BEFORE THE NIGERIAN ELECTRICITY REGULATORY COMMISSION

IN THE MATTER OF A PETITION FOR THE REVIEW OF NERC ORDER NO. NERC/GL/170 ON THE 2016 - 2018 MINOR REVIEW OF THE MULTI YEAR TARIFF ORDER (MYTO) 2015 AND MINIMUM REMITTANCE ORDER FOR THE YEAR 2019 FOR [ABUJA ELCTRICITY DISTRIBUTION PLC (FURTHER AND BETTER PARTICULARS)

BETWEEN:
ABUJA ELECTRICITY DISTRIBUTION PLC (AEDC) PETITIONER
1, Ziguinchor Street,
Off Ibrahim Babangida Way, Abuja.

AND

NIGERIAN ELECTRICITY REGULATORY COMMISSION (NERC) RESPONDENT
Plot 1387 Cadastral Zone A00
Off Shehu Shagari Way, Abuja.

THE PETITION IS BROUGHT PURSUANT TO SECTIONS 50 (1)(h) & 50(2) OF THE ELECTRIC POWER SECTOR REFORM ACT 2005 AND SECTION 22 OF THE NIGERIAN ELECTRICITY REGULATORY COMMISSION (BUSINESS RULES OF THE COMMISSION) REGULATION, 2006.

Introduction

1. The Petitioner is a limited liability company incorporated under the laws of the Federal Republic of Nigeria, whose registered office is at 1 Ziguinchor Street, Off Ibrahim Babangida Way, Wuse Zone 4, Abuja and it is a holder of the Distribution License No. NERC/LC/032, responsible for the distribution of Electricity in Federal Capital Territory, Kogi, Niger and Nasarawa states of the Federal Republic of Nigeria.

2. The Petitioner is one of the Successor Companies that emerged from the defunct Power Holding Company of Nigeria (PHCN) and privatized in 2013 through the acquisition by the core investor, Kann Utility Company Limited of majority equity stake constituting 60% in the Petitioner following a rigorous bid process.

3. The Respondent is a statutory body established by established pursuant to the Electric Power Sector Reform Act, 2005 with its head office at Plot 1387 Cadastral Zone, A00, Central Business District, Abuja. The Respondent is also the regulator of the Nigeria Electricity Supply Industry (NESI).

4. Pursuant to section 32 and 76 (2)(a) of the Electric Power Sector Reform Act, the Respondent has amongst others, the statutory objectives and obligations to ensure that tariffs set by it for the Licensees including the Petitioner are enough to allow it to finance its activities as well as reasonable earnings for efficient operations.

5. On 19th August 2019, the Commission issued Order No. NERC/GL/170; 2016 - 2018 Minor Review of Multi Year Tariff Order (MYTO) 2015 And Minimum Remittance Order for The Year 2019 (Minor Review Order).

6. Though said to have been issued to provide a cost-reflective tariff regime, the Minor Review Order has not been able to achieve this objective as the Minor Review Order proceeds on several inaccurate assumptions, analyzed in turn in the ensuing paragraphs, which has inhibited the ability of the Petitioner to meet its obligations.

A. TARIFF SHORTFALL CALCULATIONS

THE START DATE FOR THE ATC&C LOSS REDUCTION TRAJECTORY

7. It is our understanding that NERC considers 2015 and 2016 as years 1 and 2 respectively, of our loss reduction obligations under the Performance Agreement executed between KANN and Bureau for Public Enterprises (BPE). And NERC has also presented 2017 – 2018 as years of Force Majeure in which the loss reduction target was frozen. Based on the market conditions and the regulatory non-performance we believe that years 2015 through 2018 qualify to be treated as years of Force Majeure. As the Commission is aware, securing cost reflective tariffs is central to achieving our loss reduction targets, improving our capacity to earn in addition to attracting the necessary long-term investments aimed at attenuating said losses. The lack of cost reflective tariff and other sector issues during 2015 – 2018 present strong grounds for consideration for Force Majeure. Our detailed analysis and presentation of the market conditions which support this position is presented below:

8. **2015 as an FM Year:** The following issues support the categorization of 2015 as an FM year:

a. **Removal of Collection Losses:** Recall that the event that triggered the FM declared by Distribution Companies (Discos) was the removal of collection losses from MYTO 2.1 on 1st April 2015.

b. **Declaration of Force Majeure (FM):** Discos then declared FM on April 10th, 2015 i.e. within 10 days of the FM event – in conformance with rules set forth in the Performance Agreement. This event was partially cured when NERC issued MYTO 2015 in December 2015 partially reversing the initial action by adding back collection losses (less those associated with MDA collections). This order was issued in January 2016.

c. **MYTO 2015 started in February 2016:** The tariffs calculated in the MYTO 2015 10-year tariff review took effect in February 2016. Therefore, tariffs in 2015 were not cost reflective.

