



ADMINISTRATIVE PROCEEDINGS OF THE NIGERIAN ELECTRICITY REGULATORY
COMMISSION ON THE SUPPLEMENTARY ORDER ON THE COMMENCEMENT OF
THE TRANSITIONAL ELECTRICITY MARKET
(ORDER NO. NERC/15/0011)

Background:

1. The Nigerian Electricity Regulatory Commission ("NERC" or the "Commission") issued Order NERC/136 of January 29, 2015 (TEM Order) signifying the commencement of the Transition Electricity Market on February 1, 2015 pursuant to the provisions of the Electric Power Sector Reform Act ("EPSRA") on the development of the Nigerian electricity market. A further Order No. NERC/15/0011 of March 18, 2015 (Supplementary TEM Order) was issued providing the implementation guidelines for the transitional electricity market. Specifically, Order 8(a)(viii) of the Supplementary TEM Order provides as follows:

"All off-takers of energy at the 132kV voltage level shall remain customers of the DisCo. The Transmission Service Provider ("TSP") shall cut off such off-takers who do not meet their payment obligations at the request of the relevant DisCo. The TSP shall be responsible for the payment for such energy consumed by such customers if the TSP does not comply with such instructions".

Application for Review of Supplementary TEM Order and Response by the Commission:

2. The Transmission Company of Nigeria ("TCN") in petition dated 30 August 2018 and subsequent position paper dated 4 January 2019 requested for the following reliefs pursuant to section 24 of the NERC (Business Rules of the Commission) Regulations 2006 ("Business Rules").

- (i) Section 8 (a)(viii) of the Supplementary TEM Order No. NERC/15/0011 should be declared null and void because it is inconsistent with the provisions of the EPSRA and other industry ruling documents.
- (ii) All 330kV customers should be declared as eligible customers because that is the only category such customers fall into under the EPSRA, the Market Rules and the Grid Code.
- (iii) A declaration be made that all 330kV customers (eligible customers) should pay their energy and capacity charges directly to generators that they contracted with while the wheeling, ancillary, market operation and system operation charges should be paid to the Market Operator

3. Prior to TCN's application, the Commission had noted in 2013 from the monthly settlement statement that the Market Operator ("MO") had commenced the invoicing/billing of customers connected at 132kV voltage level without necessary clearance and guidance from the Commission. The Commission directed the stoppage of this practice with the advice that the MO should await the declaration of eligible customer in accordance with section 27 of EPSRA.

4. Pending the declaration of eligibility status by the Minister and the development of the subsequent enabling regulation, TCN had written to the Commission in 2017 requesting for a declaration that payments by customers on 132kV shall be to the MO and recommended that such customers be transferred to the Nigerian Bulk Electricity Trading Plc (NBET) upon the declaration of eligibility. TCN's request was based on the need to improve market liquidity and ensure compliance with industry ruling documents.

5. The TSP confirmed in a letter dated 19 March 2018 to the Commission that there was one (1) customer (Delta Steel Ltd) connected at 330kV and thirteen (13) customers connected at 132kV distributed across 5 Distribution Companies ("DisCos") with 7 in Ibadan DisCo, 3 in Ikeja DisCo and 1 each in Abuja, Jos and Enugu DisCos respectively



Public Hearing:

6. An administrative proceeding in the form of a public hearing was conducted by the Commission on 27 March 2019 to provide an opportunity for all stakeholders to contribute to the request made in TCN's position paper

7. The following participants made presentations to the Commission during the public hearing –

- a. TCN
- b. 8 DisCos
- c. Association of Nigerian Electricity Distributors ("ANED")
- d. 3 independent Power Producers
- e. National Power Training Institute of Nigeria ("NAPTIN")
- f. 3 customers connected at 330/132kV

8. The key arguments made in TCN's presentation were as follows –

- a. EPSRA and the Grid Code clearly delineate the operating voltage for DisCos and does not include 330kV and 132kV; and that it was illegal for DisCos to operate at that voltage level.
- b. The Supplementary TEM Order does not include customers connected at 330kV voltage level.
- c. Customers connected at 330/132kV voltage levels are not connected to the network of DisCos and are therefore not DisCo customers.
- d. DisCos cannot control load or improve quality of supply to customers connected at 132kV or 330kV voltage levels.
- e. The TSP has no statutory mandate to disconnect customers that are indebted to DisCos.
- f. Customers connected at 132/330kV voltage levels impose no costs on DisCos and therefore do not form part of the DisCo's business activities.
- g. The classification of 330/132kV customers as DisCo customers is in conflict with sections 67(2) and 100 of EPSRA, thus nullifying the Order of the



Commission as it is in conflict with the Act. Section 67(2) of EPSRA provides that *"a distribution licensee may also have the obligation to provide electricity to its customers, pursuant to the terms of a trading licence issued by the Commission to the distribution licensee"* Section 100 of EPSRA provides that *"distribution means delivery of electricity over a distribution system and distribution system is defined as the system of facilities, as defined by the Commission, consisting wholly or mainly of low voltage (less than 132kV) electric lines used for the distribution of electricity from grid supply points to the point of delivery to customers or eligible customers, and includes any electrical plant and meters operated in connection with the distribution of electricity, but shall not include any part of the transmission system"*.

