security of supply and continuous operations of a critical national infrastructure

Application and Purpose of the Regulation



01

The Regulation is not designed to be repetitive of existing consequences under the Act, Relevant Rules, License Terms and Conditions, Industry Agreements and Other Agreements, but is to complement all preceding instruments governing the NESI

02

The purpose of this Regulation is to provide Business Continuity Measures for the smooth running of the NESI

03

In the event of any conflict between this Regulation and any existing Legislation or Relevant Rules, the applicable Relevant Rule shall take precedence



Principles of the Regulations



Fair hearing, transparency and non-discrimination;



Proportionality in the exercise of the powers contained in these Regulations;



The need to ensure and foster an efficient NESI;

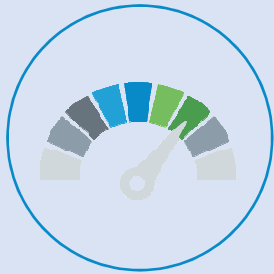


Encourage licensees to achieve set milestones and targets by means of Regulation that is supportive and geared towards the overall benefit of the NESI



Enforcement of these Regulations only after all other avenues for sustaining the licensee business as contained in any existing legislation, Agreement or Relevant Rule has been explored.

Business continuity failure events



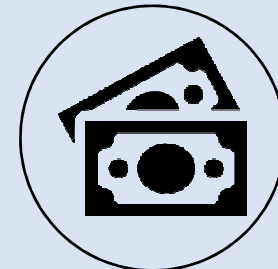
Performance Obligations



Compliance Obligations



Contractual Obligations



Financial Obligations



Liquidation Events



License Obligations



Financial Constraints



Force Majeure Events

Business Continuity Measures



Business Continuity Measures which may be undertaken by the Commission where a Business Continuity Failure Event occur:

