ORDER No. NERC/GL/172A

BEFORE THE NIGERIAN ELECTRICITY REGULATORY COMMISSION
IN THE MATTER OF THE 2016 – 2018 MINOR REVIEW OF THE MULTI YEAR TARIFF ORDER (MYTO) 2015 AND MINIMUM REMITTANCE ORDER FOR THE YEAR 2019 FOR EKO ELECTRICITY DISTRIBUTION COMPANY PLC

Title

1. This regulatory instrument may be cited as THE 2016 – 2018 MINOR REVIEW OF MULTI YEAR TARIFF ORDER (MYTO) 2015 AND MINIMUM REMITTANCE ORDER FOR THE YEAR 2019.

Commencement and Termination

2. This Order supersedes Order No. NERC/GL/172; and shall take effect from 1st July 2019 and shall cease to have effect on the issuance of a new Minor Review Order or an Extraordinary Tariff Review Order by the Nigerian Electricity Regulatory Commission ("NERC" or the "Commission").

Context

3. The Commission, pursuant to sections 32 and 76 of the Electric Power Sector Reform Act ("EPSRA"), issued the MYTO – 2015 Tariff Order in December 2015 to address, amongst other objectives, the provision of cost reflective tariffs thus ensuring that prices charged by licensees are fair to consumers, and are sufficient to allow licensees that operate efficiently to recover the full cost of their activities, including a reasonable return on the capital invested in the business.

4. Section 17 of the MYTO – 2015 Order provides for the biannual Minor Review of tariffs taking into consideration changes in exogenous variables outside the control of electricity distribution companies ("DisCos") in line with the requirement of the MYTO Methodology (Amended). These variables are Nigerian and United States inflation rates, Naira/USD foreign exchange rates, gas prices and available generation capacity.

5. This Order is issued to reflect the impact of changes in the Minor Review variables in the determination of cost reflective tariffs and relevant tariff and market shortfalls for the years 2016 to 2020.

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Objectives

6. The objectives of this Order are to:

   a. Reflect the impact of changes in the Minor Review variables for the period 2016 – 2018 to determine the cost reflective tariffs for the relevant years; and to ascertain revenue shortfalls in view of the differential between such tariffs and allowed tariffs in the Nigerian Electricity Supply Industry ("NESI").

   b. Determine and recognise the historical (2015 – 2018) tariff deficits pursuant to the objective of resolving the impairment of the financial records of DisCos arising as a consequence of the deficits.

   c. Develop and implement a framework to manage future revenue shortfalls in the industry including a minimum market remittance requirement to account for differences between cost reflective tariffs and allowed tariffs in the settlement of invoices issued by the Nigerian Bulk Electricity Trading Plc ("NBET") and the Market Operator ("MO").

   d. Establish the interim payment arrangements, reaffirm the payment securitisation requirement and flow of funds from DisCos to NBET and the MO.

   e. Steer the market to gradual activation of market contracts in line with the requirements of the Transitional Electricity Market ("TEM").

   f. Reaffirm the obligation of core investors in DisCos under the Performance Agreement and Share Purchase Agreements executed with the Bureau of Public Enterprises ("BPE").

Minor Review of MYTO – 2015 Tariff Order

7. This Order has taken into consideration the actual changes in relevant macroeconomic variables and available generation capacity in updating the operating MYTO – 2015 Tariff Order for the period January 1, 2016 to December 31, 2018 in line with the provisions of the MYTO Methodology (Amended). Projections were made for macroeconomic variables for the year 2019 and beyond based on best available information. The Commission shall make necessary adjustments to reflect actual values at the time of the next minor review that will take effect on 1st January 2020.

8. The relevant data on the following Minor Review variables were obtained from the Central Bank of Nigeria ("CBN"), National Bureau of Statistics ("NBS"), System Operations ("SO") Division of the Transmission Company of Nigeria Plc ("TCN") and NBET for the update of the MYTO – 2015 financial model:

   a. Inflation: The actual yearly average inflation rate of 15.6%, 16.5% and 12.1% for the years 2016, 2017 and 2018 respectively were utilised for the review based on the data obtained from the NBS. A projection was made for the year 2019 based on the average of the period January to June 2019.

b. Exchange Rate: In line with the provisions of the Regulation on Rate Review for NESI, CBN official exchange rates were used in this review. The average NGN/USD exchange rates of ₦255.90, ₦308.80 and ₦309.14 were used for the years 2016, 2017 and 2018 respectively. The MYTO – 2015 provides for a premium of 1% above the CBN rate as transaction cost and this was applied in the current review. The applicable NGN/USD exchange rate for 2019 is computed as ₦306.90 +1% premium = ₦309.97

c. US rate of inflation: The data on the US rate of inflation was obtained from the website of the US Bureau of Labor Statistics (http://www.bls.gov) for the years under review. The actual average rate of inflation for each year was computed and applied in this review whereas the average official rate of inflation from January to July 2019 was applied for the 2019 projections.