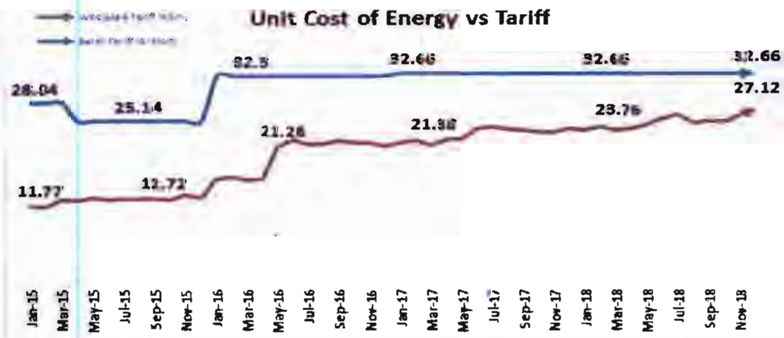
d. **AEDC not Accessing NEMSF:** NEMSF I facility which was meant to compensate Discos for issues surrounding 2013 and 2014 tariffs, was not accessed by AEDC at that time due to the inadequacy of the calculated amount to compensate AEDC for the IRP shortfalls.

e. Due to the uncertainty created in the market by the NERC from these actions, it was impossible for AEDC to deliver on its initial business plan and meet its loss reduction targets in 2015. Coupled with the absence of cost reflective tariffs, Discos were unable to prepare credible business plans as required after baseline losses studies have been approved and cost reflective tariffs set.

9. **2016 as an FM Year:** The following issues support the categorization of 2015 as an FM year

    a. **Increase in Wholesale Energy Tariff**: Subsequently in February 2016, TEM was declared and PPAs of some Generation Companies (Gencos) (such as Shell, Agip, Omotosho, AES and Olorunsogo) became effective, which resulted in an immediate significant increase in the wholesale tariff due to a mismatch in the exchange rate pass-through. (please see attached graph); The expected minor review which would have passed on these costs to the retail tariff were not implemented. This is further illustrated in the figure below:

Figure 1 – Wholesale energy tariff vs Retail Energy tariff



    b. **NERC Prior Declaration of 2016 as an FM Year**: We would also like to draw attention to an earlier position from NERC on the 2016-2017 Minor Review of MYTO-2015, dated March 2018, where NERC stated on Page 3, clause iii. "Year 2016 is deemed to be a force majeure year and hence [the Performance Agreement] is not effective and both parties (Discos and Government) are absolved of their obligations on loss reduction target….". We agree with this previous position held by NERC on the status of the year 2016; and don't believe any of the conditions that led to 2016 qualifying previously have changed.

10. 2017 & 2018 as FM Years

We agree with the Commission's position that 2017 and 2018 meet the conditions for Force Majeure as stipulated in the 2016-2018 Minor Review of MTYO-2015 submission from NERC as the similar conditions of 2016 continued to exist. .

This is supported by the following factors:

a) **MYTO 2015 Minor Reviews have not been implemented for retail tariffs:** The minor tariff reviews that should have been carried out every six months in the period spanning February 2016 to date were not implemented in our retail tariffs. However, the costs we face as a business – especially energy costs have increased dramatically with adverse changes in foreign exchange rates and inflation, amongst others;
b) **MDA debts have not been paid:** The losses in the MYTO 2015 tariffs assumed that MDA customers would be forced to pay their electricity bills in full and on a timely basis. The mechanism that was supposed to secure this is yet to be introduced and these customers continue to accrue debt to AEDC. This point is expanded on further in this document.

11. 2019 as an FM Year

It is also our position that in alignment with BPEs position, the force majeure years will continue until NERC implements a cost reflective tariff for the distribution company.

12. Prayer 1: We request that years 2015 through 2018 are treated as Force Majeure years because there is substantial supporting evidence in this regard. Of the 4 years in consideration, the most critical for AEDC are 2015 and 2016 for the reasons stipulated above. We have thus presented our updated tariff shortfall calculations with only 2015/16 modelled as FM years. Where NERC is willing to consider the four years, the model can be updated to provide an updated shortfall calculation. The i*mpact on Market Shortfall: N47.7billion.*

B. **MARKET SHORTFALL CALCULATIONS**

MDA Debts

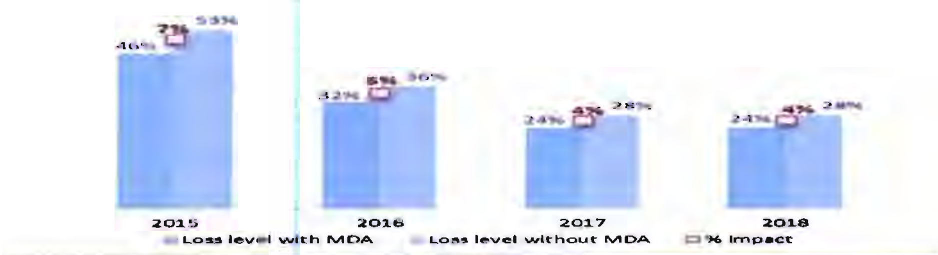
13. The MYTO 2015 Financial Model calculates the 2015 shortfall with MDA collection losses removed. This is in compliance with the NERC Multi Year Tariff Order (dated 21st December 2015) for the period spanning 1st January 2015 – December 2024. As a condition of this removal, NERC committed that a mechanism for the recovery of these debts would be put in place shortly after the 10-Year MYTO Order came into force. The same position was adopted within the MR Model. However, as at December 2018, AEDC had accrued outstanding MDA debts of ₦23.3bn (as detailed in the table below) and continues to accrue debt at a rate of roughly ₦0.25bn per month in 2019.