1

Issue letter of notice / the conduct of Investigations

2

The issuance of a Warning Notice

3

The issuance of a Rectification Order

4

A Derogation

5

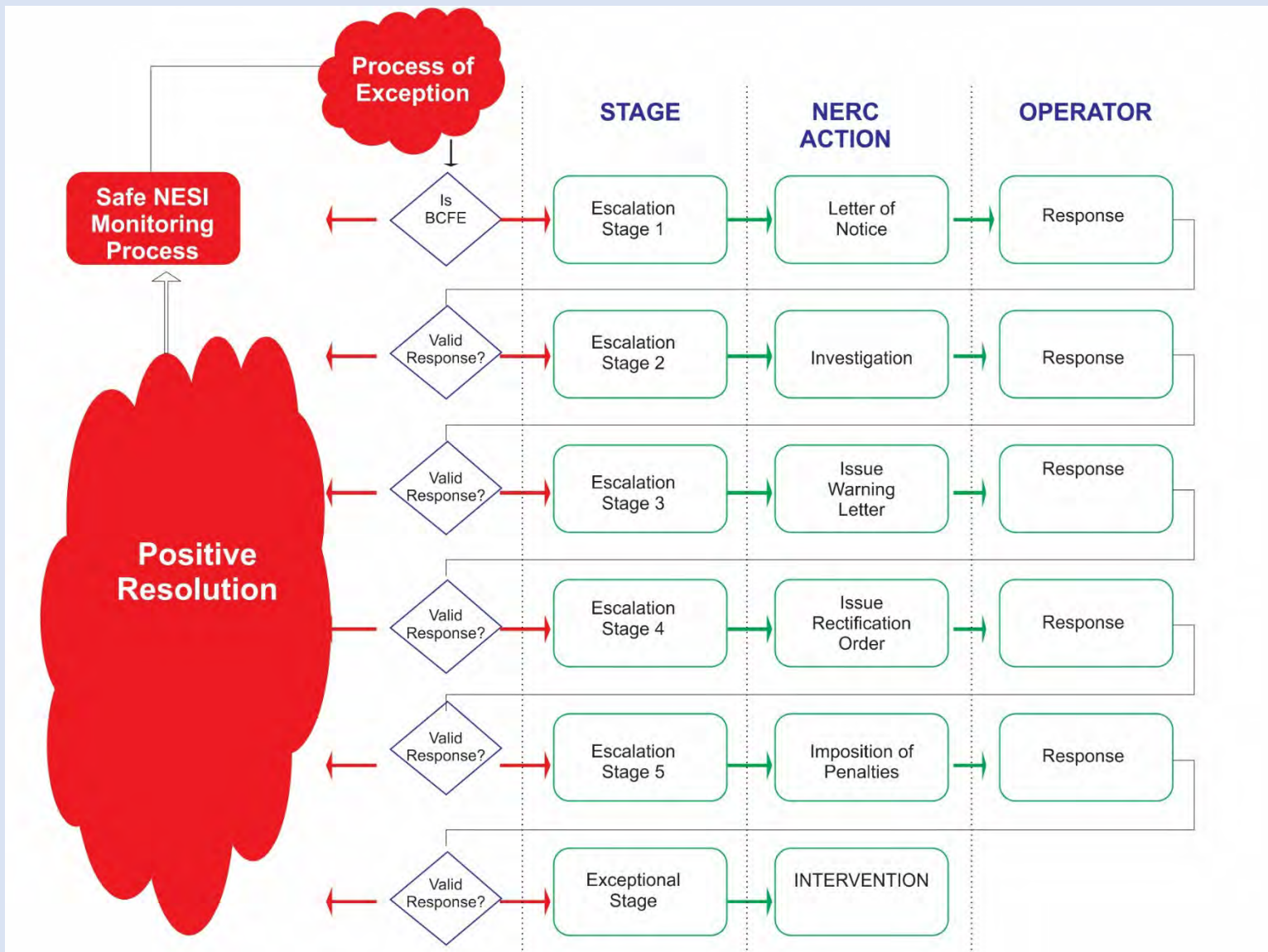
Mediation between relevant parties

6

NERC Intervention Events as set out in these Regulations

Initiation of additional monitoring on the activities of a Licensee on a weekly, monthly, quarterly, annual or other interval as the Commission may deem fit in the circumstances

