



ORDER NO: NERC/2023/002

**BEFORE THE NIGERIAN ELECTRICITY REGULATORY COMMISSION
ORDER ON THE MANDATORY FILING OF ANNUAL OPERATING
EXPENDITURE, CAPITAL INVESTMENT PLANS AND OUTCOMES OF
PROCUREMENTS CONDUCTED BY THE TRANSMISSION COMPANY OF
NIGERIA PLC**

TITLE

1. This regulatory instrument may be cited as the **ORDER ON THE MANDATORY FILING OF ANNUAL OPEX, CAPITAL INVESTMENT PLANS AND OUTCOMES OF PROCUREMENTS CONDUCTED BY THE TRANSMISSION COMPANY OF NIGERIA PLC.**

COMMENCEMENT

2. This Order shall take effect from 1 July 2023 and may be amended or revoked by subsequent Orders issued by the Nigerian Electricity Regulatory Commission ("NERC" or the "Commission").

OBJECTIVES

3. This Order seeks to -
 - a. Ensure that capital investment projects undertaken in the Nigerian Electricity Supply Industry ("NESI") are fully aligned with the Performance Improvement Plan ("PIP") of the Transmission Company of Nigeria Plc ("TCN") and successor distribution licensees ("DisCos") with no stranded dependencies for providing service.
 - b. Ensure optimal allocation of limited resources available for capital expenditure in TCN's procurement processes in NESI in conformity with global best practices for regulated utilities.
 - c. Ensure optimal and prudent expenditure of the limited resources on operating expenditure by TCN.

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- d. Ensure prudence and value for money for all network development projects by TCN and DisCos.

CONTEXT

4. The Commission is statutorily mandated by section 32(1)(a) of the Electric Power Sector Reform Act ("EPSRA" or the "Act") *"to create, promote and preserve efficient industry and market structures, and to ensure the optimal utilisation of resources for the provision of electricity services"*.
5. Pursuant to section 32(1)(d) of the Act, the Commission is required *"to ensure that prices charged by licensees are fair to consumers and are sufficient to allow the licensees to finance their activities and to allow for reasonable earnings for efficient operations"*.
6. Section 76(2)(a) of the Act allows a licensee that operates efficiently to recover the full costs of its business activities, including a reasonable return on the capital invested in the business.
7. The Commission is statutorily mandated to monitor the operation of the electricity market and undertake such other activities that are necessary or convenient for the better carrying out of or giving effect to the objects of the Commission.
8. Section 63 of the Act mandates licensees to comply with the terms and conditions of their licences, regulations, codes and other requirements issued by the Commission from time to time.
9. Condition 5(1)(2)(3) of the transmission service provider licence issued to TCN by the Commission, places an obligation on the licensee to file its transmission revenue requirement data as well as the system investment plan for every financial year with NERC for approval. Where there is a deviation in investments from those already approved by the Commission arising from unforeseen circumstances, it is mandatory for the licensee to file an application for Commission's approval of the new investments. The application shall be filed in a form/format that provides sufficient justification for the changes.

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OPERATING EXPENSES & CAPITAL INVESTMENT PLAN AND PROCUREMENT OUTCOMES

10. The reporting requirement and review process provided herein are issued with the objective of ensuring that TCN complies with the regulatory principle of optimising the utilisation of the limited funding available for operations (Opex and Capex) with beneficial impact on the market and end-use customers.

The Commission hereby orders as follows -

- A. TCN shall file a proposed annual investment plan and revenue requirements/budgets/estimates with the Commission by 31 October of the preceding financial year for review and approval. Where the approved capital investment plan is amended by the National Assembly and passed in the Appropriation Act, the amended plan shall be filed with the Commission within 30 (thirty) days of presidential ascent to the Appropriation Act.
- B. The revenue requirement shall clearly indicate the proposed operating expenses under various headings with sufficient justification. Where unforeseen circumstances result in the amendment of an approved spending plan, the proposed amendment shall be filed with the Commission for approval.
- C. All capital expenditure by TCN in excess of a threshold of NGN5,000,000,000 (Five Billion Naira) or a revision of existing contract sum in excess of 15% shall be subjected to prior review by the Commission having due regard to the following -
- (i) The condition in TCN's licence mandating the filing of annual budget/estimate of investments and revenue requirements with the Commission to ensure prudence, transparency, and value-for-money in the yearly expenditures; and ensure adequate provision for cost recovery pursuant to section 96(2)(a) of EPSRA.
 - (ii) Consistency with TCN's PIP approved by the Commission, alignment with the investment plan of DisCos and dependencies with other intervention projects.
 - (iii) Availability of funds to commence and deliver projects within contracted delivery periods except for factors beyond the reasonable control of the parties. TCN shall be required to provide evidence of funding beyond the initial advance payment to the contractor.

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- (iv) A review for variation of contract sums shall be filed along with detailed analysis of factors (i.e., extra works, standby costs, etc) and macroeconomic indices that have necessitated a cost review on the project.
 - (v) Where the request for the revision of a contract sum is on a legacy project ongoing for more than 5 (five) years, the submission shall include a technical justification indicating the exact quantum of energy and location(s) of DisCo(s) that will enjoy improved service upon the completion of the project.
 - (vi) Where the technical competence of a contractor is not evident from submissions filed by TCN, the Commission may request for additional information including but not limited to, verifiable evidence of completion of similar projects.
 - (vii) All capital expenditure allowance not expended in a budget year shall be clawed back during the year-end minor review.
11. Compliance with the regulatory filing under the provisions of this Order shall guide the Commission in the "used and useful" test of capital investments and cost recovery of completed projects in the regulatory asset base of TCN.

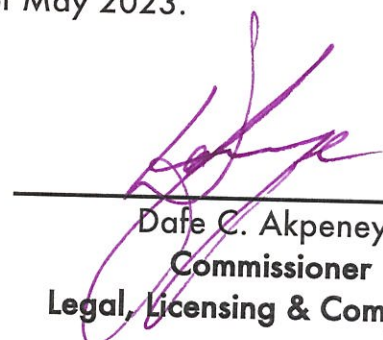
EFFECTIVE DATE

12. This Order shall be effective from 1st July 2023

Dated this 24th day of May 2023.



Sanusi Garba
Chairman



Dafe C. Akpeneye
Commissioner
Legal, Licensing & Compliance