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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/177 OF THE 2016 - 2018 MINOR REVIEW OF THE MULTI YEAR TARIFF ORDER (MYTO) 2015 AND MINIMUM REMITTANCE ORDER FOR THE YEAR 2019 FOR KADUNA ELECTRICITY DISTRIBUTION PLC

BETWEEN:

**KADUNA ELECTRICITY DISTRIBUTION PLC
1-2 Ahmadu Bello Way, Kaduna**

PETITIONER

AND

**NIGERIAN ELECTRICITY REGULATORY COMMISSION (NERC) RESPONDENT
Plot 1387 Cadastral Zone A00
Central Business District, 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 1-2 Ahmadu Bello Way, Kaduna and it is a holder of the Distribution License No. NERC/LC/023, responsible for the distribution of Electricity in Kaduna, Sokoto, Zamfara and Kebbi States.
- 2.** The Petitioner is one of the Successor Companies that emerged from the defunct Power Holding Company of Nigeria (PHCN) and privatized in 2014 through the acquisition by the core investor, Northwest Power Ltd. of majority equity stake constituting 60% 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, 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

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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/177; 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, analysed 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 N3.50 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

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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 N650Mn 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 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 ₦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 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.

Uncollectible Energies due to Ongoing Military Actions and Insurgencies

16. The Petitioner had notified NERC in writing of the ongoing military action and insurgencies in three out of four (4) states of our operations where communal crises have engulfed the towns of Kaduna, Kafanchan, Birnin Gwari and environs, as well as the banditry, kidnapping and terrorist activities covering most of Zamfara State and part of Sokoto State – these are situations that would have necessitated declaration of force majeure.
17. The company continues to operate within great operational risks and financial loss for more than 3 years, hampering both our operations as well as revenue generation.

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Impact of Reduction on Committed Energy Supply Under MYTO Orders

- 18.** Due to low energy availability, NERC has repeatedly revised the energy delivered amount (GWh) to the DisCos in its tariff orders and reviews. 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 impact of reduction of energy delivered to the DisCos has not been computed or reflected in the tariff orders. Propotional adjustment of loss reduction trajectory is definitely warranted under these circumstances, as the reduction in supply of energy has a negative impact on the customer satisfaction levels leading to customer apathy towards payment of electricity bills, among others which leads to higher collection losses.

Merit Order for the Dispatch of Energy

- 19.** NBET invoices for energy charges are being applied on the basis of proportion of energy delivered to Kaduna Electric against the total energy delivered. This is applied across all plants regardless of the cost of power. In order to justify the application of energy charges and capacity charges, it is our assertion that the capacity charges should be applied on the basis of merit order of dispatch. This means that Kaduna Electric should receive 8% of the energy from the plant with the lowest per unit cost in incremental order until the energy delivered to Kaduna Electric are fully accounted for. Analysis on our recent invoice reveals that upon applying this method, the most expensive plants do not get dispatched to Kaduna Electric, which will lead to significant reduction on our NBET invoice.

Discrepancies in Minor Review Energy Data

- 20.** We reported discrepancies in the invoices for Market Operator and NBET used in the Minor Review and the actual data from Kaduna Electric. Unfortunately, the Commission did not effect those changes when the order was released.
- 21.** The inconsistencies exist in the invoices used against the NBET and MO in the MYTO Model and the Actual Data from the Records in the received invoices for the years 2016, 2017 and 2018. Further, the Received Energy for October to December 2018 to Kaduna Electric used in the model were based on forecasts rather than the actuals.
- 22.** Summary of the differences between Minor Review MYTO and Kaduna Electric's MO and NBET invoice are reported below.

2016		2017		2018	
(GWh)	(N'm)	(GWh)	(N'm)	(GWh)	(N'm)
6	282	0.02	951	104	-755

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Conclusion

- 23. 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.
- 24. 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:

- 25. In the light of the foregoing, we humbly urge the Respondent to further reflect on the shortcomings inherent in the Minor Review Order and:
 - 25.1 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;
 - 25.2 Compel NBET, which is also a licensee of the Respondent to comply with the Minor Review Order with particular respect to generation cost;
 - 25.3 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;
 - 25.4 reflect the inter-bank exchange rate in the Respondent’s tariff assumptions; and
 - 25.5 suspend the Minimum Remittance Order pending when a truly cost reflective tariff is implemented.



ABBAS AHMAD, Esq.

For: KADUNA ELECTRICITY DISTRIBUTION PLC.

On Notice:

Nigerian Electricity Regulatory Commission
Adamawa Plaza, Plot 1387
Cadastral Zone A0C,
Central Business District,
Abuja.

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IN THE MATTER OF A PETITION FOR THE REVIEW OF NERC ORDER NO. NERC/GL/177A ON THE 2016 - 2018 MINOR REVIEW OF THE MULTI YEAR TARIFF ORDER (MYTO) 2015 AND MINIMUM REMITTANCE ORDER FOR THE YEAR 2019 FOR KADUNA ELECTRICITY DISTRIBUTION CO. PLC.

BETWEEN:
KADUNA ELECTRICITY DISTRIBUTION CO. PLC
NO.1-2 AHMADU BELLO WAY, KADUNA

APPLICANT/PETITIONER

AND

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

RESPONDENT

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, Abbas Ahmad esc. adult of 54 years, Male, of No.1-2 Ahmadu Bello Way, Kaduna, do hereby make an oath and state as follows:

1. I am the 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.

Abbas Ahmad
.....
DEPONENT

Sworn to this 21st day of October, 2019

BEFORE ME
JENNIFER INIGBOESQ
NOTARY PUBLIC OF NIGERIA
08036815013

Plot 1077, Suite F002, Israel Plaza
Adetokunbo Ademola Crescent
By Nitel Junction Wuse 2, Abuja

Sign..... Date 21/10/19



BEFORE THE NIGERIAN ELECTRICITY REGULATORY COMMISSION

IN THE MATTER OF A PETITION FOR THE REVIEW OF NERC ORDER NO. NERC/GL/177A ON THE 2016 - 2018 MINOR REVIEW OF THE MULTI YEAR TARIFF ORDER (MYTO) 2015 AND MINIMUM REMITTANCE ORDER FOR THE YEAR 2019 FOR KADUNA ELECTRICITY DISTRIBUTION CO.PLC.

BETWEEN:

**KADUNA ELECTRICITY DISTRIBUTION CO. APPLICANT/PETITIONER
NO.1-2, AHMADU BELLO WAY, KADUNA**

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, Abbas Ahmad esq, adult of 54 years, male, of No.1-2 Ahmadu Bello Way Kaduna, do hereby make an oath and state as follows:

1. I am the Legal Adviser 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
JENNIFER NWOSU ESQ.
NOTARY PUBLIC
NOTARY PUBLIC OF NIGERIA
08036815013
Plot 1077, Suite F002, Isreal Plaza
Adetokunbo Ademola Crescent
By Nitel Junction Wuse 2, Abuja
Sign  Date 21/10/19