Business Continuity Measures



NERC Intervention Measures



Change in
Board and
Management
of Licensees



Suspension
of License



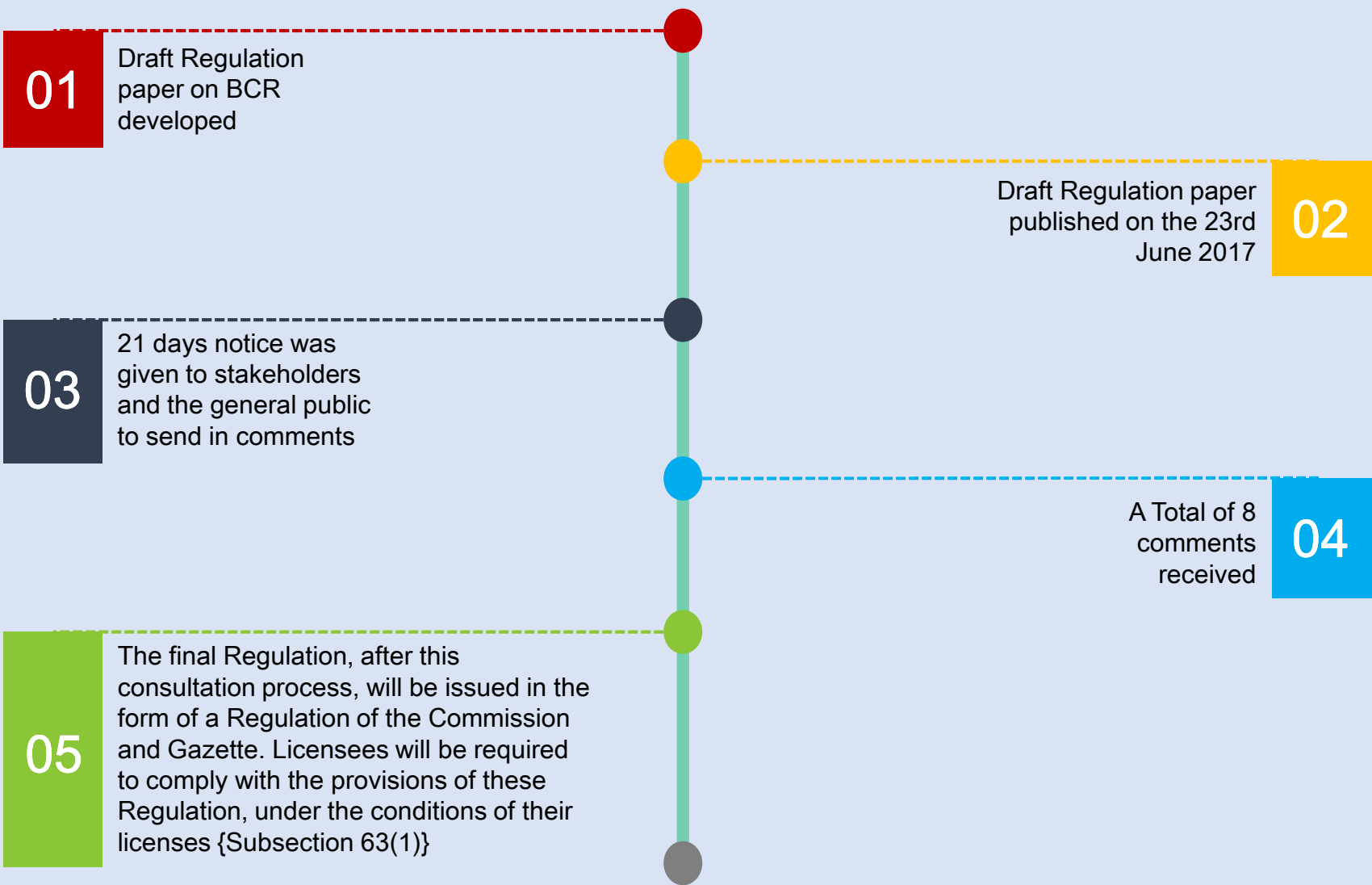
Appointment
of Interim
Operator



Initiation of
Enforcement



Steps taken by NERC



List of Commentators



Comments Received from Stakeholders



- 01 Objective of the Regulation Section 5(b)
- 02 Principle of the Regulation section (6 (e))
- 03 Section 7 (1) (a,b,c,d,e,f,g, and h)
- 04 Section 8(1)
- 05 Section 10.1 (a,c and h)
- 06 Section 11
- 07 Section 12.1 (a and e)
- 08 Section 13 and 14
- 09 Section 15.3,16.1 (a,and f),16.2 (a,b,c and d)
- 10 Section 17, 18.2(b), 19, 24 (a,b,c,d and e), 26
- 11 Section 33

Performance Obligation Failure Event



NAME OF ORGANIZATION	COMMENTS	RECOMMENDATION
<p>JEDC, IBEDC, BEDC, PHEDC, KEDCO, IKEDC</p>	<p>SECTION 7 (1) A,B,C,D,E,F,G &H)</p> <p>a) In view of the fact that this failure event is hinged on the Performance Agreement [the “PA”] entered into between the Investor and the BPE, the failure event here in mentioned must be in tandem with the provisions of the PA. This Regulation cannot extend, modify or alter the provisions of the PA. As the Commission is not a party to the PA and can therefore not vary the provisions of the PA or any other Industry Agreement as it lacks privity</p> <p>b) The Regulation has hinged failure event on non-performance by the Target Date or Extended Target Date. The Target Date under the PA is the 5th anniversary from the date a Licensee’s Baseline ATCC loss level (as revised) is approved by the BPE or an Extended Date as agreed by the BPE and the Licensee.</p>	<p>We humbly request that sections 7.1 (a, b) be expunged.</p>

Performance Obligation Failure Event



NAME OF ORGANIZATION	COMMENTS	RECOMMENDATION
<p>JEDC, IBEDC, BEDC, PHEDC, KEDCO, IKEDC</p>	<p>c) Section 7.1 (a) of the Draft Regulation directly conflict with NESI Agreements especially the PA. This is in relation to the right of NERC to unilaterally make a determination that 2 years prior to the Target Date that a Performance Obligation Failure Event has occurred. The PA expressly grants Licensees, the right to seek for extension of the Target Date at least 60 days prior to its expiration where a Licensee opines that it would not have fully met its PA obligations by the Target Date. This provision indirectly shortens the Target Date in the PA from 5 years to 3 years which amends the term of the PA and makes Discos vulnerable to NERC's intervention earlier than the initial target date set in the Performance Agreement.</p> <p>d) Stating that our failure to meet our performance targets for at least 3 consecutive months amounts to a Performance Obligation Failure Event in section 7.1 (b) is unacceptable, particularly in view of the grave challenges the honorable Commission is aware of – i.e. liquidity challenges, collection losses, the absence of cost-reflective tariffs, and so much more.</p>	<p>We humbly request that section 7.1 (c & d,) be expunged.</p>

Performance Obligation Failure Event



NAME OF ORGANIZATION	COMMENTS	RECOMMENDATION
<p>JEDC, IBEDC, BEDC, PHEDC, KEDCO, IKEDC</p>	<p>e) Any decision to trigger an enforcement action in the event of a Licensee's failure to meet the minimum performance targets in the PA is at the discretion of BPE in accordance with the terms of our PA. The Commission can not alter the provisions of the PA using section 7.1 (c).</p>	<p>We humbly request that section 7.1 (e) be expunged.</p>
	<p>f) The failure of a Disco to purchase and/or accept delivery of Dependable Capacity and Gross Energy Output per section 7.1 (d) is to be dealt with under the Vesting Contract, not this Draft Regulation.</p>	<p>We humbly request that section 7.1 (f) be expunged.</p>

