



## **NIGERIAN ELECTRICITY REGULATORY COMMISSION**

**ORDER NO: NERC/181/2018**

**BEFORE THE NIGERIAN ELECTRICITY REGULATORY COMMISSION**

**IN THE MATTER OF AN APPLICATION OF THE ENFORCEMENT  
REGULATION FOR THE NIGERIAN ELECTRICITY SUPPLY INDUSTRY  
PURSUANT TO THE ELECTRIC POWER SECTOR REFORM ACT**

### **WHEREAS:**

1. The Commission pursuant to its powers under the Electric Power Sector Reform Act ("EPSRA") conducted an open book review of the financial records of Ibadan Electricity Distribution Company ("IBEDC") on 12 July 2016.
2. A Notice of Intention to Commence Enforcement ("NICE") dated 14 November 2016 was issued to IBEDC by the Commission to enable IBEDC provide a written defence to the breaches identified during the open book review.
3. The management of IBEDC made the following admission to the NICE issued by the Commission –
  - a. An unauthorised payment of interest on pre-takeover expenses in the sum of NGN47.97million to Oceanic Marine Solutions Group being 21% of the pre-takeover expenses in the sum of NGN288.4million.
  - b. An unauthorised grant of an interest free loan in the sum of NGN6billion to Integrated Energy Distribution & Marketing Group Limited ("IEDMG"), a shareholder and investor in IBEDC.
  - c. The recovery of NGN300million on the interest free loan made to IEDMG by IBEDC referred to in "b" above.
4. The Commission by a resolution dated 8 June 2017 authorised the issuance of Order NERC/173 directing the management of IBEDC to –
  - a. Recover the sum of NGN47.97million being the unauthorised payment of interest on pre-takeover expenses made in 3(a) above.

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- b. Recover the sum of NGN5.7billion being the balance on the interest free loan granted in 3(b) above along with interest at the rate of 10% and submission of evidence of such recovery to the Commission by 30 June 2017.
5. The management of IBEDC failed and refused to comply with Order NERC/173 until 18 September 2017 where the Commission issued a further Order NERC/FN/166 with the following directives –
  - a. IBEDC shall pay a fine in the sum of NGN50million for the continued failure and refusal to comply with Order NERC/173.
  - b. IBEDC shall recover the sum of NGN5.7billion being the balance on the unauthorised interest free loan granted to IEDMG. The unauthorised loan was granted from the Nigerian Electricity Market Stabilisation Facility (“NEMSF”) by the Central Bank of Nigeria (“CBN”) to IBEDC for the primary purpose of meeting market obligations and reducing Aggregate Technical, Commercial and Collection (ATC&C) losses. IBEDC received a total sum of NGN11.367billion under the CBN-NEMSF and the management approved the grant of an interest free loan in the sum of NGN6billion from this fund to IEDMG contrary to the intention of the facility and the company’s role as the holder of a distribution licence in the Nigerian Electricity Supply Industry (“NESI”).
  - c. IBEDC shall pay interest at the rate of NIBOR + 10% on the outstanding balance of NGN5.7billion on the hitherto interest free loan granted to IEDMG from the date the loan was granted until the earlier of 30 September 2017 or date of repayment.
  - d. IBEDC shall recover the sum of NGN47.97million being the unauthorised payment of interest on pre-takeover expenses to Oceanic Marine Solutions Group.
  - e. IBEDC shall provide evidence of compliance with Orders 1 to 4 above to the Commission on or before 30 September 2017.
6. IBEDC by a letter dated 25 September 2017 (ref: IBEDC/MD/CEO/124/2017) signed by the managing director, Mr. John Donnachie, confirmed compliance with 5(d) above.
7. IBEDC by a letter dated 29 September 2017 (ref: IBEDC/MD/CEO/128/2017) signed by Mr. John Donnachie confirmed compliance with 5(a) above.
8. The Commission had a further meeting with the board of IBEDC on 23 October 2017. The board of IBEDC provided further clarification on the circumstances leading to the loan in 5(b) above and undertook to repay the loan on or before 31 December 2017.
9. The Commission received a letter dated 12 December 2017 from IEDMG signed by the managing director, Dr. Sola Alayande, and vice chairman, J.O Ayeni, with a proposal that was contrary to the agreement reached at the meeting held on 23 October 2017. IEDMG had premised the repayment of the loan on the refund of

the sum due from the Federal Government on the failed privatisation of Yola Distribution Company. They stated that they had been informed by the Bureau of Public Enterprises (“BPE”) that this refund could only be made after the 2018 Appropriation Bill is approved and signed into law.

10. IEDMG proposed to effect the repayment in monthly installments of NGN150million pending the receipt of the refund from the Federal Government.
11. IBEDC by a letter dated 31 January 2018 (ref: IBEDC/MD/CEO/021/2018) confirmed receipt of the sum of NGN150million from IEDMG being the January 2018 instalment payment.
12. IBEDC by a letter dated 8 March 2018 (ref: IBEDC/MD/CEO/063/2018) confirmed receipt of the sum of NGN150million from IEDMG being the February 2018 instalment payment.
13. The Commission was notified that IEDMG paid the sum of NGN130million to IBEDC’s account as the March 2018 instalment payment on 20 April 2018 contrary to the repayment proposal in the letter dated 12 December 2017.
14. IEDMG has not made any further repayments to IBEDC since the last payment made on 20 April 2018.

UPON being satisfied that the board and management of IBEDC have failed and refused to comply with Order NERC/FN/166.

UPON being satisfied that the board and management of IBEDC have continued in their failure and refusal to comply with Order NERC/FN/166.

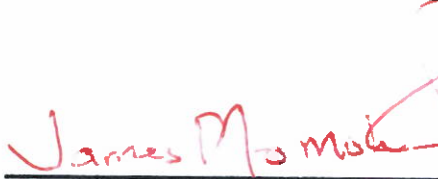
**THE COMMISSION HEREBY ORDERS** as follows –

1. The suspension of all executive and non-executive directors from the board of IBEDC.
2. The suspension of the finance director/chief financial officer of the company.
3. The last act of the board before proceeding on suspension shall be to call an extraordinary general of the company to be held within 21 days from the receipt of this Order.
4. The shareholders of the company shall do the following at the extra-ordinary general meeting –
  - a. Appoint a new board comprising of executive, non-executive and independent directors.
  - b. Appoint a new managing director and chief executive officer for the company.
  - c. Appoint a new finance director/chief financial officer for the company.


5. All nominees to fill the new appointments must have proven track records in their respective fields.
6. All nominees to fill the new appointments shall be interviewed by the Commission as part of the fit and proper requirements and these nominees must be able to demonstrate a capacity to remediate the issues affecting the company.
7. IBEDC shall appoint a reputable consultant subject to the confirmation of the Commission to conduct bi-annual evaluations and peer reviews of the new board. The consultant shall send a copy of his board evaluation reports to the Commission.
8. IBEDC should put in place appropriate governance structures to address whistle blowing, ethical conduct and general business practices.
9. The Commission and IBEDC's auditor shall be invited to witness proceedings at the extra-ordinary general meeting of the company.
10. The Commission shall commence process of cancelling IBEDC's distribution licence in accordance with section 74 of EPSRA where the company fails to comply with any of the orders stated above.

**BY ORDER OF THE COMMISSION**

DATED THIS 19<sup>th</sup> DAY OF JUNE 2018



**James A. Momoh  
Chairman**

  
**Dafe C. Akpeneye  
Commissioner  
Legal, Licensing & Compliance**