



BEFORE THE NIGERIAN ELECTRICITY REGULATORY COMMISSION

**IN THE MATTER OF A PETITION FOR THE REVIEW OF THE 2016 - 2018 MINOR
REVIEW OF MULTI YEAR TARIFF ORDER AND MINIMUM REMITTANCE ORDER
FOR THE YEAR 2019**

TAKE NOTICE that pursuant to section 74 of the Electric Power Sector Reform Act ("EPSRA") and the terms and conditions of electricity distribution licences issued to the distribution licensees ("DisCos") by Nigerian Electricity Regulatory Commission (herein referred to as "NERC" or the "Commission") a notice of intention to cancel distribution licences ("Cancellation Notice") dated 8 October 2019, was issued to the licensees listed below for breach of the provisions of EPSRA, terms and conditions of their respective distribution licences and the 2016 - 2018 Minor Review of Multi Year Tariff Order ("MYTO") and Minimum Remittance Order for the Year 2019 (hereinafter called the "Minor Review and Minimum Remittance Order") -

- a. Abuja Electricity Distribution Company Plc ("AEDC").
- b. Benin Electricity Distribution Company Plc ("BEDC").
- c. Enugu Electricity Distribution Company Plc ("EEDC").
- d. Ikeja Electric Plc ("IE").
- e. Kaduna Electricity Distribution Company Plc ("KAEDCO").
- f. Kano Electricity Distribution Company Plc ("KEDCO").
- g. Port Harcourt Electricity Distribution Plc ("PHEDC").
- h. Yola Electricity Distribution Company Plc ("YEDC").

1. The aforementioned DisCos were required to **SHOW CAUSE** in writing within **60 days from the date of receipt of the Cancellation Notice** as to why their licences should not be cancelled in accordance with section 74 of EPSRA.

2. The Commission notes that the following DisCos filed petitions challenging the Minor Review and Minimum Remittance Order pursuant to section 50 of EPSRA and the NERC (Business Rules of the Commission) Regulations 2006 (the "Business Rules") -

	DisCo	Date of Filing
a.	Abuja Electricity Distribution Company Plc	21 October 2019
b.	Benin Electricity Distribution Company Plc	21 October 2019
c.	Eko Electricity Distribution Company Plc ("EKEDC")	21 October 2019
d.	Enugu Electricity Distribution Company Plc	21 October 2019
e.	Ikeja Electric Plc	21 October 2019
f.	Kaduna Electricity Distribution Company Plc	21 October 2019
g.	Kano Electricity Distribution Company Plc	21 October 2019
h.	Port Harcourt Electricity Distribution Plc	22 October 2019
i.	Ibadan Electricity Distribution Company Plc ("IBEDC")	25 October 2019


3. YEDC did not file a petition against the Minor Review and Minimum Remittance Order and IE withdrew its petition by a letter (IE/REG/001.001) dated 28 October 2019 by electing to rely on their letter dated 18 October 2019 **SHOWING CAUSE** with grounds against the cancellation of their licence and seeking the Commission's audience to discuss "lasting and sustainable" resolution of the issue.

4. The Commission notes further that besides IE no other recipient of the Cancellation Notice provided a direct written response to the Cancellation Notice.

5. In compliance with section 41 of EPSRA and section 17 of the Business Rules the Commission resolved that the petitions would be heard by a panel of 4 commissioners with the Vice-Chairman serving as Chairman of the panel.

6. The petitions were scheduled to be heard at public hearings open to the general public at the Commission's Hearing Room on the 4th Floor of the NERC Headquarters Building, Plot 1387 Cadastral Zone A00, Central Business District, Abuja in accordance with the hearing schedule below -

	DisCo	Hearing Date	Time
a.	AEDC	6 November 2019	9am - 12pm
b.	BEDC	6 November 2019	2pm - 5pm
c.	EKEDC	7 November 2019	9am - 12pm
d.	EEDC	7 November 2019	2pm - 5pm
e.	IBEDC	8 November 2019	9am - 12pm
f.	KAEDCO	8 November 2019	2pm - 5pm
g.	KEDCO	11 November 2019	9am - 12pm