d. Gas Price: The price of natural gas for the power sector has been regulated since the inception of MYTO in 2008. The Commission has maintained a gas price of US$2.50/MMBTU and gas transportation cost of US$0.80/MMBTU for this review. However, other generating companies had contracted different gas prices outside the regulated rates as provided in their respective individual Gas Sales Agreements ("GSAs").

e. Capital Expenditure Allowance for TCN: The Commission has reviewed the capital expenditure (CAPEX) allowance for TCN to MYTO – 2 level. This is in line with the provisions of the MYTO Methodology which provides for the revision of the financial model due to changes in available generation capacity and associated CAPEX required to evacuate and distribute the revised available capacity. The Commission shall make adjustments to the capital expenditure allowance for TCN at the next review on the basis of verifiable information submitted by the organisation.

Other Considerations

9. **Projected Loss Reduction Targets**

The successor DisCos had, in the executed Performance Agreements with the BPE committed to an Aggregate Technical, Commercial and Collection ("ATC & C") loss reduction trajectory over a period of 5 years. The loss reduction trajectory was applied in MYTO 2015 with the first-year loss reduction target imputed at the end of year 2015 following a baseline loss study in the year 2014. However, arising from the uncertainties that shrouded full revenue recovery in the years 2017 – 2018, the Commission, after due consultation with BPE, had agreed on the following:

a. The ATC&C loss reduction trajectory as provided in the Performance Agreement of Eko Electricity Distribution Company Plc ("EKEDC") was applied in the tariff computation with effect from 1st January 2015.

b. The Performance Agreement was considered as fully effective in the years 2015 and 2016 and the applicable loss reduction targets were applied in line with provisions of MYTO – 2015 Tariff Order of EKEDC.

c. The years 2017 and 2018 are recognised as years of mutual non-performance to account for uncertainties on cost reflective tariffs and revenue recovery. Hence, ATC&C loss improvement targets will not apply in computing tariffs and relevant revenue deficit/surplus in the respective years. In this regard, the provisions for CAPEX for the years of non-performance have been netted-off the revenue requirement of DisCos.

10. **Treatment of 2015, 2016, 2017 and 2018 Shortfalls**

a. The Commission has computed and recognised the sum of ₦95.6billion as the tariff shortfall for EKEDC for the years 2015 - 2018. Under the Power Sector Recovery Plan ("PSRP") approved by the Federal Government, all accrued liabilities in DisCo's financial records arising from tariff shortfalls shall be transferred off the balance sheet and fully settled under the financing plan of the PSRP initiative.

b. All funds retained by the DisCos as represented by excess of market (remittance) shortfalls over tariff shortfall are to be recovered as a full liability of the DisCos, including applicable interest thereon, in line with the provisions of the Supplementary TEM Order, the Market Rules and respective industry contracts with NBET and the MO.

c. All DisCos with excess of tariff shortfall over market shortfall shall be compensated accordingly for the difference.

d. All interest payable by DisCos on unpaid invoices issued by NBET and the MO and attributable to tariff shortfall shall be transferred off the balance sheet of the utilities in line with paragraph 10(a).

e. On the basis of the foregoing, the computed tariff shortfall for EKEDC for the year 2015 to 2020 is as indicated in Table 1 below:

Table 1: Tariff Shortfall for EKEDC

Operating Year		Tariff Shortfall (Naira)
Historical	2015	7,284,546,262
	2016	21,194,072,190
	2017	29,751,698,690
	2018	37,415,606,844
	Sub-total	**95,645,923,986**
Ongoing	2019	49,571,686,510
	2020	5,857,735,530
Total		**151,075,346,026**

11. **MDA Debts**

This Order reiterates that the responsibility and initiative for revenue collections from all customers including Ministries, Departments and Agencies ("MDAs") of States and Federal Government rests with the DisCos. Accordingly, this Order makes it mandatory for all DisCos to meter all MDAs with appropriate meters of their choice within 60 days from the effective date of this Order. All DisCos reserve the right to disconnect any MDAs defaulting in the payment for electricity in line with the Regulation on Connection and Disconnection Procedures for Electricity Services.

12. **REVIEW OF BASIC ASSUMPTIONS**

Table 2 below provides a summary of the actual and projected indices for years 2015 – 2021.