Performance Obligation Failure Event



NAME OF ORGANIZATION	COMMENTS	RECOMMENDATION
<p>JEDC, IBEDC, BEDC, PHEDC, KEDCO, IKEDC</p>	<p>g) The honourable Commission is aware of the impracticability of supplying uninterrupted electricity to customers. If we do not receive the energy to supply to our customers as a result of the poor transmission infrastructure, we cannot be held culpable. More so, determining in section 7.1. (e) That DisCos should continue to supply electricity to consumers who do not pay for it definitely runs foul of the objectives behind business continuity.</p>	<p>We humbly request that section 7.1 (g) be expunged.</p>
	<p>h) The Commission empowering itself in section 7.1 (g) as being able to unilaterally declare any other event as a Performance Obligation Failure Event is excessively ambiguous.</p>	<p>We humbly request that section 7.1 (h) be expunged.</p>

Compliance Obligation failure event



NAME OF ORGANIZATION	COMMENTS	RECOMMENDATION
<p>JEDC, IBEDC, BEDC, PHEDC, KEDCO, IKEDC</p>	<p>Section 8.1(d) This section is rather vague and ambiguous with all due respect to the Commission, Compliance Obligation Failure Event should be clearly stated and parameter to determine what constitute a Compliance Obligation Failure Event well defined.</p> <hr/> <p>It is unfair and unjust to classify the inability to obtain and maintain adequate insurance cover, non-compliance with good industry practice as event of default which may give rise to heavy actions such as the suspension of license or appointment of an interim operator and so on.</p>	<p>The entire Section 8 be expunged.</p>

Financial Obligation Failure Event



NAME OF ORGANIZATION	COMMENTS	RECOMMENDATION
<p>JEDC, IBEDC, BEDC, PHEDC, KEDCO, IKEDC</p>	<p>The Draft Regulation section 10.1 (a & c) stipulate that the inability of the Discos to pay 100% of their MO and NBET Invoices constitute a Failure Event. This is worrisome. In particular, the Commission’s failure to put in place cost-reflective tariffs or undertake periodic reviews of the Multi Year Tariff Order (MYTO) as required by the EPSRA. The tariff shortfall has made it impossible for Discos to meet financial obligations to the market 100%.</p>	<p>We humbly request that paragraphs be expunged.</p>
	<p>The Commission empowering itself in section 10.1 (h) as being able to unilaterally declare any other event as a Financial Obligation Failure Event is excessively ambiguous.</p>	<p>We humbly request that paragraphs be expunged.</p>

Contractual Obligation Failure Event



NAME OF ORGANIZATION	COMMENTS	RECOMMENDATION
<p>JEDC, IBEDC, BEDC, PHEDC, KEDCO, IKEDC</p>	<p>The provisions of section 11 are far too wide and run contrary to legitimate contractual expectations. The Regulation cannot override existing market contracts otherwise, same will be deemed as a “Change in Law”. To generally declare an Event of Default under any NESI Agreement or other Agreements as a Contractual Failure Event constitutes an overreach of contractual rights, as the Commission are not a party to any Industry Agreement and can therefore not vary the provisions of the Performance Agreement or any other Industry Agreement as it lacks privity.</p>	<p>The Regulation as currently worded seeks to void all of the legitimate contractual expectations contained in the aforementioned Agreements and as such, should be expunged.</p>
	<p>The NESI Agreements and other Industry Agreements specifically provide for how to manage the affairs of parties where there has been an event of default</p>	<p>We humbly request that paragraphs be expunged.</p>

Liquidation Obligation Failure Event



NAME OF ORGANIZATION	COMMENTS	RECOMMENDATION
<p>JEDC, IBEDC, BEDC, PHEDC, KEDCO, IKEDC</p>	<p>Section 12.1 (a) provides that a Liquidation Event shall amount to a Business Continuity Failure Event where a petition for winding up is instituted before a court of competent jurisdiction against the Licensee under the Laws of Nigeria</p>	<p>We propose that this paragraph be amended to read that the appointment of a provisional liquidator by a competent court will suffice</p>
	<p>Section 12.1 (e) provides that any other event as may be declared by the Companies and Allied Matters Act 2004 shall constitute a Winding Up Event</p>	<p>we propose that this paragraph be amended to read “Any other winding up event as may be declared by the Companies and Allied Matters Act 2004</p>

Financial Constraint/Force Majeure Failure



NAME OF ORGANIZATION	COMMENTS	RECOMMENDATION
<p>JEDC, IBEDC, BEDC, PHEDC, KEDCO, IKEDC</p>	<p>Section 13 of the Draft Regulation is too ambiguous and should be properly defined within its context. Merely stating the inability of a Licensee to meet its financial obligation is not sufficient. It is no secret that all market participants are experiencing financial difficulties due to several factors. The opinion of the Commission in this regard, is too subjective.</p>	<p>A clear and precise yardstick should be set to determine circumstances in which a Licensee will be deemed to be experiencing Financial Constraints</p>
	<p>Section 14 of the BCR generally declare the occurrence of “Force Majeure” under any NESI Agreements or other Agreements as a failure event under the Regulation constitutes an overreach of contractual rights. The Agreements specifically provide for what will happen in the event of a Force Majeure Event occurring, as agreed by the parties to the various Industry Agreements to which the Commission is not a party.</p>	<p>We humbly request that Section 14 of the Draft Regulation be expunged.</p>

