

IN THE MATTER OF A PETITIONER FOR THE REVIEW OF NERC ORDER NO. NERC /GL/174A ON THE 2016 – 2018 MINOR REVIEW OF THE MULTI YEAR TARIFF ORDER (MYTO) 2015 AND MINIMUM ORDER FOR THE YEAR 2019 FOR IBADAN ELECTRICITY DISTRIBUTION COMPANY PLC.

BETWEEN

IBADAN ELECTRICITY DISTRIBUTION COMPANY PLC.
115, Capital Building, M.K.O. Abiola Way (Ring Road)
Ibadan, Oyo State

APPLICANT/PETITIONER

AND

NIGERIAN ELECTRICITY REGULATORY COMMISSION
Nigerian Electricity Regulatory Commission
Plot 1387 Cadastral Zone A00
Central Business District, Abuja

RESPONDENT

THE PETITION IS BROUGHT PURSUANT TO SECTION 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, Oluseye Alayande, Adult, Female of 115, Capital Building, M.K.O. Abiola Way (Ring Road), do hereby make an oath and state as follows:

1. I am the Company Secretary / Chief Legal Officer 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 accordance with the Oaths Act.

Oluseye

DEPONENT

Sworn to this 21st day of October, 2019

BEFORE ME
GEORGE M. OGUNTADE SAN
NOTARY PUBLIC

NOTARY PUBLIC

*126 Bashirun Okunuga, Mr.
Lekki Lagos State*



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BEFORE THE NIGERIAN ELECTRICITY REGULATORY COMMISSION

IN THE MATTER OF A PETITION FOR THE REVIEW OF NERC ORDER NO. NERC/GL/174A ON THE 2016 - 2018 MINOR REVIEW OF THE MULTI YEAR TARIFF ORDER (MYTO) 2015 AND MINIMUM REMITTANCE ORDER FOR THE YEAR 2019 FOR IBADAN ELECTRICITY DISTRIBUTION COMPANY PLC

BETWEEN:

IBADAN ELECTRICITY DISTRIBUTION COMPANY PLC
Capital Building, Plot 115, M.K.O Abiola Way,
Ibadan, Oyo State.

PETITIONER

AND

NIGERIAN ELECTRICITY REGULATORY COMMISSION (NERC)
Plot 1387 Cadastral Zone A00,
Central Business District, Abuja.

RESPONDENT

THIS 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 Capital Building, 115 M.K.O Abiola Way, Ibadan, Oyo State and is a holder of the Distribution License No. NERC/LC/033, responsible for the distribution of Electricity in Ogun, Oyo, Osun, Kwara, and parts of Ekiti, Kogi and Niger States 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 acquisition by the core investor, Integrated Energy Distribution and Marketing Limited of majority equity stake of 60% vested in the Petitioner following a rigorous bid process.
- 3.** The Respondent is a statutory body 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 the regulator of the Nigeria Electricity Supply Industry (NESI).

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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 for the Licensees, including the Petitioner are sufficient 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/174A; The 2016 - 2018 Minor Review of Multi Year Tariff Order (MYTO) 2015 and Minimum Remittance Order for The Year 2019 (Minor Review Order).
 6. Though, it was 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 a number of inaccurate assumptions, analyzed in the ensuing paragraphs, which has inhibited the ability of the Petitioner to meet its obligations.

ATC&C Loss Assumption

7. A key element for making an assessment and reaching a determination on what constitutes a truly cost-reflective tariff is the ATC&C losses, suffered by the Petitioner in operating the business. However, the Petitioner notes that the Minor Review Order does not recognize the actual annual ATC&C loss in computing the tariff.
8. Furthermore, a critical requirement for achieving the target ATC&C loss level, is the capital expenditure (CAPEX) which is required to make significant investments towards reducing the ATC&C loss level. Whilst the CAPEX allowance previously allowed under the pre-Minor Review Order was grossly inadequate, it made the needed investment to achieve the loss reduction target. It is shocking to note that the Minor Review Order totally excluded CAPEX from its revenue requirements.
9. More so, the Respondent has failed to account for the years 2015 and 2016 as Force Majeure years, which were years that were adversely hit by macro-economic factors which was beyond the control of the Petitioner and as such should have been recognized together with 2017 and 2018 being non-performing years.

Generation Cost Assumption

10. Whilst the Minor Review Order assumes a generation cost of N20.80, the invoices from NBET to the Petitioner, following the issuance of the Minor Review Order, indicated a generation cost significantly higher than NERC's assumed figure resulting in a gap of N3.17 on the average. Whilst NBET's case appears to rest on the premise that it is merely applying the monthly escalation mechanism provided for under the Power Purchase Agreement with the Generation Companies, the Petitioner on the other hand would

however not be able to pass through the increased cost to electricity consumers until the next minor review.

11. The effect of this state of affairs is the inability of the Petitioner to meet the minimum remittance threshold as it will be practically impossible for the Petitioner to source for the excess above the permitted tariff by the Respondent to meet the minimum remittance threshold. From the Petitioner's computation, the excess above the Respondent's allowed generation cost is a monthly sum in the region of N972.5million and too huge a deficit to be accommodated by the Petitioner's monthly collections.