Table 1: Debts owed to AEDC from MDAs

Period	MDA Receivables, Naira (million)
2013/2014	**5,318**
2015/2016	**10,874**
2017/2018	**7,104**
Total as at Dec 2018	**23,296**

14. It is also pertinent for us to note the provisions of Section 16[c] of NERC's Guideline on the Review of MYTO 2.1 [Amended] which expressly provides that: ***"NERC, BPE and Federal Ministry of Power will assist Discos in ensuring that government MDAs pay their electricity bills."*** Also noted in the Power Sector Recovery Program, a sustainable mechanism for timely MDA payments was a key issue with NERC being tasked with the development of a draft mechanism for ensuring settlement of electricity invoices by all branches of Government. However, since no such mechanism exists, there is no assurance of collections in the future. In our view, there has been no traction with this since February 2016 when MYTO 2015 commenced.

15. Figure 1: Impact of MDA Debts on AEDC's Loss Level



16. As shown in the figure above, the impact of the MDA debt on AEDC's loss level targets is significant and has an adverse effect on our tariffs. We also wish to bring to your attention that the extensively verified 2015/2016 Federal MDA debt of **N9,097,417,554.00 (Nine Billion, Ninety-Seven Million, Four Hundred and Seventeen Thousand, Five Hundred and Fifty-Four Naira only)** is yet to be credited to AEDC's market account with NBET. Kindly find attached NBET's letter with reference number NBET/CEO/AEDC/2018/059, dated February 2, 2018 ***(See attached Annex 1),*** clearly notifying AEDC of the Federal Executive Council's net off of the said sum with a promise to deduct it from the electricity debt owed by AEDC; however NBET is yet to comply with this letter, and the ₦9.097bn forms part of the market shortfall calculated by NERC.

17. **Prayer 2: We request that the MDA debt risk should be shifted to the Federal Government of Nigeria, as the entity best able to control payment by the MDAs. AEDC has fully metered all MDAs so invoice verification can be automated and seamless. The impact of *our Market Shortfall (2015 – 2018) is ₦23.3billion while the impact on our Market Shortfall (Jan – Jun 2019) is ₦1.4billion.*** Consequently, the only fair outcome in the circumstance is for the Respondent to allow MDA debts to be deductible from NBET's invoices until such a time as the collection of MDA's debts has been satisfactorily resolved.

Capacity Charge Adjustments

18. As mentioned in our prior submission, the Vesting Contract between AEDC and NBET clearly stipulates a sharing allocation of 11.5% of every actual available generating unit capacity to AEDC. AEDC in a bid to satisfy its customers and particularly to meet the power needs of the Federal Capital Territory as well as support grid stability, has consistently taken more energy than allocated to it. As a result, AEDC's share of capacity has consistently exceeded the 11.5% cap which has resulted in being billed for the excess capacity and unduly inflating AEDC's market bills. This is in direct contravention of the Vesting Contract with NBET in which Disco Share Dependable Capacity for AEDC was stated to be 11.5%.

19. Overall, this treatment has unfairly inflated AEDC's capacity charges in the invoices from NBET by about ₦17bn (for the period spanning February 2015 – December 2018). So far, an additional ₦4.3bn has already been incurred from January 2019 – June 2019, bringing the total incorrectly billed amount to about **<u>₦21.3bn</u>**.

20. Whilst AEDC does not dispute its obligation to pay for any additional energy taken from the grid, we wish to state that the corresponding capacity for such additional energy ought not to be considered in determining the capacity charge for AEDC and only 11.5% should be applicable in calculating the capacity charge component of AEDC's monthly Invoice. AEDC is firmly of the belief that imposing an additional capacity charge against the express provision of the Vesting Contract is unlawful and a breach of the Vesting Contract and we urge you to use your good offices to intervene.

21. **Prayer 3: AEDC requests that the above sum be deducted from our market shortfalls, having been incorrectly recognized as an expense to AEDC in the first place. Furthermore, similar reduction must be taken into account regarding future monthly invoices. The i*mpact on our Market Shortfall (2015 – 2018 is ₦17billion while the impact on our Market Shortfall (Jan – Jun 2019): ₦4.3billion***

Effect of Debt owed by AEDC Customers that are Members of Manufacturers Association of Nigeria

22. Following the legal actions instituted by MAN in 2015 against NERC and Discos, MAN members have accrued a total of N2.85bn to AEDC on account of the non-payment of the revised tariffs set by NERC in the Minor Review 2015. Non-compliance by the Commission with the tariff review process provided grounds for the legal recourse sought by MAN.

