



ORDER NO: NERC/2024/45

**BEFORE THE NIGERIAN ELECTRICITY REGULATORY COMMISSION
ORDER ON THE ESTABLISHMENT OF THE INDEPENDENT SYSTEM OPERATOR
FOR THE NIGERIAN ELECTRICITY SUPPLY INDUSTRY**

Title

1. This regulatory instrument may be cited as the *Order on the Establishment of the Independent System Operator*.

Commencement

2. This Order shall take effect from 1 May 2024 and shall remain in force until amended or revoked by a subsequent Order issued by the Nigerian Electricity Regulatory Commission ("NERC" or the "Commission").

Background

3. The Transmission Company of Nigeria Plc ("TCN") as a successor company was issued 2 (two) separate licences to operate as the transmission service provider and system operator for the national grid system by the Commission.
4. The repealed Electric Power Sector Reform Act 2005 ("EPSRA" or the "Repealed Act") envisaged that TCN would transfer the function of system operation for the national grid to an Independent System Operator ("ISO").
5. The Electricity Act (the "EA" or "Act") 2023 came into effect on 9 June 2023 and this piece of legislation went beyond the Repealed Act by providing clearer guidelines for the incorporation, governance structure and licensing of the ISO, as well as the transfer of the assets and liabilities of the system operations portion of TCN to the ISO.
6. Section 15 of the EA provides as follows on the incorporation and licensing of the ISO –
 - a. *The Transmission Company of Nigeria Plc (hereinafter referred to as "TCN"), being the successor company issued the license that covers*

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Transmission Service Provider, market and system operation functions under the repealed Act shall in accordance with the terms of its license and within such stage or period of the market as the Commission may in a written directive specify, take such steps as are necessary under the Companies and Allied Matters Act, 2020 to incorporate an entity, the Independent System Operator which may be a company limited by shares or have such ownership and governance structure as the Commission may specify and the entity once incorporated pursuant to the provisions of this section shall immediately apply to the Commission and be licensed by the Commission as an Independent System Operator to carry out such market and system operation functions as stipulated under this Act its license and such terms and conditions as the Commission may direct.”

- b. Upon incorporation and issuance of an ISO license by the Commission, pursuant to subsection (1) of this section –
- i. *the TCN shall transfer to the Independent System Operator (hereinafter called “the “ISO” in this Act), all the assets and liabilities held by the Transmission Company of Nigeria Plc pertaining to its market and system operation functions and the Independent System Operator shall be subject to such powers and duties of an independent System Operator under the terms of its license and the provisions of this Act in relation to market and system operation;*
 - ii. *the TCN shall retain its Transmission Service Provider license and shall be responsible for transmission assets and liabilities and perform such functions as are relevant to the development and maintenance of the power transmission infrastructure in accordance with the terms of its license as may be issued by the Commission and the provisions of this Act.*
 - iii. *the Commission shall, through an order put in place a clear plan and timeline for the transition process in subsections (1) and (2) of this section above to avoid disruption of industry operations.*

7. Section 16(1) of the EA provides –

At the time of incorporation, the subscribers to the Incorporation Documents of the ISO shall be as may be directed by the Commission in consultation with relevant stakeholders.

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8. In order to achieve the objective of the creation of the ISO, the Commission held several stakeholder consultations and public hearings on the determination of the following -
 - a. The readiness of the market for the separation of the System Operator ("SO") and Market Operator ("MO") from TCN.
 - b. Appropriate legal entity/structure for the ISO.
 - c. Ownership and governance structure for the ISO.
9. The outcome of the consultations and hearings indicates that the Nigerian Electricity Supply Industry requires an ISO to provide confidence to market participants.

Objective

10. This Order seeks to -
 - a. Mandate TCN to comply with the provisions of the EA on the incorporation of the ISO.
 - b. Provide clear directives to TCN to incorporate the ISO.
 - c. Provide TCN with the procedure for the transfer of the assets and liabilities of the market and system operations portion of the business that currently vests in TCN to the ISO.

