BEFORE THE NIGERIAN ELECTRICITY REGULATORY COMMISSION

IN THE MATTER OF A PETITION FOR THE REVIEW OF NERC ORDER NO. NERC/GL/178 ON THE 2016 - 2018 MINOR REVIEW OF THE MULTI YEAR TARIFF ORDER (MYTO) 2015 AND MINIMUM REMITTANCE ORDER FOR THE YEAR 2019 FOR KANO ELECTRICITY DISTRIBUTION COMPANY LIMITED (KEDCO)

BETWEEN:
KANO ELECTRICITY DISTRIBUTION COMPANY LTD. .... PETITIONER

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, Niger Street, Kano, Nigeria, and it is a holder of the Distribution License No. NERC/LC/036, responsible for the distribution of Electricity in Kano, Katsina, Jigawa states.

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, Sahelian Power SPV Ltd., 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 1099, First Avenue, off Shehu Shagari Way, Central Business District, Garki, Abuja. The Petitioner is 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 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/178; 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 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 turn in the ensuing paragraphs, which has inhibited the ability of the Petitioner to meet its obligations.

ATC&C Loss Assumption

7. A key element to making an assessment of 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, quite curiously the Petitioner notes that the Minor Review Order does not include the annual ATC&C loss targets in computing the tariff.

8. Further, a critical requirement to 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 to make 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 requirement.

9. Relatedly, 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 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 N 3.28 per unit on the average. Whilst NBET's case appear to rest on the premise that it is merely applying the monthly escalation mechanism provided under the Power Purchase Agreement with the Generation Companies, the Petitioner on the other hand would only 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 N 800 million 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 ongoing conversation on the crippling effect of the legacy debts incurred by MDAs and their enormous impact on the Petitioner's books and their 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 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.

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 N309.90 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 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.

Other Issues

16. **Market Shortfall versus Tariff Shortfall** – The Hon'ble Commission has computed the cumulative shortfall between market remittance and tariff shortfall for KEDCO as ₦ 13.9 billion. However, the Hon'ble Commission has not included the following relevant amounts while computing the market shortfall for the period 2015 to 2018

    a. **MAN Underpayment**. The amount that has not been collected from members of Manufacturers Association of Nigeria (MAN) on account of the court case filed against NERC by MAN. The amount remaining unpaid and uncollected by KEDCO is almost ₦ 6.4 billion from over 340 customers. Since this litigation is purely on account of NERC as the primary defendant, we expect that this amount shall be set against the market shortfall for this period.

    b. **Credit for Payment by Federal Government** – The Federal Ministry of Power (MoP) on behalf of the Federal Government MDAs has issued a credit note to

KEDCO in 2018 for an amount of ₦ 1.3 billion paid on behalf of KEDCO to NBET. However, this amount has not been included in the payments made to NBET by KEDCO.

c. **Credit for Adjusted Bills of the MO up to 2015** – Subsequent to various discussions between TCN and KEDCO and final agreement reached between the companies with NERC intervention, the amount of ₦ 3.2 billion has not been credited to KEDCO's account or reduced from the outstanding invoice amount of the MO.
d. **Credit for Exported Energy** – In our earlier submission also, we had represented that the Market Operator (MO) had not provided credit to KEDCO for energy exported to other DISCOs (Kaduna and Yola) using KEDCO's network. The exported energy is also included in the energy allocated to KEDCO. As per our submission, the amount due to KEDCO on this account for the period 2015 to 2018 is approximately ₦ 1.9 billion. This amount should then be debited to Kaduna and Yola DISCOs and recovered from them.
e. **Additional MDAs** – Additional amounts due from various MDAs (after reconciling their payments made during the period) for both Federal and State Governments amount to nearly ₦ 4.3 billion. Since there is a precedence of amount due to KEDCO by the Government MDAs being settled directly with NBET (see item (b) above) and also the fact that the Government is likely to adopt this same methodology in the future, it is requested that this amount should also be reduced from KEDCO's market remittance shortfall figure for the period.