Table – 2: EKEDC's Minor Review Assumptions 2015 – 2021

Minor Review Assumptions 2016 – 2019: EKEDC								
Parameter	Unit	2015	2016	2017	2018	2019	2020	2021
PA Effectiveness	PA Year	1	2	-	-	3	4	5
Loss Target	%	26.6%	19.4%	14.2%	14.2%	14.2%	11.2%	10.1%
Nigerian Inflation	%	8.3%	15.6%	16.5%	12.1%	11.3%	11.3%	11.3%
US Inflation	%	0.1%	1.3%	2.1%	2.5%	1.8%	1.8%	1.8%
Exchange Rate N/$	N	199.0	255.9	308.9	309.1	310.0	310.0	310.0
Energy Delivered to DisCo	GWh	2,646	2,504	3,042	3,229	3,250	4,294	4,684
Generation Cost	N/kWh	9.7	16.0	19.2	21.1	20.8	19.9	19.9
Transmission & Admin Cost	N/kWh	3.0	3.6	3.8	3.8	7.8	6.5	6.3
End-User Cost Reflective Tariff	N/kWh	28.4	38.8	39.7	41.8	46.1	39.8	39.2
End-User Allowed Tariffs	N/kWh	25.2	28.3	28.3	28.3	28.3	36.8	39.2
Tariff Shortfall	N'000,000	7,285	21,194	29,752	37,416	49,572	5,858	0
Market Shortfall	N'000,000	-5,712	-19,005	-35,920	-45,386	N/A	N/A	N/A
Bal. Due To/(From) DisCo	N'000,000	1,573	2,189	-6,168	-7,971	N/A	N/A	N/A
Cumulative Tariff Shortfall	N'000,000	7,285	28,479	58,230	95,646			
Cumulative Market Shortfall	N'000,000	-5,712	-24,717	-60,637	-106,023			
Total Bal. Due to/(from) DisCo	N'000,000	1,573	3,762	-2,406	-10,377			

13. **Market Remittance by DisCos**

The PSRP provides for a gradual transition to cost-reflective tariffs with safeguards for the less privileged in the society. It is proposed that an intermediate review in end-user tariffs on January 1, 2020 and transition to full cost reflectivity shall be achieved by July 2020. In the interim, the Federal Government, under the PSRP, has committed to fund the revenue gap arising from the difference between cost reflective tariffs determined by the Commission and the actual end-user tariffs. The waterfall of market revenues during the transitional period shall be in line with the following:

a. All DisCos are obligated to settle their market invoices in full as adjusted and netted off by applicable tariff shortfall approved by the Commission.

b. All FGN intervention from the financing plan of the PSRP for funding tariff shortfall shall be applied through NBET and the MO to ensure 100% settlement of market invoices as issued by Market Participants.

c. Under this framework, the minimum market remittance threshold for EKEDC is determined after deducting the revenue deficit arising from tariff shortfall from the aggregate NBET and MO market invoices. EKEDC shall be availed the opportunity to earn its revenue requirement only upon fully meeting the following payment obligations:

    i. Repayment of CBN-NEMS facility.

    ii. 100% settlement of MO's invoice based on the tariffs applied by the MO in determining respective invoices prior to this Order. Effectively, this Order places a freeze on the tariffs of TCN and other admin charges covering NBET and the Commission throughout 2019 at the rates applied in generating MO invoices for the period of January – May 2019.

    iii. Full settlement of 45.4% of NBET's monthly invoices being the minimum remittance threshold prescribed in this Order.

d. EKEDC shall liable to relevant penalties/sanctions for failure to meet the minimum remittance requirement in any payment cycle in line with the provisions of its respective contracts with NBET, MO and the provisions of the Market Rules and Supplementary TEM Order.

e. EKEDC shall maintain an adequate and unencumbered letter of credit covering three (3) months based on the minimum payment obligations to NBET and the MO.

f. The table below provides the minimum remittance threshold for EKEDC.