THE COMMISSION HEREBY ORDERS as follows -

- A. BPE shall incorporate, no later than 31 May 2024, a private company limited by shares under the Companies and Allied Matters Act to carry out the market and system operation functions stipulated in the EA and the terms and conditions of the system operation licence issued to TCN.
 - i. The name of the company shall, subject to availability at Corporate Affairs Commission, be the *Nigerian Independent System Operator of Nigeria Limited* ("NISO").
 - ii. The object clause of the Memorandum of Association of the NISO as provided in section 16(2) of EA shall be as follows -
 - a. to hold and manage all assets and liabilities pertaining to market and system operation on behalf of market participants and

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consumer groups or such stakeholders as the Commission may specify;

- b. to carry out all market and system operation-related contractual rights and obligations novated to it by the Transmission Company of Nigeria;
- c. to negotiate and enter into contract for the procurement of ancillary services with independent power producers, successor generation licensees, etc and generally carryout market and system operations functions as specified under the EA and the terms of its license in the interest of market participants and system users;
- d. to carry out all market and system operation-related contractual rights and obligations novated to it by the Transmission Company of Nigeria;
- e. the income and property transferred to it by the TCN or whensoever derived shall be applied solely towards the promotion of its objects as set forth in its incorporation Documents and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, or bonus otherwise howsoever, by way of profit to the subscribers:

provided that nothing herein contained shall prevent the payment in good faith of remuneration to any contractor or staff of the company in return for any services rendered to the Company.

- iii. NISO's initial subscribers shall be -
 - a. Bureau of Public Enterprises ("BPE")
 - b. Ministry of Finance Incorporated ("MOFI")
 - v. The final shareholding structure of NISO shall be determined after further consultations with government, market participant and industry stakeholders.
- B. TCN shall conclude the identification and mapping of the assets and liabilities for the system/market operation portion of its business and forward same to the Commission and the BPE no later than 30 June 2024.

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C. BPE shall, through the National Council on Privatisation, conclude the transfer of all the market and system operation assets and liabilities held by TCN to NISO ("Transfer") as follows -

- i. All bonds, hypothecations, securities, deeds, contracts, instruments, documents and working arrangements pertaining to the market and system operation that subsisted immediately before or on the completion date of the transfer ("Transfer Date" or "Completion Date") to which TCN was a party shall, on and after that date, be as fully effective and enforceable against or in favour of NISO as if, instead of TCN, NISO had been named therein.
- ii. Any cause of action or proceeding pertaining to the market and system operation of TCN which existed or was pending by or against TCN that subsisted immediately before or on the Transfer Date shall be enforced or continued, as the case may be, on and after that date by or against NISO in the same way that it might have been enforced or continued by or against TCN had this Order not been passed.
- iii. No action or other proceeding shall be commenced against NISO with respect to any employee, asset, liability, right or obligation that has been transferred to NISO if, had there been no transfer, the time for commencing the action or other proceeding would have expired.
- iii. Every person employed by TCN to perform market and system operations immediately before the Transfer Date shall be transferred to the service of NISO on terms not less favourable than those enjoyed by him/her immediately prior to his/her transfer. The service rendered by such employee transferred from TCN shall be deemed service with NISO to determine employment-related entitlements as specified in relevant laws of employment in Nigeria.
- iv. Until such time as conditions of service is drawn up by NISO -
 - a. the terms and conditions of service applicable to employees of TCN shall continue to apply to every person transferred to the NISO as if every such person were still in the service of the TCN; and
 - b. NISO shall continue to contribute towards a pension scheme to which TCN was contributing in respect of persons in the employment of the TCN, prior to the Transfer Date.

D. This Transfer shall not be deemed to:



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- a. constitute a breach, termination, repudiation or frustration of any contract, including a contract of employment or insurance;
 - b. constitute a breach of any Act, regulation or by-law; or
 - c. constitute any event of default or force majeure;
 - d. give rise to a breach, termination, repudiation or frustration of any licence, permit or other right;
 - e. give rise to any right to terminate or repudiate a contract, licence, permit or other right; and
 - f. give rise to any estoppels.
- E. This Transfer shall not create any new cause of action in favour of -
- a. a holder of a debt instrument that TCN issued before the Transfer Date;
 - b. a party to a contract with TCN that was entered into before the Transfer Date.
- F. This Transfer shall be concluded no later than 31 August 2024 herein referred as "Completion Date".
- G. TCN shall relinquish its system operation licence to the Commission within 7 days of the Completion Date.

Dated this 30th day of April 2024



Sanusi Garba
Chairman



Musiliu Oseni
Vice Chairman