MDA Debts

12. The removal of MDA debts from the Minor Review Order is shocking, because as the Respondent is aware, there is an ongoing conversation on the crippling effect of the debts incurred by MDAs and their enormous impact on the Petitioner's books coupled with the negative impact on the Petitioner's collection efficiency. To carry on this huge debt burden in addition to the expected remittances is an untenable and unsustainable venture which will literally bring the Petitioner's business operations to a halt if left unchecked.
13. Consequently, the only fair outcome in this circumstance is for the Respondent to allow MDA debts to be deductible from NBET's invoices, until such a time, when the collection of MDA's debts has been satisfactorily resolved.

Exchange Rate Assumption

14. 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 ₦309.90 to US\$ 1.00 respectively.
15. Whilst the foregoing accurately reflect the CBN exchange rate, the Respondent is very much aware that foreign exchange is not generally accessible at 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 conveniently adopted in computing the tariff.

Other Issues

16. Other issues affecting the Petitioner's inability to meet the Minimum Remittance Threshold are;
- a) The petitioner is expected to remit 100% Transmission and Administrative cost of about N1.25 billion per month. This will further put pressure on already strained cash flow as noted in items 10 and 11 above;
 - b) The expected collection loss in the Minor Tariff Order is retained at 1.7%. This is very unrealistic and unachievable;
 - c) The court injunction obtained by Manufacturers Association of Nigeria (MAN) against DISCOS has resulted in outstanding debts of about N8.7 billion for the petitioner. This is also contributing to the petitioner's inability to meet the Minimum Remittance Threshold.
17. The Petitioner submits that the Minimum Remittance Order while seemingly well intended is impracticable and particularly 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.
18. 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.

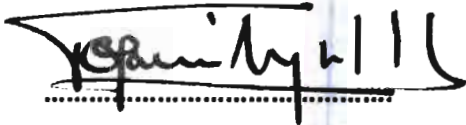
Our Prayers:

19. In the light of the foregoing, we humbly urge the Respondent to further reflect on the shortcomings inherent in the Minor Review Order and:
- 19.1 Give due recognition to the impact of the Petitioner's actual ATC&C loss level as an input into the tariff, also, to recognize 2015 and 2016 as Force Majeure Years and make adequate provision for CAPEX aimed at reducing the Petitioner's ATC&C loss level;
 - 19.2 Compel Nigerian Bulk Electricity Trader (NBET), which is also a licensee of the Respondent, to comply with the Minor Review Order with particular respect to generation cost;
 - 19.3 Allow MDA debts to be deductible from our payments of invoices received from the Nigerian Bulk Electricity Trader (NBET). The basis for this prayer is the absence

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of any certainty within the industry regarding a Recovery Mechanism for Outstanding MDA Bills. Once such a mechanism is successfully implemented, this variation can be revisited;

- 19.4 Reflect the inter-bank exchange rates in the Respondent's tariff assumptions; and
- 19.5 Suspend the Minimum Remittance Order pending when a truly cost reflective tariff is implemented.



Engr. JOHN AYODELE, FNSE

CHIEF OPERATING OFFICER

For: IBADAN ELECTRICITY DISTRIBUTION COMPANY PLC

On Notice:

Nigerian Electricity Regulatory Commission
Plot 1387 Cadastral Zone A00,
Central Business District, Abuja.

BEFORE THE NIGERIAN ELECTRICITY REGULATORY COMMISSION

IN THE MATTER OF A PETITION FOR THE REVIEW OF NERC ORDER NO. NERC/GL/174A ON THE 2016 - 2018 MINOR REVIEW OF THE MULTI YEAR TARIFF ORDER (MYTO) 2015 AND MINIMUM REMITTANCE ORDER FOR THE YEAR 2019 FOR IBADAN ELECTRICITY DISTRIBUTION COMPANY PLC

BETWEEN:

**IBADAN ELECTRICITY DISTRIBUTION COMPANY PLC.
115, CAPITAL BUILDING
M.K.O. ABIOLA WAY (RING ROAD)
IBADAN, OYO STATE
APPLICANT/PETITIONER**

AND

**NIGERIAN ELECTRICITY REGULATORY COMMISSION
PLOT 1387 CADASTRAL ZONE A00
CENTRAL BUSINESS DISTRICT, ABUJA**

RESPONDENT

AFFIDAVIT IN SUPPORT OF PETITION

I, Oluseye Alayande, Female, Adult and Christian of 115, Capital Building, M.K.O. Abiola Way, (Ring Road Ibadan), do hereby make an oath and state as follows:

1. I am the Company Secretary/Chief Legal Officer 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.

Oluseye Alayande
.....
DEPONENT

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

BEFORE ME

**GEORGE M. OGUNTADE SAN
NOTARY PUBLIC
NOTARY PUBLIC**

*126 Bashirun Okunoye No.
Lekki, Lagos State*