23. **Prayer 4:** With the matter remaining unresolved, we request that the debt accrued as a result of this action be netted off payments due to the market. The i***mpact on our Market Shortfall (2015 – 2018) is ₦2.8 billion***

Imbalance Penalties

24. The issue of imbalance penalties in 2014/2015 is yet to be addressed. The abolishment of imbalance penalty in July 2015 was discussed in the Minor Review meeting on 19th March 2018. It inadvertently penalized Discos who accepted more than their required energy allocation at the time. NERC's subsequent removal of the requirement for Discos to pay the imbalance penalty stemmed from the perverse incentive it created for market participants (i.e. Discos) to reject load. AEDC had suffered imbalance penalties of approximately ₦4.56bn.

25. It appears the Commission has not factored in the potential impact of the removal of the imbalance penalty in calculating our shortfalls and may have also omitted the removal of imbalance penalty from January – June 2015 from the payment due to the market by AEDC in 2015. At the time this issue was tabled, NERC had committed to resolving it at a later date.

26. It is also our understanding that the Management of Benin Electricity Distribution Company (BEDC) successfully argued for a reversal of similar charges attributed to them. In the same vein, AEDC possesses evidence which demonstrate the fact that Transmission Company of Nigeria (TCN) dispatched energy not requested, into AEDC's franchise area to ensure grid stability.

27. Prayer 5: We request that the imbalance penalty should be reconciled with NERC and subsequently netted off from the payment due to the market by AEDC. The i***mpact on our Market Shortfall (2015 – 2018)*** **is ₦4.56 billion**

Legacy Issues from Interim Rules Period

28. NERC developed a MYTO Shortfall model to calculate the shortfall in the allowable revenue requirement experienced by the industry during the Interim Rules Period. The final version of this model was shared with Discos on 10th December 2014 and results fed into the Central Bank of Nigeria (CBN) Capital Model for the Nigerian Electricity Market Stabilization Facility (NEMSF) of ₦214.8 bn (full amount, including transaction costs). NERC calculated that the share of this amount due to AEDC after payment of market debts would be zero. As at the end of 2017, AEDC was not a cash beneficiary of the MEMSF for reasons further articulated below.

29. Furthermore, in a letter dated 7th October 2015 AEDC brought to the attention of the Commission the fact that the facility was incorrectly sized as AEDC was owed in excess of ₦42bn (and not ₦25.5bn estimated at the time). This was on account of errors with the shortfall calculation method. With the correction of these errors, the impact on shortfall calculations is presented below:

Table 2: Impact of reconciliation on AEDC shortfall figure (Naira)

Shortfall components	Naira
Interim Period Shortfall	25,465,807,656
Legacy Gas Debt	1,643,558,363
Capitalized Transaction Cost	542,187,320
A. NERC MYTO Shortfall model – calculation for AEDC	27,651,553,339
Correct ATC&C losses	*14,366,984,308*
Corrected interest rates (real % to nominal %)	*2,346,316,038*
Update to include 1-month additional interest for December 2014:	*612,665,770*
B. Revised figure after above changes	44,977,519,456
Total increase due to adjustments (B-A)	**17,325,966,117**

30. This shortfall in NERC's calculation, which allocated zero to AEDC undermined our ability to issue the Letter of Credit (LOC) required to NBET as a Market Participant. Our Bank required the LOC to be cash-backed and NEMSF I was the only source to fund this as was done by other Distribution Companies that met this obligation. The impact on its pay-out from NEMSF forced AEDC to borrow money from NELMCO/TCN to fund its cash collateral obligations for market registration.

31. **Prayer 6: We request that the outstanding of ₦17.3bn be reconciled with NERC and subsequently netted off the payment due to the market by AEDC. The *impact on our Market Shortfall (2015 – 2018) is 17.3 billion***

Reconciled Market Shortfalls

32. Based on the items highlighted above, the impact of these proposals outlined in a – e above, on AEDC's tariff and market shortfalls is presented below: **Figure 2: Impact of AEDC's Proposal on Tariff Shortfalls**

	2015	2016	2017	2018	Total
Tariff Shortfalls (NERC)	20,339	17,741	26,061	38,079	102,220
MDA Debt	5,318	10,874	3,898	3,206	23,296
Adjustment to Capacity Charges	3,195	4,021	4,192	5,635	17,043
MAN Debt	-	-	1,839	967	2,806
Imbalance Penalty	4,560	-	-		4,560
IRP Shortfall not covered by NEMSF I	17,326	-	-	-	17,326
Updated Tariff Shortfalls	50,738	32,636	35,990	47,887	167,251
Market Shortfalls (NERC)	(21,866)	(41,825)	(51,300)	(61,066)	(176,057)
Net Shortfalls	28,872	(9,189)	(15,310)	(13,179)	
Cumm. Net Shortfalls	28,872	19,683	4,373	(8,806)	

33. Contrary to the Commission's computation of AEDC net market shortfall position of ₦73.8bn, adjustments for these proposals puts **the Company in a tariff shortfall position of ₦8.8 bn** only. There have been further accruals of ₦1.4bn for MDA Debts and ₦4.2bn for excess capacity charges, respectively for the period of January – June 2019, culminating in a total of ₦5.6bn.