 2

h.	PHEDC	11 November 2019	2pm - 5pm
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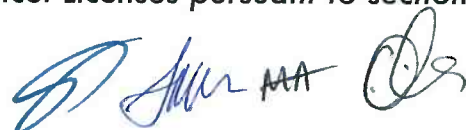
7. EKEDC withdrew its petition against the Minor Review and Minimum Remittance Order by a letter (23/MD/CEO/EKO/14.5/1078/2019) dated 30 October 2019 wherein the Managing Director/CEO stated that "... Upon further consideration and to achieve a congenial atmosphere for handling our earlier enumerated issues, we hereby formally withdraw the said Application for a Review of the Order No. NERC/GL/172A and shall pursue other methods of engagement with the Commission, to achieve our intended outcome"

8. BEDC withdrew its petition against the Minor Review and Minimum Remittance Order by a letter dated 30 October 2019 wherein the Managing Director/CEO stated that "... Further to the various interactions held, we hereby write to inform the Commission that BEDC is withdrawing its petition and will therefore not be participating in the public hearing scheduled by the Commission for next week. The Company will continue with the ongoing discussions with the Commission in seeking lasting and sustainable resolution of the issue raised in the various letters earlier submitted"

9. IBEDC withdrew its petition against the Minor Review and Minimum Remittance Order by a letter (IBEDC/COO/162/2019) dated 1 November 2019 wherein the Chief Operating Officer stated that "... The management of IBEDC by this letter, humbly inform the Commission of its intention to withdraw the said petition. The decision of our withdrawal is predicated on a well-thought management appraisal of the current turnaround direction of the sector through the Performance Improvement Plan Program initiatives and the possibilities it presents. However, it is pertinent to recognise and discuss the hardships the current MYTO 2015 review has imposed on IBEDC, especially the minimum remittance of 100% of Market Operator's bill and 26.2% of the Nigerian Bulk Electricity Trading Company Plc's bill from July 2019"

10. AEDC withdrew its petition against the Minor Review and Minimum Remittance Order by a letter (AEDC/MD&CEO/2019) dated 1 November 2019 wherein the Managing Director/CEO stated that "... AEDC hereby gives notice to the Commission of its intention to withdraw its petition which has been scheduled for hearing on Tuesday, 6th November 2019 pursuant to the provisions of Rule 14(7) of the Commission's Business Rules. Further to this notice, AEDC shall no longer proceed with the petition"

11. PHEDC withdrew its petition against the Minor Review and Minimum Remittance Order by a letter (PHED/REG/19/11/OT/NERC/158) dated 4 November 2019 wherein the Chief Executive Officer stated that "... Consequent upon the issuance of Notice of Intention to Cancel Licenses pursuant to section 74

 3

of EPSRA, for which we are preparing our response and intend to present our case for the sympathetic consideration of the Honourable Commission, we wish to withdraw the said petition, along with the verifying affidavit and the affidavit of urgency filed with respect to the Order”

12. EEDC withdrew its petition against the Minor Review and Minimum Remittance Order by a letter (EEDC/CHQ/REG-HOD/NERC/083/2019) dated 4 November 2019 wherein the Managing Director/CEO stated that “... Sequel to the meetings with the Committees on Power of both chambers of the National Assembly on 22nd and 23rd October, 2019 and subsequent interventions by the various arms of government, EEDC has decided to withdraw its petition dated 18th October, 2019 in order to meet with the Commission for an amicable resolution of issues concerning the Minimum Remittance Order, 2019. It is pertinent to underscore that it was our fervent believe in the bilateral and amicable resolution of the issues that made EEDC, in the first instance, to file the petition pursuant to the Commission’s extant Business Rules which allow for an appeal for re-hearing via a petition. We would like to reiterate our support for most elements of the Minor Review Order which we believed addressed the key problems in the Nigerian Electricity Supply Industry (NESI). Again, the petition was not meant to be a substitute for EEDC’s response to the Notice of Intention to Cancel our licence dated 8th October, 2019 which we intend to do before the deadline”

13. The Commission notes that 7 out of the 9 petitioners have withdrawn their petitions against the Minor Review and Minimum Remittance Order and the public hearing of the outstanding petitions shall be heard at the Commission’s Hearing Room on the 4th Floor of the NERC Headquarters Building, Plot 1387 Cadastral Zone A00, Central Business District, Abuja from 7 - 8 November 2019 in accordance with the schedule below -

	DisCo	Hearing Date	Time
a.	KAEDCO	7 November 2019	9am - 5pm
b.	KEDCO	8 November 2019	9am - 5pm

14. The Commission also notes the respective requests of some of the petitioners to have bilateral meetings with the Commission to discuss issues arising from the Minor Review and Minimum Remittance Order and has resolved to schedule meetings to discuss these issues with them.