The total of all above amounts is ₦ 17.1 billion. Therefore, the actual market shortfall of KEDCO is negative (-) ₦ 3.2 billion.

17. **ATC&C Loss Reduction Commitment in the Performance Agreement** – As the Hon'ble Commission is aware, the ATC&C loss reduction commitments were based on the MYTO 2.0 order of 2012. The loss figures quoted therein are shown hereunder:

2014	*2015*	*2016*	*2017*	*2018*	*2019*	*2020*	*2021*
23.0%	18.0%	15.0%	14.0%	14.0%	14.0%	14.0%	14.0%

It is understandable that the bid loss reduction levels were based on the above figures, which led to the assumptions that:

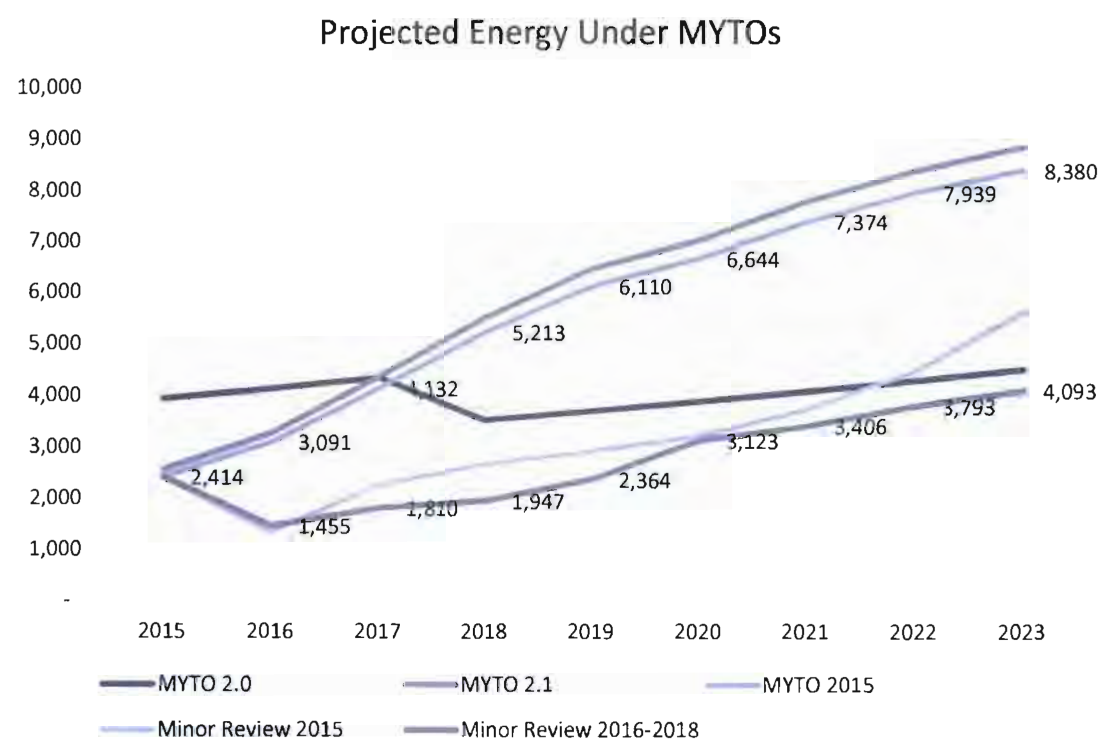
a. The company had higher levels of collections
b. The surplus available to the company during the 'interim rules' period would allow the company to leverage additional funds for capex – thus making an aggressive load reduction trajectory possible.

However, one year after the takeover of the company by the investors, the Hon'ble Commission, revised the loss level up to 49% as the baseline – from the given 23% to 18% for the first two years. The impact of this 'actual' figure on the loss reduction trajectory, however, remained unchanged.