34. Prayer 7: We respectfully request that this sum be netted off the market shortfall for 2019. The *estimated impact on 2019 Net Shortfall is a reduction of about ₦5.6 billion*

Repayment of Market Shortfalls

35. In view of prevailing cash constraints, AEDC would like an opportunity to negotiate concessionary terms for settlement of the net tariff shortfall after the adjustments presented in (a-e) have been applied to the final amount. Key terms required to ensure sustainability of the business include (a) Tenure of 10-15 years (b) Moratorium of at least 3 years to enable the business to improve and stabilize its operations – commence payments in July 2022 (b)Interest rate of 0% (d) Accrued shortfall from January – June 2019 be added to the outstanding balance. AEDC is making this payment proposal based on its projected operations and outstanding obligations. Please see below for a proposed repayment schedule for AEDC's market shortfall of ₦8.8bn.

Figure 3: Proposed Loan Schedule for AEDC's Market Shortfall (₦)

Period	Annual Payment	Cummulative Payment	Closing Balance
2022	-	-	8,806,000,000
2023	-	-	8,806,000,000
2024	-	-	8,806,000,000
2025	587,066,666.67	587,066,666.67	8,218,933,333
2026	587,066,666.67	1,174,133,333.33	7,631,866,667
2027	587,066,666.67	1,761,200,000.00	7,044,800,000
2028	587,066,666.67	2,348,266,666.67	6,457,733,333
2029	587,066,666.67	2,935,333,333.33	5,870,666,667
2030	587,066,666.67	3,522,400,000.00	5,283,600,000
2031	587,066,666.67	4,109,466,666.67	4,696,533,333
2032	587,066,666.67	4,696,533,333.33	4,109,466,667
2033	587,066,666.67	5,283,600,000.00	3,522,400,000
2034	587,066,666.67	5,870,666,666.67	2,935,333,333
2035	587,066,666.67	6,457,733,333.33	2,348,266,667
2036	587,066,666.67	7,044,800,000.00	1,761,200,000
2037	587,066,666.67	7,631,866,666.67	1,174,133,333
2038	587,066,666.67	8,218,933,333.33	587,066,667
2039	587,066,666.67	8,806,000,000.00	-
	8,806,000,000.00		

C. MARKET REMITTANCE LEVELS

36. Given the Commission's position that AEDC should retain 100% of its share of allowable revenue in order to be held accountable for expected service level improvements, it is important that the proposed payment thresholds are revisited to ensure that AEDC is able to achieve them. A few key issues, some of which are highlighted below will impair AEDC's ability to pay the proposed levels:

i. **Higher unit cost and volume of energy**; As a result of the current capacity payment treatment and the level of energy that AEDC takes, our unit cost of energy is higher than the unit cost of energy used in the 2019 projection; in addition, AEDC consistently takes a higher volume of energy than the projected 11.5%.

ii. **Higher loss levels**: Due to the inability to fund sufficient capex driven by non-cost reflective tariffs, our actual ATC&C loss level is significantly higher than proposed in the model.

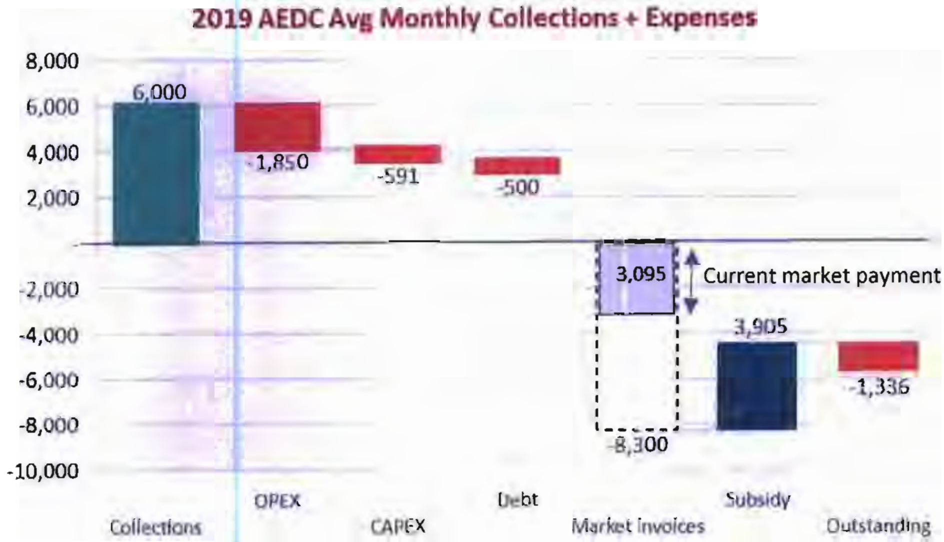
iii. **High accrual of MDA debt**: As articulated earlier, AEDC accrues approximately ₦250mn/month in MDA debts. Unless MDA debts are deducted from the market bill, AEDC will be unable to meet the proposed payment thresholds.

iv. **Higher Capex/Opex**: Actual CAPEX and OPEX requirements for 2019 for business operations and performance improvements are significantly higher than the levels in the model.

v. **Financial Obligations from NEMSF**: In addition to NEMSF, AEDC had to borrow funds from TCN as well as NELMCO because it had a shortfall in its NEMSF calculation (mentioned above). This has resulted in pressures on its cashflows.

