



NIGERIAN ELECTRICITY REGULATORY COMMISSION

ORDER NO: NERC/GL/167

**BEFORE THE NIGERIAN ELECTRICITY REGULATORY COMMISSION
IN THE MATTER OF NON-COMPLIANCE WITH THE ELECTRIC POWER
SECTOR REFORM ACT, TERMS AND CONDITIONS OF OFF-GRID
GENERATION LICENCES AND OTHER REGULATORY DIRECTIVES AND
INSTRUMENTS ISSUED BY THE NIGERIAN ELECTRICITY REGULATORY
COMMISSION**

WHEREAS:

1. The Commission issued off-grid electricity generation licences (NERC/LC/128, NERC/LC/129, NERC/LC/170 and NERC/LC/171) to Cummins Power Generation Nigeria Limited ("CPGNL") in accordance with section 32(2)(d) of the Electric Power Sector Reform Act ("EPSRA").
2. Section 63(1) & (2) of EPSRA imposes obligations on the holder of an electricity generation licence to comply with the terms of issuance of the licence, regulations, codes and other requirements issued by the Commission from time to time.
3. Section 71(1) of EPSRA provides that a licence shall be issued subject to such terms and conditions as may be prescribed, or as the Commission may reasonably determine.
4. CPGNL applied for an off-grid electricity generation licence by a letter dated 28 June 2016 to supply power to the Nigerian Carton and Packaging Manufacturing Company Limited (NICAPACO), Ilupeju, Lagos.

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5. The Commission received a Notice of Objection dated 9 August 2018 from Ikeja Electric Plc ("IE") against CPGNL's application on grounds of network encroachment by supplying customers on IE's priority feeders without the approval of the Commission.
6. The Commission also received a petition dated 9 August 2018 from IE further objecting to CPGNL's application for an off-grid licence on grounds of encroachment into IE's distribution network and tampering with distribution infrastructure.
7. A Technical Investigation Team ("TIT") was constituted by the Commission to investigate IE's claim of network encroachment and tampering with distribution infrastructure.
8. The TIT confirmed that CPGNL was supplying electricity to Nigerian Carton and Packaging Manufacturing Company Limited (NICAPACO), Ilupeju, Lagos contrary to condition 7(1)(b) of the terms and conditions of its licence.
9. The TIT also confirmed that CPGNL had constructed distribution infrastructure from its plant in the NICAPACO premises to the Fountain of Life Church, Ilupeju, Lagos without the approval of the Commission.
10. A Notice of Intention to Commence Enforcement ("NICE") dated 30 January 2019 was issued by the Commission to CPGNL in compliance with section 75(2)(a) of EPSRA to enable CPGNL provide a defence in writing to the identified infractions.
11. The NICE state that CPGNL had breached condition 7(1)(b) of the terms and conditions of its off-grid generation licence which states that ***"the licensee shall not engage in the distribution or trading of electricity outside the approved distribution area specified in schedule 1 of its licence"***.
12. The NICE also stated that CPGNL engaged in the following activities without the approval of the Commission -

- a. Constructing distribution infrastructure from NICAPACO's premises to Fountain of Life Church, Ilupeju, Lagos.
 - b. Entering into a supply arrangement and supplying electricity to NICAPACO contrary to the terms of its licence.
13. CPGNL's actions in 12 above constitute a violation of section 63(1) of EPSRA and a breach of the terms and conditions of its licence and other regulatory instruments of the Commission.
14. CPGNL sought to rectify the infraction by filing an application dated 8 February 2019 to supply excess electricity from the unapproved facility that was constructed at NICAPACO to Fountain of Life Church.
15. CPGNL responded to the NICE by a letter dated 11 February 2019 stating the following -
- a. CPGNL applied for an off-grid generation licence on 28 June 2016 to generate and supply 1.75MW off-grid electricity to NICAPACO.
 - b. CPGNL issued statutory notices 2 national newspapers notifying the public of its application for an off-grid electricity licence to generate and supply electricity to NICAPACO in ilupeju, Lagos State and requested for objections within 21 days from the date of publication.
 - c. No objection was received by CPNGL within the specified period and it did not receive any correspondence from NERC that any objections had been received.
 - d. CPGNL took NERC's silence as acceptance, in line with the Executive Order 01 issued by the Vice President for the purpose of ease of doing business.
 - e. CPGNL thereafter entered into a supply arrangement with NICAPACO and commenced the supply of off-grid electricity to the NICAPACO project.

- f. CPGNL had commenced the construction of distribution network to supply Fountain of Life Church but stopped construction when its internal audit revealed that the required approvals had not been obtained from the Commission.
16. CPGNL's response to the NICE constitutes an admission of the infractions stated therein.
 17. The Commission is the only authority vested with the powers under section 73 of EPSRA to grant or amend licences for regulated activities in the Nigerian Electricity Supply Industry ("NESI").
 18. The Commission is also the only authority vested with powers under section 32(2)(d) of EPSRA to licence and regulate persons engaged in the generation, transmission, system operation, distribution, and trading of electricity in NESI.
 19. UPON being satisfied that CPGNL has admitted to the breach of condition 7(1)(b) of the terms and conditions of its licence by encroaching on IE distribution network and tampered with distribution infrastructure.
 20. UPON being satisfied that CPGNL failed to comply with the provisions of section 73 of EPSRA and obtain a licence before supplying and constructing distribution facilities to the aforementioned customers
 21. UPON being satisfied that CPGNL is still in breach of the terms and conditions of its licence.

THE COMMISSION HEREBY ORDERS as follows -

1. The immediate suspension of electricity supply to NICAPACO from CPGNL's plants.
2. The decommissioning of the distribution infrastructure from NICAPACO to Fountain of Life Church.

3. CPGNL shall compensate IE for the loss of revenue for the period during which CPGNL supplied electricity to NICAPACO contrary to the terms of its off-grid generation licence.
4. The quantum of compensation to be paid by CPGNL to IE in 3 above shall be computed by IE and approved by the Commission.
5. CPGNL is hereby fined the sum of NGN10,000 per day in accordance with section 75 EPSRA from the date of commencement of supply of electricity to NICAPACO contrary to the terms and conditions of its off-grid generation licence till the date of compliance with this order.

BY THE ORDER OF THE COMMISSION

DATED THIS 26TH DAY OF APRIL 2019



James A. Momoh
Chairman



Dafe C. Akpeneye
Commissioner