It is hard to surmise that an increase of over 200% in baseline loss levels would not impact the company's surplus and its leverage, and its ability to raise capital for expenditure required for the loss reduction commitment.

The impact on the loss level reduction trajectory can be assumed to be proportional to the opening loss levels. Thus, if the opening loss level is increased by a factor of 2.5, the loss reduction commitment should also be reduced by the same factor, if statistically significant correlation figures are not available. It is, therefore, incumbent upon the Honorable Commission to revise the loss reduction commitments in the Performance Agreement based on the revision in the opening loss levels – for the sake of equity and fairness.

18. **Impact of Reduction on Committed Energy Supply under MYTO Orders** – The Hon'ble Commission has repeatedly revised the energy delivered amount (GWh) to the DISCOs in all its tariff orders and reviews. A summarized view as applicable to KEDCO's energy delivered is shown below:



As can be seen from the above, the energy delivered in 2019 is assumed as 6,110 GWh in MYTO 2015 whereas the current review revises the energy downwards to 2,364 GWh. The energy gap is maintained up to 2023, where the figures are 8.380 GWh and 4,093 GWh respectively.

The impact of reduction of energy delivered to the DISCOs has not been computed or reflected in the tariff orders. Proportional adjustment of loss reduction trajectory is definitely warranted under these circumstances, as the reduction in supply of energy has a significantly high negative impact on the customer satisfaction levels leading to high incidences of meter tampering/bypass, willingness to pay, among others, which lead to significantly higher collection losses. The Honorable Commission may wish to make the necessary adjustments noted above in order to improve upon service quality to customers, which the industry needs.

19. **Payments of Federal, State and Local Ministries, Departments and Agencies (MDAs)** – As indicated in 1 (b) above, there is an established precedence of the Federal Government MDAs and their outstanding bills being paid directly to NBET on behalf of KEDCO. Therefore, it is proposed that KEDCO should be allowed to reduce the amount payable by Federal and State Government MDAs against the amount owed to NBET, subsequently as well. The summarized amount of the bills due shall be presented to both the Federal Ministry of Power and NBET to be settled between the two agencies. The amount shall be 'deemed collected' on the books of KEDCO as was assumed in the calculation of ATC&C losses under MYTO 2015 and shall be treated as paid to NBET as part of its mandated market remittance.

20. **Calculation of NBET Bills on MYTO Mandated Tariff and to be Based on Charges for Actual Capacity Linked to Plant Load Factor (PLF) and Merit Order Dispatch** –

    a. **Absolute Value for NBET Remittance Instead of Percentage**. NBET invoices have been based on different exchange rates and other indices which are higher than those approved by NERC as per the MYTO order. These increments in tariff on month-on-month basis are not reflected in the retail tariff as a pass-through item. The MYTO 2015 order has a tariff of ₦ 12.63 per unit at transmission bus and the Minor Review 2016-2018 has an applicable generation tariff at transmission bus at ₦ 19.10 – without any pass-through in retail tariff. The reality, however, is that NBET invoices are based on an average tariff of ₦ 23.3 per unit. This can be verified by summoning copies of the NBET invoices, if required. It would, thus, be preferable to have an absolute Naira based value for remittance of NBET invoices, rather than a percentage, as the difference in amounts would be significant – based on the tariff order and the actual invoice raised by NBET. This is our humble request to the Honorable Commission.
    b. **Capacity Charges to be Linked to Actual PLF**. NBET invoices are raised on the basis of capacity charges being applied on the basis of the proportion of capacity of a generation plant – linked to the proportion of total energy consumed (delivered to) KEDCO. However, it can be seen that the actual Plant Load Factor (PLF) of the plants are much lower in terms of energy delivered. The transmission loss factor is already accounted for in the energy charged to KEDCO. We have recast the NBET bill for July 2019 based on the above principle of capacity charges being applied on the basis of actual plant PLF and also provided the

actual NBET bill based on proportionate capacity allocation without reference to actual PLF.