Business Continuity Measures



NAME OF ORGANIZATION	COMMENTS	RECOMMENDATION
<p>JEDC, IBEDC, BEDC, PHEDC, KEDCO, IKEDC</p>	<p>Section 15.3– Business Continuity Measures; The section provides that Business Continuity Measures for successor companies prior to the target date specified in their respective Performance Agreements shall be jointly determined by NERC and BPE.</p>	<p>The Target Date is specified in the Performance Agreement and the Commission cannot via Regulation, vary the provisions of the Performance Agreement.</p> <p>This paragraph should be deleted in its entirety</p>

Business Continuity Measures



NAME OF ORGANIZATION	COMMENTS	RECOMMENDATION
<p>JEDC, IBEDC, BEDC, PHEDC, KEDCO, IKEDC</p>	<p>Sections 16.1, 16.2 (b & c) and 18.2 (b) – Imposing a fine of N10, 000 per day is not in accordance with the provisions of the EPSRA which stipulates that regulations made by NERC may impose a fine of not more than N10, 000 (Ten Thousand Naira), or upon default of payment, imprisonment for not more than six (6) months on licensees or consumers in breach of the EPSRA or its subsidiary instruments. The foregoing provision therefore indicates that while NERC can legitimately make a regulation imposing penalties, fines and/or disciplinary measures on participants in the NESI for their failure or refusal to comply with a regulation, rule, order or subsidiary instrument issued by NERC, the sum total of any fine NERC may impose on a Licensee for breach of the EPSRA or its subsidiary instrument cannot exceed N10, 000.00 in total.</p>	<p>We humbly request that the Commission amend this paragraph to read that the total fine payable by the Licensee shall not exceed N10,000</p>

Business Continuity Measures



NAME OF ORGANIZATION	COMMENTS	RECOMMENDATION
<p>JEDC, IBEDC, BEDC, PHEDC, KEDCO, IKEDC</p>	<p>Section 16.1(f) a NERC Intervention as a result of a continuation of a default of Performance Obligation Failure</p>	<p>We humbly request that the time frame for the application of a NERC Intervention as a result of a continuation of a default of Performance Obligation Failure Event be amended from 30 days to 90 days.</p>
	<p>Section 16.2(a) to remedy a damage or defect in Licensee’s systems</p>	<p>Section 16.2 (a) We humbly request that time frame to remedy a damage or defect in Licensee’s systems be revised from 30 to 90 days of the issuance of Rectification Order</p>
	<p>Section 16.2(d) the time frame for the continuation of a default</p>	<p>Section 16.2 (d) We humbly request that the time frame for the continuation of a default be extended from 15 to 45 days, before a NERC Intervention is applied</p>

Business Continuity Measures



NAME OF ORGANIZATION	COMMENTS	RECOMMENDATION
<p>JEDC, IBEDC, BEDC, PHEDC, KEDCO, IKEDC</p>	<p>Section 17. warning notice urging the Licensee to comply</p>	<p>Section 17 – In sub-paragraph (c), NERC issuing a warning notice urging the Licensee to comply within 15 days should be revised to 45 days. The grace period in sub-section (d) should be revised from 15 days to 45 days as well.</p>
	<p>The Draft Regulation does not contain provisions giving an aggrieved Licensee a right to challenge a decision of NERC made pursuant to the Draft Regulations.</p>	<p>For the sake of fairness and equity, it is necessary that Licensees be given a right to seek redress against any decision(s) of NERC before it is implemented. We humbly request that a section is developed in this regard</p>

Business Continuity Measures



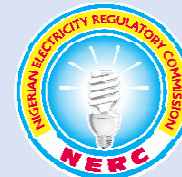
NAME OF ORGANIZATION	COMMENTS	RECOMMENDATION
<p>JEDC, IBEDC, BEDC, PHEDC, KEDCO, IKEDC</p>	<p>Section 19 of the Draft Regulation gives NERC the powers to escrow the account of a Disco. Licensee's accounts cannot be escrowed based on present market realities. There must have been a total reset of the NESI for such measures to be implemented. Escrow of accounts is tantamount to the FGN taking over of the Licensees business</p>	<p>We humbly request that Section 19 of the draft Regulation be expunged.</p>
	<p>Escrowing Collection Accounts of Electricity Distribution Companies in Nigeria (2016). The Federal High Courts in each of the existing suits has granted injunctive orders restraining NERC, Nigerian Bulk Electricity Trading Plc (NBET), and their agents/servants from giving effect or continuing to give effect in anyway howsoever to NERC's letter dated 30th March, 2016 (Escrow Directive) and the Escrow Guidelines and from directing any bank in Nigeria to escrow any funds in the Discos' collection accounts</p>	<p>In view of this, this proposed measure by NERC is caught by the Injunctive Orders and the doctrine of <i>lis pendens</i>.</p>