Table 3: EKEDC's Remittance Waterfall for the Year 2019

EKEDC's Minimum Remittance Table - 2019			
Head	**Subhead**	**₦000,000**	**Remarks**
Revenue Required - 2019	**NEMSF**	**1,031**	CBN - Loan
	Genco Invoice	**66,522**	Projected Annual Generation cost
	TCN & Admin Services	**25,264**	Projected Annual TCN and Admin Services cost
	Disco	**35,601**	Approved recovery of capital and operating expenses
	Total	**128,417**	Annual Revenue Required by EKEDC in 2019
Allowed Recovery		**78,845**	61% Being Amount recoverable through allowed end-user tariffs of EKEDC in 2019
Tariff Shortfall		**49,572**	39% Being the difference between EKEDC's revenue requirement and its allowed recovery
Minimum Remittance Obligation	**NEMSF**	**1,031**	1st - Line Charge on Collection as per loan Agreement
	NBET Minimum Remittance	**30,191**	Being Minimum Remittance Obligation of 45.4% of NBET's Monthly Invoices in 2019. Full settlement to be supplemented by the FGN intervention funds.
	MO Minimum Remittance	**12,023**	Being Minimum Remittance Obligation of 100% of MO's monthly Invoices (N/kWh) frozen at the rates applied in generating MO invoices for the period of January – May 2019. Full settlement to be supplemented by the FGN intervention funds
	Disco	**35,601**	Being DisCo's opportunity to earn its revenue requirement based on its efficient operations and upon full settlement of the minimum remittances to NEMSF, NBET and MO.
	Total Distribution	**78,845**	

Effective Date

14. This Order shall be effective from 1st July 2019.

Dated this 19th day of August 2019

James A. Momoh
Chairman

Dafe C. Akpeneye
Commissioner
Legal, Licensing & Compliance

Appendix: 1 Energy Charges ₦/kWh

Category	Class	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Residential	R1	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00
	R2S	15.20	24.00	24.00	24.00	24.00	30.74	32.79	32.42	32.54	32.90
	R2T	15.20	25.79	25.79	25.79	25.79	39.07	41.68	41.20	41.35	41.81
	R3	27.68	29.00	29.00	29.00	29.00	40.15	42.83	42.34	42.49	42.97
	R4	27.68	29.00	29.00	29.00	29.00	40.15	42.83	42.34	42.49	42.97
Commercial	C1S	18.48	24.00	24.00	24.00	24.00	31.51	33.61	33.22	33.34	33.72
	C1T	18.48	30.00	30.00	30.00	30.00	39.35	41.98	41.49	41.64	42.11
	C2	25.72	36.00	36.00	36.00	36.00	44.72	47.70	47.15	47.32	47.86
	C3	25.72	36.00	36.00	36.00	36.00	44.72	47.70	47.15	47.32	47.86
Industrial	D1S	20.75	24.00	24.00	24.00	24.00	33.97	36.23	35.82	35.95	36.35
	D1T	20.75	30.00	30.00	30.00	30.00	39.55	42.19	41.71	41.86	42.33
	D2	26.97	36.00	36.00	36.00	36.00	45.48	48.52	47.96	48.13	48.67
	D3	26.97	36.00	36.00	36.00	36.00	45.48	48.52	47.96	48.13	48.67
Special	A1S	19.86	24.00	24.00	24.00	24.00	31.59	33.70	33.31	33.43	33.81
	A1T	19.86	24.28	24.28	24.28	24.28	31.59	33.70	33.31	33.43	33.81
	A2	19.86	24.28	24.28	24.28	24.28	31.59	33.70	33.31	33.43	33.81
	A3	19.86	24.28	24.28	24.28	24.28	31.59	33.70	33.31	33.43	33.81
Street Lighting	L1	15.25	23.52	23.52	23.52	23.52	30.51	32.54	32.17	32.29	32.65

Appendix: 2 Customer Classifications

The Customer Classification remains the same until the next major review when EKEDC can (if required) propose and make amendments to the customer classification.

	Customer Classification	Description	Remarks
1	**Residential**		A consumer who uses his premises exclusively as a residence - house, flat or multi-storeyed house where people reside.
	R1	Life-Line (50 kWh)	
	R2	Single and 3-phase	
	R3	LV Maximum Demand	
	R4	HV Maximum Demand (11/33kV)	
2	**Commercial**		A consumer who uses his premises for any purpose other than exclusively as a residence or as a factory for manufacturing goods.
	C1	Single and 3-phase	
	C2	LV Maximum Demand	
	C3	HV Maximum Demand (11/33kV)	
3	**Industrial**		A consumer who uses his premises for manufacturing goods including welding and ironmongery.
	D1	Single and 3-phase	
	D2	LV Maximum Demand	
	D3	HV maximum Demand (11/33kV)	
4	**Special**		Customers such as agriculture (agro-allied enterprises involving processing are excluded), water boards, religious houses, Government and teaching hospitals, Government research institutes and educational establishments.
	A1	Single and 3-Phase	
	A2	LV Maximum Demand	
	A3	HV Maximum Demand (11/33kV)	
5	**Street Lighting**		
	S1	Single and 3-phase	