



BEFORE THE NIGERIAN ELECTRICITY REGULATORY COMMISSION

IN THE MATTER OF A PETITION AGAINST THE GRANT OF AN INDEPENDENT ELECTRICITY DISTRIBUTION NETWORK LICENCE TO ASABA DISTRIBUTION LIMITED BY BENIN ELECTRICITY DISTRIBUTION PLC

TAKE NOTICE that the hearing scheduled for 19 January 2021 to consider the petition filed by Benin Electricity Distribution Plc ("BEDC") against Asaba Distribution Limited ("ADL") application for an independent electricity distribution network licence has been postponed indefinitely.

2. The hearing was meant to be conducted pursuant to section 70 (2) of the Electric Power Sector Reform Act ("EPSRA"), clause 11 of the NERC Application for Licences Regulations 2010 and section 17 of the Nigerian Electricity Regulatory Commission (Business Rules of the Commission) Regulations (Business Rules) 2006 and considered by a panel of 3 Commissioners.

3. The Commission was served court processes on 18 January 2021 of a suit (FHC/ABJ/CS/36/2021) that was filed at the Federal High Court by BEDC on 15 January 2021 against the Commission and ADL.

4. BEDC avers in the suit that it *"has the capacity to and has in fact been supplying adequate and sufficient electricity that meets the demand of the Delta State Government for whom the IEDN license is purported as being procured for within the BEDC electricity distribution area, including the designated area"*.

5. BEDC has sought the following reliefs in the suit –

- a. A declaration that the conditions stipulated in Regulation 8(1)(a) and (b) of the Independent Electricity Distribution Networks ("IEDN Regulations") 2012 are conditions precedent for the issuance of an IEDN licence by the Commission.
- b. A declaration that ADL is not entitled to the grant of an IEDN licence to operate anywhere within the BEDC electricity distribution area.

- c. An order of perpetual injunction restraining the Commission from granting ADL an IEDN licence to operate within the BEDC electricity distribution area.
- d. An order of perpetual injunction restraining ADL from distributing electric power in any guise or manner to the areas covered under BEDC's distribution licence, including but not limited to core areas of Asaba, Delta State, namely Summit Road, Anwai Road, Government House, Cabinet Road, New General Hospital Area, Okpanam Road and NTA Road.
- e. An order of perpetual injunction restraining ADL from approaching any of the customers of BEDC or from taking any steps or actions towards the supply of electricity to any of the customers of BEDC in the BEDC electricity distribution area.
- f. An order mandating ADL to forthwith, at its own cost and without any disturbance to BEDC's business or destruction of any of BEDC's equipment or structure, remove the parallel overhead distribution lines, underground cables, and every other structure(s) or fixture(s) constructed or installed within the BEDC electricity distribution area for the purpose of distributing electricity or carrying out any activity exclusive to a holder of an IEDN licence within the BEDC electricity distribution area.

6. Section 71(6) of EPSRA provides that *"unless expressly indicated in the licence, the grant of a licence shall not hinder or restrict the grant of a licence to another person for a like purpose and, in the absence of such an express indication, the licensee shall not claim any exclusivity, provided that the Commission may allow a licensed activity to be exclusive for all or part of the period of the licence, for a specific purpose, for a geographical area, or for some combination of the foregoing"*.

7. EPSRA recognises the public interest test as a critical factor for the consideration of all applications for licences and also provides administrative remedies that must be explored within the framework of the Act prior to seeking external redress.

8. The Commission acknowledges that the matter is now subject to judicial review and hereby notifies the general public that the hearing shall no longer hold as scheduled as the parties are now required to present their respective positions to the court in a manner that respects the independence of the judiciary

9. The Commission regrets any inconvenience this indefinite postponement may cause to the public.

Dated this 18th day of January 2021.

Management