37. The minimum remittance levels stipulated by NERC (i.e. 100% of MO and 45% of NBET) represent approx. 75% of AEDC's monthly collections. For AEDC to cover its monthly OPEX, CAPEX and other obligations at these remittance levels, it requires an additional N1.3Bn for its operations as seen in the chart below.

Figure 4: 2019 AEDC Average Monthly Collections and Expenses



38. The sustainability of AEDC's operations is threatened if the additional N1.3bn funding gap is not immediately met. AEDC will respectfully like to make some proposals that will assist in closing this gap:

i. **Netting off MDA Debt:** The impact of non-payment of the accrued MDA Debt on AEDC's operations is significant. MDA Debts have continued to accrue at an average of N[300million] monthly in 2019. All MDAs have been metered and outstanding balances are verifiable. **Prayer 8: We request that the amount AEDC submits as verified MDA debts should be calculated and used in ascertaining AEDC's required remittance levels. The *estimated impact on July 2019 remittance is a reduction of about ₦371 million.***

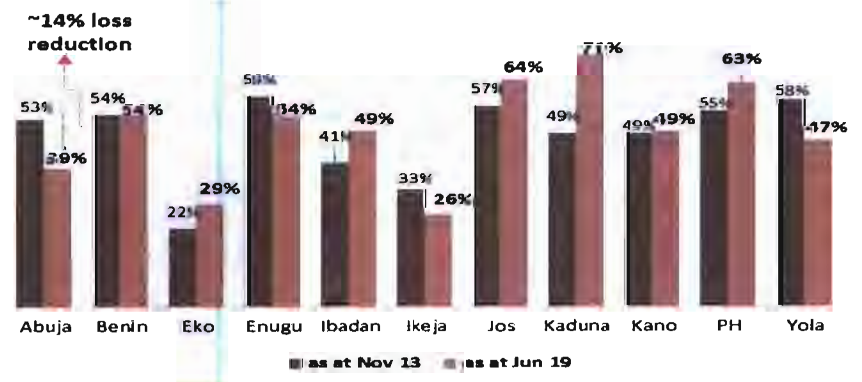
ii. **Netting off Capacity Charges:** It has previously been stated that AEDC has been unfairly billed for excess capacity in direct contravention of the Vesting Contract with NBET in which the Disco Share Dependable Capacity for AEDC was stated to be 11.5%. We are aware that NERC will be issuing an order to clarify how capacity should be calculated and distributed across Discos. This will be important in order to address load rejection practices by other Discos. **Prayer 9: We respectfully request that NERC intervenes in ensuring there is a net off, against AEDC's market invoice, of the cost of any excess monthly capacity above its stipulated load allocation. The *estimated impact on July 2019 remittance: a reduction of about ₦646 million.***

iii. **Net-off of energy tariff differential:** The wholesale energy tariff in the MYTO model and by extension, the minimum market remittance limit, was predicated on a stipulated unit cost of energy estimated at ₦20.77 for 2019 and ₦3.82 for TCN. This varies from the actual unit cost of energy payable by AEDC for each trading period.

For example, the unit cost for July 2019 was ₦23.18 kWh and ₦3.94kWh for NBET and MO, respectively, resulting in a ₦2.5kWh differential. This has an impact of N368mn on July 2019 invoice. Given the cash constraints, it is impossible for AEDC to bear this cost or obtain financing to do so pending the implementation of the next minor review. **Prayer 9: Considering the required commitment to meet the minimum remittance level to the market, we request that in situations where the actual unit cost of energy (as represented in the monthly market invoice) is in excess of this amount, the cost differential should be netted off AEDC's minimum remittance for that period.** The e***stimated impact on 2019 July remittance: a reduction of about ₦368 million.***