The Hon'ble Commission is, therefore, requested to enable recalculation of all the NBET bills wherein the capacity charges of a plant is based on the actual PLF of the corresponding plant.

c. **Merit Order Based Billing of Energy by NBET**. NBET invoices for energy charges are being applied on the basis of proportion of energy delivered to KEDCO against the total energy delivered. This is applied across all plants regardless of the cost of power. However, it can be seen that KEDCO is perennially short of supply of power in terms of its regulatory allocation of share of capacity and energy. The mandated 8% of the energy share has never been received by KEDCO. In order to justify the application of energy charges and capacity charges, it is our assertion that the charges should be applied on the basis of merit order of dispatch. This means that KEDCO should receive 8% of the energy from the plant with the lowest per unit cost in incremental order until the energy delivered to KEDCO has been fully accounted.

   Our recast of the NBET bill for July shows that upon applying this method, the most expensive plants do not get dispatched to KEDCO. The surplus energy in the system, therefore, is being dispatched to DISCOs that receive higher energy than their regulated allocation.

   The Hon'ble Commission may observe here that using the principles outlined in (b) and (c) above, the NBET invoice for July 2019 reduces from ₦ 3.329 billion to ₦ 2.233 billion. This is a significantly high reduction in the amount billed (approximately ₦ 1.1 billion), using the basic principles of economic merit order dispatch and capacity charges linked to plant PLF that are universally accepted.

   It is, therefore, our plea that NBET should be directed by the Hon'ble Commission to recast its past and future bills in terms of the above applicable principles. This would also significantly lower the amount of Federal Government intervention being paid to the generation companies – as the capacity charges are not justified based on the actual plant load factor (PLF).

d. **Capacity Utilization Factor for Transmission Charges**. A major portion of the Market Operator (MO) bills carry a charge for transmission which is based on energy delivered to KEDCO. However, it can be seen that the capacity claimed by the Transmission Company of Nigeria (TCN) is not equivalent to the capacity delivered to KEDCO, largely due to limitations of the current carrying capacity of conductors at the 132kV level. The capacity has further been constrained by the failure of 150MVA transformer at Kumbotso Transmission Station since December 2014 and subsequent failure of another 150MVA transformer at the same substation from January to May 2019. It is, therefore, our assertion that the transmission charges be also linked to the actual CUF of transmission being delivered to KEDCO – which upon analysis corresponds to be less than 60%.

21. The Petitioner submits that the Minimum Remittance Order while seemingly 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.

22. 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:

23. 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 ATC&C loss level as an input into the tariff, to also 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 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 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 rate in the Respondent's tariff assumptions; and

19.5 suspend the Minimum Remittance Order pending when a truly cost reflective tariff is implemented.

....

Barr. Daniel Okum, Esq., Company Secretary
For: Kano Electricity Distribution Company Limited

08033109356

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/178A ON THE 2016 - 2018 MINOR REVIEW OF THE MULTI YEAR TARIFF ORDER (MYTO) 2015 AND MINIMUM REMITTANCE ORDER FOR THE YEAR 2019 FOR KANO ELECTRICITY DISTRIBUTION COMPANY PLC.

BETWEEN:
KANO ELECTRICITY DISTRIBUTION COMPANY PLC
NO. 1, NIGER STREET, KANO **APPLICANT/PETITIONER**

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, Daniel Okum, adult of 53 years, male, of No. 1, Niger Street, Kano, do hereby make an oath and state as follows:

1. I am Company Secretary/Legal Adviser 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.

DEPONENT

Sworn to this 21st day of October, 2019

BEFORE ME

NOTARY PUBLIC

JENNIFER NWOSU ESQ
NOTARY PUBLIC OF NIGERIA
08036815913
Plot 1077, Suite F002, Israel Plaza
Adetokunbo Ademola Crescent
By Nitel Junction Wuse 2, Abuja
Sign............... Date 21/10/19

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