



NIGERIAN ELECTRICITY REGULATORY COMMISSION

ORDER ON THE SUSPENSION OF THE “GOOD CAUSE” EXCEPTIONS TO THE PROCUREMENT OF GENERATION CAPACITY REGULATIONS 2014

ORDER NO: NERC/179/2018

WHEREAS:

- A. The Nigerian Electricity Regulatory Commission (the “Commission”) is required by sections 32 (1) (a) and 68 (3) of the Electric Power Sector Reform Act (“EPSRA”) to –
- i. Create, promote and preserve efficient industry and market structures, and to ensure the optimal utilisation of resources for the provision of electricity services; and
 - ii. Ensure that all contracts for purchases of electrical power and ancillary services shall be awarded according to an open, transparent and competitive manner, pursuant to a procedure established by the Commission, unless the circumstances require otherwise and the Commission allows or requires an alternative method.
- B. The Procurement of Generation Capacity Regulations (the “Regulations”) of 2014 provides for the process for procuring additional electric generation capacity.
- C. Section 5.2 of the Regulations prohibits, except otherwise approved by the Commission for good cause,
- i. The soliciting for bids or proposals for the provision of generation capacity to which these Regulations apply.
 - ii. The entry into any contract whereby a Buyer agrees to purchase the electrical output of any generation facility to which these Regulations apply.
- D. Section 5.3 of the Regulations grants the following exceptions to the application of section 5.2 –
- i. Small scale power plant generating 10MW or less.
 - ii. Purchase of occasional electricity supply from a self-scheduling generator.

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- iii. Any procurement by a Buyer under any agreement entered into prior to the coming into force of these Regulations, including pending applications.
- iv. Any procurement by a Buyer under any option or other right to acquire generating capacity or electricity, subject to the approval of NERC, where such option or other right had been granted prior to the coming into force of these Regulations, notwithstanding the date of the option or other right.

E. The Commission subsequently developed and defined certain classes of applications as qualifying for exemption under the Regulations for good cause as follows –

- i. **Renewable and Alternative Power** – Renewable energy based power projects such as solar, wind, biomass or small hydro which require no fuel supply agreement and in respect of which feed-in-tariffs have been approved with no capacity charge component.
- ii. **Environment-related Projects** – Where a guaranteed fuel source for the generation of power may be a solution to waste disposal challenges, e.g. a sawmill desirous of using saw dust for biomass power, a sugar factory using bagasse for power generation or a landfill generating power from landfill gas etc.
- iii. **Grid Stability** – As the country runs on one transmission grid and its stability is paramount to the development of the NESI, the siting of a plant in an area which will contribute to maintaining stability of the grid may be acceptable as a project which is developed for “good cause”. This may however only be done with the involvement of the System Operator (SO) after carrying out stability studies.
- iv. **Excess Generation** – Companies with existing CPG Permits intending to sell and supply their excess power to the national grid. This includes off-grid generation companies with available excess capacity which can be utilised by the NESI to ensure that adequate electricity is supplied to customers.
- v. Conventional generation that the System Operator deems necessary to procure urgently for the purpose of capacity adequacy.
- vi. **Available Fuel Source**- Companies with available fuel provided that such companies undertake competitive procurement and take efficient price.
- vii. **Government-Funded projects**- to be considered on a case by case basis.

F. The Commission is presently re-assessing the transactions exempt from the application of the Regulations in order to ascertain the extent to which they still constitute substantial grounds for exemption under the Regulations.

NOW THEREFORE:

Upon due consideration of the foregoing and the obligation on the Commission to monitor the operations of the electricity market and institute necessary change when

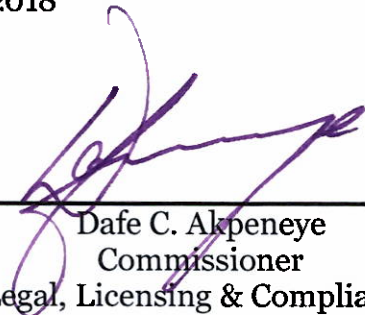
required for its sustained and orderly growth and expansion, the Commission pursuant to the powers conferred by the EPSRA and the Regulations, and as resolved at its 10th Formal Meeting of 19 and 20 April, 2018 hereby orders as follows –

1. The “Good Cause” definition and classification developed by the Commission as exceptions to the competitive procurement of power provided for in the Procurement of Generation Capacity Regulations, 2014 is suspended until a final decision on the review of this definition and classification is reached by it.
2. No new licence application brought under the “Good Cause” exceptions shall be considered by the Commission with effect from 20 April 2018.
3. Exceptional Circumstances such as policy directives by the Federal Government of Nigeria to promote a specific fuel type or other such policy directives may be considered by the Commission as transactions exempt from the applications of the Regulations on a case-by-case basis.

Dated this 20th day of April 2018



James A. Momoh
Chairman



Dafe C. Akpeneye
Commissioner
Legal, Licensing & Compliance