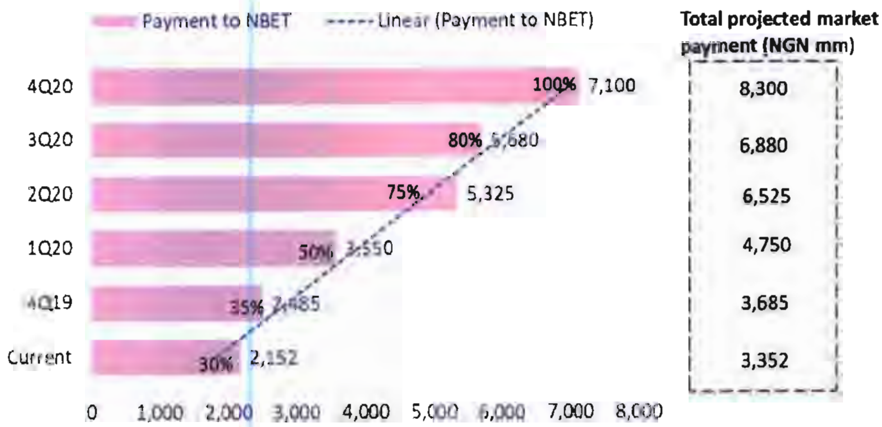
iv. **Ramp up of NBET Invoice:** AEDC has demonstrated strong commitment to improving its operations and recorded the most improvement of its ATC&C loss performance in both relative and absolute terms compared to other Discos.

Figure 5: ATC & C Loss Level by Discos (Nov 13 & Jun 19)



39. However, the reality is that due to the impact of the various issues highlighted above such as **high accrual of MDA Debt, higher cost of energy and higher CAPEX/OPEX to ensure sustainability,** AEDC is unable to meet the expected market remittance levels. **Prayer 10: We hereby request for a ramp up to expected market remittance levels of 100% in 2020. This would allow AEDC to adequately plan for the increased remittances and benefit from the results of the various initiatives it has commenced to improve its operations and in turn, cash flows. The requested ramp-up plan is presented below:**

Figure 6: Proposed Ramp-up for NBET Payment



Please note that the ramp-up presented is for illustration purposes – MO invoices have been frozen at 100% and while NBET invoices have been sculpted. However, this suggested ramp-up of payments can be shared across both invoices.

40. Monthly reconciliation and remittance reporting on shortfall calculations

In order to ensure the solvency of Discos and improve attractiveness to the investor community, it is imperative that a monthly reconciliation and remittance reporting on shortfall calculation be implemented. This will properly represent the Disco required payment remittance level, guarantee the credibility of the PSRP-driven process, present an accurate view of Disco market liabilities and equity position - essentially shoring up our balance sheets and ability to source for requisite financing to meet our CAPEX requirements.

Please refer to the table below for AEDC's remittance report for July 2019 which proposed format will be submitted to the Commission in each subsequent month to explain the remittances made to the NBET and the Market Operator.

Table 3: Proposed Market Remittance for AEDC

Energy Statistics for AEDC – July 2019	
Energy Shared (KWh)	309,488,300
Proposed Market Remittance – July 2019*	Naira
NBET Invoice (NGN)	**7,174, 686,088**
Cash Payment to NBET	*2,152,105,826*
Total Non-Cash Payment to NBET (a+b+c)	*1,385,458,318*
a. Net-off of MDA Debt	*370,824,149*

b. Net-off of Capacity Charge	*646,147,316*
c. Net-off of Energy Tariff Differential	*368,486,853*
Total Remittance to NBET	**3,537,564,144**
Expected Remittance to NBET @ 45%	**3,228,608,740**
Surplus Remittance to be carried forward	*308,955,404*
ONEM Invoice (NGN)	**1,220,835,900**
Cash Payment to ONEM	*1,220,835,900*
Total Cash Payment to NBET & MO	**3,372,941,727**
Total Market Remittance – NBET & MO	**4,758,400,044**

Exchange Rate Assumption

41. The Minor Review Order utilizes official exchange rates of the Central Bank of Nigeria (CBN), plus the premium of 1% permitted for transaction costs under the MYTO 2 methodology, which in effect pegs the average exchange rates for determining the applicable end user tariff for the years 2016, 2017, 2018 and 2019 at ₦255.90, ₦308.80, ₦309.14 and N309.90 to US$ 1.00 respectively.

42. Whilst the foregoing accurately reflects the CBN exchange rate, the Respondent is very much aware that foreign exchange is not generally not accessible on the CBN exchange rate as the Petitioner has to contend to obtain foreign exchange at the interbank rate to run its operations which is significantly higher than the CBN official rate which the Respondent has adopted in computing the tariff.

D. OUR SUBMISSION

43. The Petitioner submits that the Minimum Remittance Order while well intentioned is impracticable and more particularly is not sustainable as it will severely and adversely impact the business operations of the Petitioner with the horrific ultimate result of taking the Petitioner into insolvency and by extension the Nigerian Electricity Supply Industry at large.

44. The particulars of the detrimental effects of the Order is monumental and impractical for:

a) The Petitioner to be able to collect cost-reflective tariffs to finance its activities and to engage in the much-needed capital projects that will help improve its facilities.
b) The Petitioner's Investor to meet up with its obligations to the Bureau of Public Enterprises (BPE) under the Performance Agreement.

c) The Petitioner to meet up with its market obligations under the Amended and Restated Disco Disbursement Agreement.