Business Continuity Measures



NAME OF ORGANIZATION	COMMENTS	RECOMMENDATION
<p>JEDC, IBEDC, BEDC, PHEDC, KEDCO, IKEDC</p>	<p>Section 24 (a,b,c,d) Change in Board/Management):</p> <p>a) Although NERC has been empowered to license and regulate persons engaged in the generation, transmission, system operation, distribution, and trading of electricity; the EPSRA from which NERC derives its powers and functions, does not contain a statutory provision expressly empowering NERC to change the Board or Management of a Licensee. NERC is a creation of law and as such, should not go beyond what its enabling law expressly empowers it to do. In effect, the NERC purporting to exercise this type of power is ultra vires and without any legal backing</p>	

Business Continuity Measures



NAME OF ORGANIZATION	COMMENTS	RECOMMENDATION
<p>JEDC, IBEDC, BEDC, PHEDC, KEDCO, IKEDC</p>	<p>b) Section 24 of the draft Regulation which empowers NERC to change Boards of Licensees is also an FGN Event of Default under the PA as same would mean the compulsory acquisition of a “constituent element” of a Licensee’s Business contrary to the provisions of the Privatization Transaction Documents</p> <p>c) It is no comfort that NERC is expected to exercise its powers in accordance with the Electricity Industry Enforcement Regulations 2014 [2014 Enforcement Regulation] in conjunction with the BPE prior to Successor Company’s Target Date. The draft Regulation itself states that NERC may not be obliged to so consult with the BPE or act in accordance with the 2014 Enforcement Regulation.</p>	

Business Continuity Measures



NAME OF ORGANIZATION	COMMENTS	RECOMMENDATION
<p>JEDC, IBEDC, BEDC, PHEDC, KEDCO, IKEDC</p>	<p>d) While there is precedent for an industry Regulator to exercise similar powers, same has to be conferred on the Regulator by the enabling law. This is the case with the CBN who have been expressly empowered by legislation to remove and replace the Board and Management of Banks by the Banks and other Financial Institutions Act(BOFIA) under limited certain circumstances. This is a sacred public duty conferred by BOFIA on the CBN. The power of the CBN to exercise the powers is also not at large.</p> <p>e) In addition, the Companies and Allied Matters Act, the principal statute regulating all companies in Nigeria, stipulates the process of removing a director in Section 262.A failure by a company (including a Disco) to comply with the process stipulated in Section 262 of CAMA will render the purported removal of the director invalid. The removal of a Board as intended by this Regulation is potentially ultra vires.</p>	<p>Where the intent was that the provisions of EPSRA would prevail over the provisions of CAMA, there would need to be an express provision in the EPSRA to that effect. Absent such provision, the procedure in CAMA must be applied to remove a director of a DisCos or any Licensee.</p>

Objective of the Regulation



NAME OF ORGANIZATION	COMMENTS	RECOMMENDATION
<p>DETAIL COMMERCIAL SOLICITORS</p>	<p>Section 5 (b) The Regulation is not designed to be repetitive of existing consequences under the Act, Relevant Rules, License Terms and Conditions, Industry Agreements, and Other Agreements, but is to complement all preceding instruments governing the NESI. The purpose of this Regulation is to provide Business Continuity Measures for the smooth running of the NESI.</p> <p><i>“In the event of any conflict between this Regulation and existing Legislation or Relevant Rules, the applicable Relevant Rule shall take precedence”</i></p>	<p>It is a fundamental error in law to state that in the event of a conflict, an applicable relevant rule will take precedence over an existing legislation (of the National Assembly). Existing legislation in this context would include the Electric Power Sector Reform Act (EPSRA). The EPSRA (as with all other Acts or legislation of the National Assembly) should take precedence over all rules/regulations of NERC. This is to be rectified by the Commission.</p>

Objective of the Regulation



NAME OF ORGANIZATION	COMMENTS	RECOMMENDATION
DETAIL COMMERCIAL SOLICITORS		<p>The highlighted portion (which provides that the applicable relevant rules will take precedence over the BCR, also conflicts with Section 33 of the Regulations which provides that “In the event of any inconsistency or conflict with the Relevant Commission Rules currently in force, the provisions of these Regulations shall prevail.” It is recommended that the Commission should ensure consistency with Section 33 which provides that in the event of any inconsistency with the relevant rules, these Regulations shall prevail</p>