15. The Commission notes further that the issues raised in the various petitions against the Minor Review and Minimum Remittance Order are totally distinct from the infractions which gave rise to the issuance of the notice of intention to cancel distribution licences (“Cancellation Notice”) to the 8 DisCos on 8 October 2019.

16. The Cancellation Notice remains extant and the 8 DisCos are still required to **SHOW CAUSE in writing within 60 days from the date of receipt** thereof as to why their licences should not be cancelled in accordance with section 74 of EPSRA.

17. The 8 recipients of the Cancellation Notice who filed petitions against the Minor Review and Minimum Remittance Order have acknowledged that their petitions did not constitute their written response to the Cancellation Notice.


18. The deadline for the submission of written response showing cause against the Cancellation Notice by the 8 DisCos is **7 December 2019**.

19. The Commission expects the 8 DisCos to address the issue of "*optimal utilisation of resources*" and "*efficient operation*" imposed by sections 32 and 76 of EPSRA respectively in their written responses to the Cancellation Notice.

20. The Commission also expects the 8 DisCos to address the principles "*prudence*" and "*used and useful*" as further justification of optimal utilisation of resources for efficient operations in the areas listed below in their written response to the Cancellation Notice -

- a. Customer enumeration progress to date.
- b. General procurement practices
- c. Related party transactions
- d. Directors' fees and expenses
- e. Technical partners from takeover to date
- f. Material and contingent liabilities
- g. Utilisation of intervention funds received from the Federal Government.
- h. Efforts to date to address customer complaints and improvement of overall willingness to pay for services.
- i. Efforts to date at addressing overall quality of service.
- j. Analysis of capital and recurrent expenditure.
- k. Metering and billing of maximum demand customers.
- l. Metering and billing of MDAs
- m. Payments for technical and management fees.
- n. Purchase and utilisation of foreign exchange.
- o. Remittances on market obligations from date of takeover to date.

21. DisCos are the designated revenue collection agents for the entire value chain in NESI as they interface with end-use customers. The 8 DisCos have been unable to meet the minimum remittance thresholds specified in the Minor Review and Minimum Remittance Order and the Commission therefore requires that they provide the following information along with their written response to the Cancellation Notice -



- a. Monthly balances in their revenue accounts from date of takeover to date.
- b. Contracts with all revenue collection agents.
- c. Monthly remittances by all collection agents from date of appointment to date along with fees paid by the DisCo to the collection agents.
- d. Details of bilateral contracts and willing buyer/willing seller arrangements along with monthly revenue made from these arrangements.

22. The information in paragraph 21 above must be submitted individually under oath in depositions by each of the following officers of the 8 DisCos -

- a. Managing Director/CEOs
- b. Chief Operating Officer
- c. Finance Director/Chief Financial Officer
- d. General Counsel/Head of Legal
- e. Head of Compliance

23. The officers of the 8 DisCos are to be guided by the provisions of section 93 of EPSRA which provides that *"any person who, in any declaration required to be made under this Act, makes any statement which he knows to be false or does not have reasonable grounds to believe to be true commits an offence and is liable on conviction to a fine not exceeding one hundred thousand Naira or imprisonment for a period not exceeding six months or to both such fine and imprisonment"*, in making the depositions required in 22 above.

24. All financial submissions received from the 8 DisCos shall be forwarded to the Central Bank of Nigeria and Federal Inland Revenue Service for additional review.

25. The consideration of a DisCo's written response to the Cancellation Notice is a matter of significant interest to the general public and the Commission believes that the evaluation and decision making process must be fair and transparent to all stakeholders.

26. The Commission has resolved to consider all responses received in public hearings in accordance with section 24 of the Business Rules which provides that *"the Commission may hold a public hearing on any matter which it is empowered under the Act and which the Commission determines to be of significant interest to the general public"*.

27. The public hearings shall be chaired by a panel of 4 commissioners with the Vice Chairman serving as the Chairman of the panel.



28. The public hearings shall be conducted at the Commission's Hearing Room on the 4th Floor of the NERC Headquarters Building, Plot 1387 Cadastral Zone A00, Central Business District, Abuja.

29. The Commission shall assign a full day (9am - 5pm) for the consideration of each DisCo's response and the Managing Director/CEO of each DisCo shall be responsible for making the presentation and responding to questions raised by the panel.

30. A public notice of the hearing schedule shall be published in the newspapers upon expiration of the deadline.

Dated this 5th day of November 2019



Dafe C. Akpeneye
Commissioner