E. PETITIONERS PRAYERS:

45. In the light of the foregoing, we humbly urge the Respondent to further reflect on the shortcomings inherent in the Minor Review Order and its consequences as encapsulated in our specific **Prayers 1 – 10** and submissions respectively, and in addition consider further the following prayers:

i. Compel NBET, which is also a licensee of the Respondent to comply with the Minor Review Order with respect to generation cost;

ii. Reflect the inter-bank exchange rate in the Respondent's tariff assumptions; and;

iii. Suspend the Minimum Remittance Order pending when a truly cost reflective tariff is implemented.

Yours faithfully,

For: ABUJA ELECTRICTY DISTRIBUTION PLC

………………………………

ERNEST MUPWAYA
MANAGING DIRECTOR / CEO

On Notice:
Nigerian Electricity Regulatory Commission
Adamawa Plaza, Plot 1099, First Avenue,
Off Shehu Shagari Way,
Central Business District,
Garki, Abuja.

BEFORE THE NIGERIAN ELECTRICITY REGULATORY COMMISSION

IN THE MATTER OF A PETITION FOR THE REVIEW OF NERC ORDER NO. NERC/GL/170 ON THE 2016 - 2018 MINOR REVIEW OF THE MULTI YEAR TARIFF ORDER (MYTO) 2015 AND MINIMUM REMITTANCE ORDER FOR THE YEAR 2019 FOR ABUJA ELECTRICITY DISTRIBUTION COMPANY PLC.

BETWEEN:

ABUJA ELECTRICITY
DISTRIBUTION COMPANY PLC — **APPLICANT/PEITIONER**
1 Ziguinchor Street,
Wuse Zone 4, Abuja

AND

NIGERIAN ELECTRICITY REGULATORY COMMISSION — **RESPONDENT**
Nigerian Electricity Regulatory Commission
Plot 1387 Cadastral Zone A00
Off Shehu Shagari Way, Abuja.

AFFIDAVIT IN SUPPORT OF PETITION

I, Ije Ikoku-Okeke, adult of 43 years, female, of No 1 Ziguinchor Street, Wuse Zone 4, Abuja, do hereby make an oath and state as follows:

1. I am the Chief Finance Officer (CFO) of the Petitioner in this matter.
2. I have the authority of the Petitioner to make this statement on oath.
3. The statements made in all the paragraphs of the petition here now shown to me and marked as Exhibit A are true to the best of my knowledge.
4. I depose to this affidavit conscientiously, believing its contents to be true and correct and in accordance with the Oaths Act.

DEPONENT

Sworn to this 21st day of October 2019

BEFORE ME

CEPHAS J. CALEB
NOTARY PUBLIC
FEDERAL REPUBLIC OF NIGERIA
SIGN... DATE 21/10/19

IN THE MATTER OF A PETITION FOR THE REVIEW OF NERC ORDER NO. NERC/GL/170 ON THE 2016 - 2018 MINOR REVIEW OF THE MULTI YEAR TARIFF ORDER (MYTO) 2015 AND MINIMUM REMITTANCE ORDER FOR THE YEAR 2019 FOR ABUJA ELECTRICITY DISTRIBUTION COMPANY PLC.

BETWEEN:

ABUJA ELECTRICITY DISTRIBUTION PLC. **APPLICANT/PETITIONER**
No. 1 Ziguinchor Street,
Wuse Zone 4,
Abuja.

AND

NIGERIAN ELECTRICITY REGULATORY COMMISSION **RESPONDENT**
Nigerian Electricity Regulatory Commission
Plot 1387 Cadastral Zone A00
Off Shehu Shagari Way, Abuja.

THE PETITION IS BROUGHT PURSUANT TO SECTIONS 50 (1)(h) & 50(2) OF THE ELECTRIC POWER SECTOR REFORM ACT 2005 AND SECTION 22 OF THE NIGERIAN ELECTRICITY REGULATORY COMMISSION (BUSINESS RULES OF THE COMMISSION) REGULATION, 2006.

AFFIDAVIT OF URGENCY IN SUPPORT OF APPLICATION/PETITION

I, Ije Ikoku-Okeke, adult of 43 years, female, of No. 1 Ziguinchor Street, Wuse Zone 4, Abuja, do hereby make an oath and state as follows:

1. I am the Chief Finance Officer (CFO) of the Applicant/Petitioner in this matter.
2. I have the authority of the Applicant/Petitioner to make this affidavit in support of the Petition on its behalf.
3. The statements made in all the paragraphs of the Petition are true to the best of my knowledge.
4. I verily believe that unless this matter is dealt with urgently and expeditiously, it shall cause negative and potentially irreversible damage to the Applicant/Petitioner's business and drastically impede its ability to

discharge its obligations to the electricity market, other industry stakeholders and ultimately its customers.

5. I make this affidavit in good faith and in accordance with the Oaths Act.

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DEPONENT

Sworn to this...21st...............day of..October.........2019

BEFORE ME

CEPHAS J. CALEB
NOTARY PUBLIC
FEDERAL REPUBLIC OF NIGERIA
21/10/19

NOTARY PUBLIC