Principle of the Regulation



NAME OF ORGANIZATION	COMMENTS	RECOMMENDATION
DETAIL COMMERCIAL SOLICITORS	<p>Section 6 (e) strict enforcement of these regulations only after all other avenues for sustaining the licensee business as contained in any existing legislation, Agreement or Relevant Rule has been explored</p>	<ul style="list-style-type: none"> ➤ Kindly note that the provision in paragraph (e) may conflict with some of the Business Continuity Measures provided for in the Regulations which would typically kick in before all avenues have been explored. ➤ It is recommended that this provision should exclude processes that have specifically been provided for in the Regulations. For example, to the extent that there is a potential failure event, the Business Continuity Measures provided in the Regulation should, as a first step, kick in to check/assess the failure event. ➤ The provision may be amended as follows: <ul style="list-style-type: none"> <i>“Unless otherwise determined by the Commission, the business continuity measures provided for in these Regulations shall first be explored by the Commission in relation to the relevant licensee’s business, prior to the application of any other avenues for sustaining such licensee’s business as may be contained under the Relevant Rules”.</i>

Principle of the Regulation



NAME OF ORGANIZATION	COMMENTS	RECOMMENDATION
<p>DETAIL COMMERCIAL SOLICITORS</p>	<p>Section 10 Provided that a Financial Obligations Failure event may only occur if its occurrence is strictly due to default of the licensee and not other players in the value chain. The Commission shall determine cases that will be classified as default by the licensee</p>	<ul style="list-style-type: none"> ➤ This provision will be subject to ambiguity, as all circumstances of financial obligations failure event can be determined to be remotely caused by other participants in the value chain. This will not change the fact that the licensee is in a financial obligations failure event). ➤ It is expected that when the preliminary investigations are carried out, and NERC finds that the failure event is due to another participant's failure, NERC should carry out appropriate business continuity measures ➤ A provision may however be included under business continuity measures for financial obligations that <i>"NERC shall initiate appropriate business continuity measures where investigation reveals that the occurrence of a Financial Obligations Failure Event is due to the default of other market participants"</i>

Performance Obligation Failure Event



NAME OF ORGANIZATION	COMMENTS	RECOMMENDATION
BPE	<p>Regulation 7: The evaluation to determine if a Performance Obligations Failure Event has occurred should be a joint exercise by NERC and BPE who share the same interest and have the same goals in the reform trajectory. NCP to be final arbiter</p>	<p>Redraft to insert a joint assessment process for the two agencies with NCP arbitrating</p>
	<p>Regulation 8: Compliance Obligation failure event Comments on 1 above apply mutatis mutandis</p>	<p>Suggestions/Recommendations on 3 above apply</p>
	<p>Regulation 9: Licence Obligation failure event; The terms of each license contain rights, obligations including penalties for the infringement of license terms. A justification needs to be made as to why we need a fresh rehashing of this requirement here.</p>	<p>Expunge</p>

Performance Obligation Failure Event



NAME OF ORGANIZATION	COMMENTS	RECOMMENDATION
BPE	<p>Regulation 11: Contractual Obligation events; The challenge here is the negation and redundancy of the provisions of the industry documents referred to in the draft regulations. Each of the industry documents has obligations and accompanying sanctions in the event of default. What interface would there be between the regime in the industry documents and the draft regulations in the event of the occurrence of Contractual Obligations Failure Event?</p>	<p>This dovetail into the monitoring provisions contained in the industry agreements with the ones envisaged in the draft regulations and specify one route of ascertaining if a Contractual Obligations Failure Event has occurred to be co-determined by NERC and BPE with NCP arbitrating</p>
	<p>Penalties enshrined in the entire regulation</p>	<p>Are these complementary to or overriding of the License terms NERC entered into with the Investors</p>
	<p>Regulation 19: Financial Obligations Failure Event: Escrowing the funds of the DISCO. That certainly is not a regulatory function by any stretch of imagination</p>	<p>Amend to share the power of actual escrowing with BPE with NCP arbitrating</p>

Performance Obligation Failure Event



NAME OF ORGANIZATION	COMMENTS	RECOMMENDATION
BPE	<p>Regulation 21 Business Continuity Measures for Liquidation Events of a Licensee. This process will enmesh the Commission in operational issues beyond its regulatory scope of authority</p>	<p>NERC to determine but let BPE enforce. Its gives you an arms-length relationship with the market</p>
	<p>Regulation 24 and 26 Change in Board and Management of Licensees and Appointment of an Interim Operator. Who does the appointment? Selection mechanisms? Who do they report to? Would that supervisory role acquired by NERC not compromise its neutrality in the market</p>	<p>A determination should be made and NCP should appoint an Interim Operator that reports to the Chairman on NCP/Secretariat</p>
	<p>Regulation 33 Supremacy of the draft regulations over other NERC regulations</p>	<p>This is a recipe for chaos. These rules are ancillary to the mandate of NERC. It is too radical to make them supreme to other regulations of the Commission even including Market Rules, Grid Codes, etc.</p>