- h. DisCos provide no service and add no additional value to customers connected at 330/132kV voltage level.
- i. The TEM Order places an obligation and costs on the TSP to disconnect customers defaulting in payment failing which the TSP shall be liable to pay for all energy consumed by the defaulting customer
- j. Customers connected at 132/330kV are currently providing cross subsidy contrary to section 76(2)(f) of EPSRA which provides for the elimination or substantial reduction of cross subsidies.
- k. The declaration of customers on 132/330kV as eligible customers will solve the liquidity challenge in the electricity market as DisCos will be forced to operate more efficiently
- l. The transfer of customers connected at 132kV to the DisCos has reduced the remittance level to the MO from about 80% to 40%.

9. Some participants at the public hearing concurred with TCN's position during their presentation to the Commission. The Manufacturers Association of Nigeria, Sumo Steel Limited, Kam Industries Limited and Federated Steel Mills Limited agreed with TCN's position.

10. ANED and the 8 DisCos had the following common positions in their presentations to the Commission:



- a. DisCos have the sole responsibility for collecting revenues on behalf of the value chain of the Nigerian Electricity Supply Industry.
- b. The TSP is in the best position to disconnect customers on account of being in control of the infrastructure.
- c. The technical grounds cited by TCN are for demarcation purposes and not for control of customers.
- d. TCN should focus on its core activity of transmission of energy and system operations and not deviate towards commercial activities.
- e. The low market remittance is as a result of absence of cost-reflective tariff, mismatch in forex assumptions, low generation, non-payment by MDAs and the NEMSF repayment.
- f. Customers connected at 132/330kV shall pay competition transition charge to DisCos if TCN prayers are granted.
- g. The responsibility for disconnection of 132/330kV customers shall remain with the TSP even if the regulator grants the prayers of TCN.

Ruling

11. The Commission has considered all issues raised by TCN and other participants at the public hearing in accordance with EPSRA, the Supplementary TEM Order, the Eligible Customer Regulations, the Business Rules of the Commission and other industry ruling documents and finds as follows:

- a. DisCos have a composite licence which enables the utilities operate the "wire" business and electricity trading. NBET and other licensed traders may therefore procure electricity from generation companies ("GenCos") and contract to sell electricity to end-use customers without owning any aspect of the "wire" business. There is therefore no contractual basis for NBET to invoice customers connected at 132kV voltage level unless the customer decides to exit the services of the DisCo.



- b. Pursuant to the vesting contract executed by DisCos, the total energy and capacity of the grid connected GenCos has been assigned to the DisCos with operating voltage serving only as a medium for transmission. Vacating section 8(a) (iii) would mean that energy bought by the DisCos through the vesting contracts cannot be sold by them.
- c. Condition 29 of the terms and conditions of TCN's licence prohibits the licensee from the purchase and sale of electricity. TCN's primary responsibility is the wheeling power and it does not have any rights to this power
- d. The payment obligation to the MO is securitized by bank guarantees in accordance with the terms of the Market Participation Agreement and the MO may call on the guarantee instrument upon a failure event.
- e. The current liquidity challenge in the Nigerian Electricity Supply Industry (NESI) which may be the underlying reason for the application by TCN, is a consequence of several factors which include inadequacy of cost recovery, infrastructure and supervisory oversight.
- f. The Minister, pursuant to section 27 of EPSRA has declared that customers consuming more than 2MWhr/hr of energy may procure power directly from a generation licensee or a trader and the Commission has issued the enabling regulation (Eligible Customer Regulations NERC-R-111) to that effect.
- g. Unless a bilateral contract is entered into between a customer and a GenCo in accordance with the provisions of the Eligible Customer Regulations, the default supplier for all grid connected customers is DisCo covering the franchise area pursuant to the assignment of energy in the vesting contract.

The Commission hereby rules as follows:

- A. Section 8(a) (vii) of the Supplementary TEM Order is consistent with EPSRA and industry ruling documents as DisCos pursuant to their respective composite licence for network business and trading, allows the utilities to contract for supply of electricity at all voltage levels. The reference to voltage level lower than 132kV is in respect of network ownership and management.



- B. The Eligible Customer Regulations provide for an elective regime whereby customers meeting the eligibility requirements of the regulation may choose their supplier (DisCo, GenCo or trading licensee), hence there is no regulatory basis or justification for such a declaration of customers connected at 330kV as eligible customers.
- C. Any customer connected at 330kV voltage level who elects to be an eligible customer may freely contract directly with a GenCo or a trading licensee for supply of energy and capacity under a Transmission Use of System Agreement with the Transmission Service Provider.

Dated the 28th day of August 2019



Frank N. Okafor
Commissioner



Sanusi Garba
Vice Chairman



Nathan R. Shatti
Commissioner