Final Note



The Vision for this regulation should not be misrepresented. NERC's intent is not for the **Business Continuity Regulations** to intrude in the operational affairs of the market participants. But to act in a more proactive capacity to mitigate risks and provide for events of failure in a controlled manner by:

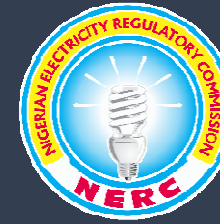
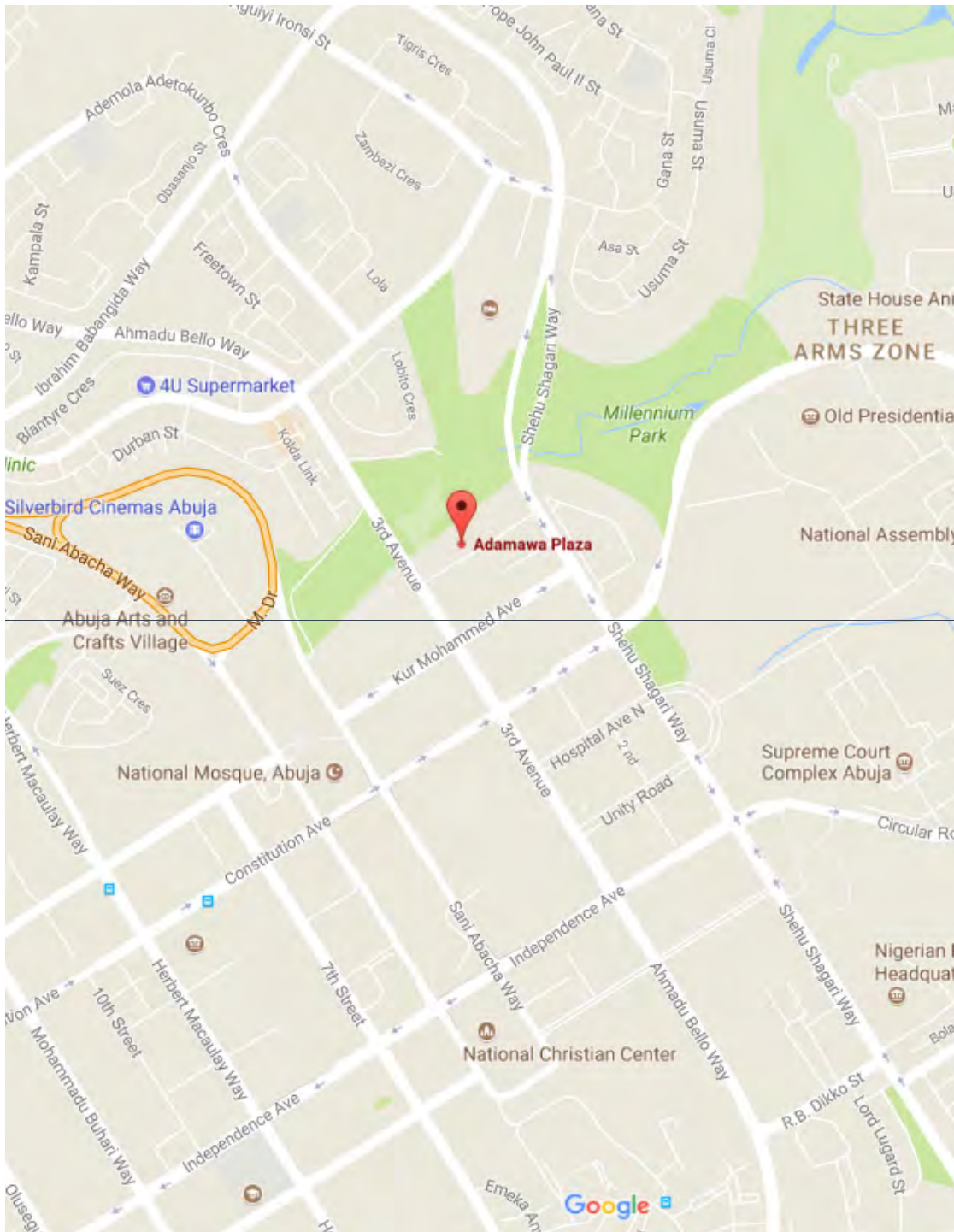
1

Identifying gaps and weaknesses and effectively monitoring the process that may trigger red flags in a timely manner

2

Guarantee continuity of security of supply across the value chain and preserve critical national infrastructure and performance obligation to the market.

All critical stakeholders have important and necessary roles to play in resolving the challenges and ensuring continuity of the market. Their responsibilities need to be fulfilled within the context of a common understanding and shared interest.



Thank You

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