ORDER NO: NERC/2024/058

BEFORE THE NIGERIAN ELECTRICITY REGULATORY COMMISSION ORDER ON THE TRANSITION TO BILATERAL TRADING IN THE NIGERIAN ELECTRICITY SUPPLY INDUSTRY

Title

1. This regulatory instrument may be cited as the ***Order on the Transition to Bilateral Trading in the Nigerian Electricity Supply Industry ("NESI")***.

Commencement

2. This Order shall take effect from 25 July 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. Following the unbundling of the defunct Power Holding Company of Nigeria Plc. ("PHCN") and in preparation for the privatisation of the successor Generation Companies ("GenCos") and Distribution Companies ("DisCos"), the Electric Power Sector Reform Act ("EPSRA" or the "Repealed Act") provided for the establishment of a bulk trading company with the object of serving as an intermediary between the GenCos and DisCos for the procurement of energy and capacity until such a time when the latter attains the required creditworthiness for execution of Power Purchase Agreements ("PPAs"). This was in line with section 25 of EPSRA.

4. The Nigerian Bulk Electricity Trading Company Plc. ("NBET") was incorporated on 29 July 2010 by the Federal Government of Nigeria to act as a credible and creditworthy off-taker and to be provided with credit support and/or capitalisation by the Federal Government thus enabling the company guarantee payments to GenCos while facilitating bankable project financed independent power projects.

5. NBET was subsequently licensed as a bulk trader by the Commission on 23 August 2011 with a key mandate of procuring and sale of bulk electricity and ancillary services to DisCos, pursuant to sections 25(a) and 68(2) of EPSRA and parts 5 and

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7 of the Market Rules for Transitional and Medium-Term Stages of NESI ("Market Rules"). The licence issued to NBET had a tenure of 10 (ten) years and subject to renewal as may be determined by the Commission.

6. The energy and capacity contracted by NBET is vested onto DisCos based on the guaranteed share of capacity as provided in the executed Vesting Contract ("VC") between NBET and the DisCos.

7. Following stakeholder engagements on NBET's continued role in NESI, the Commission renewed the initial 10-year licence issued to NBET upon expiration in August 2021 but for a term of 3 years, noting that the continued role of the NBET in the market has been a disincentive for the transition to bilateral contracting between DisCos and GenCos thus exposing the FGN to the risk of revenue shortfalls beyond tariff support (i.e. subsidies).

8. The Electricity Act 2023 ("EA" or the "Act") mandates the Commission to steer the development of NESI from its current transitional electricity market stage to such stages of the market provided in the Market Rules or amendment to such rules as the Commission may approve. Section 7(2) of the EA provides that:

> *For the purpose of subsection (1) and preparatory to the initiation of medium-term and long-term Electricity Market stages as recognised under this Act, the Commission shall by its directive and within such period as it may specify, direct NBET Plc, the trading licensee holding the licence for the bulk procurement and bulk sale of electricity and ancillary services, to, in accordance with its licence, cease to enter into contracts for the purchase and resale of electricity and ancillary services and novate its existing contractual rights and obligations to other licensees.*

Trends in the Wholesale Energy Trading Segment of NESI

9. The Commission has, since 2022, issued trading licences to 10 (ten) private companies that have indicated interest in trading electricity bilaterally with DisCos and eligible customers. The interest in electricity trading so far indicates that there is significant potential in the wholesale trade of electricity outside the NBET single buyer pool. The Commission has further received requests for regulatory approval from some of the aspirational DisCos for the purchase of electricity from parties other than NBET, i.e. directly from the GenCos or through other trading licensees.

10. On the supply side, the Commission has further received notifications from several GenCos signalling their intention to exercise the partial or full exit rights contained in their PPAs with NBET with a view to contracting for the supply of electricity directly

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to DisCos, other bulk traders and eligible customers, in furtherance of the provisions of the Act. The key incentive of GenCos contracting bilaterally for energy and capacity with DisCos is to secure satisfactory off-take commitments backed by some form of payment guarantees, thus enabling more predictability in generation and gas availability.

Administration of the PPAs with Omotosho Power Plc and Olorunsogo Power Plc

11. Pursuant to the terms of the PPA executed between Pacific Energy Ltd and NBET in respect of the Olorunsogo and the Omotosho power plants, NBET has contracted a capacity for 304MW for each of the plants. The PPA further provides for the payment of a capacity charge of 186MW representing minimum guaranteed gas availability for the plants.

12. The operational records of the 2 power plants owned by Pacific Energy Ltd in the year 2023 indicates an average availability of 106.6MW, a significant mismatch with the capacity payment of 186MW for each of the plants with attribution to gas shortage representing the most significant constraint. In the absence of a bank guarantee to securitise the payment obligation under the PPA, an addendum to the PPA was executed by NBET waiving the requirement for a firm gas supply agreement ("GSA") by Pacific Energy Ltd.

13. In pursuit of securing best value for the electricity market, the Commission notes the imperative for eliminating payments for undelivered capacity for all "take and pay" contracts hence the earlier order for the priority dispatch of APWAL and the hydropower GenCos.

Current State of Energy Trading with NBET

14. While the Power Sector Recovery Program ("PSRP") has made significant progress towards improving the sustainability of the NESI, the challenge of inadequate revenues to cover the funding requirement of the value chain has continued to plague NESI since privatisation in 2013. The key factors that largely contributed to the liquidity challenge include non-cost reflective end-user customer tariffs, untimely disbursement of subsidy and poor billing and collection by DisCos thus incurring market shortfalls. Without capitalisation by the FGN, NBET has so far relied on the ad-hoc payments from budgetary appropriation, PSRP funding (including the World Bank) and the balance sheet of the Federal Government hence its inability to attract new IPPs under "project finance" model.

15. The industry best practice for bulk energy trading involves the execution of fully effective PPAs backed by effective fuel supply agreements ("FSAs") and bank guarantees to cover payment obligations. With fully effective "back-to-back"

contracts backstopped by payment guarantees, the outcome is an electricity market with certainty in performance obligations as it relates generation capacity, gas supply, energy off-take to the last mile and revenues to deliver on operational expenses, including necessary routine maintenance required to keep generating units functional.

16. A review of the status of the PPAs executed between GenCos and NBET indicates that, as at June 2024, only 8 (29%) of the 28 GenCos trading with NBET have fully effective contracts backed by some form of payment guarantees. The other 20 grid connected GenCos trade with NBET on a "Take and Pay" basis but without payment guarantees thus creating significant operational challenges due to continued growth in debt for energy supplied to the grid. In 2024/Q1, only 23.25% of the gross installed capacity of GenCos on best endeavour contracts was available for the purpose of generating electricity during the quarter.

17. The high incidence of plant unavailability has exacerbated the mismatch between the demand and supply on the national grid thereby increasing the technical fragility of the grid making it susceptible to incidences of system collapse. The curtailed generation availability has also led to increased customer dissatisfaction with the service provision and payment apathy to their respective public utilities.

Objective

18. This Order seeks to:

a. Steer the electricity market towards bilateral contracting for energy and capacity between generation and/or trading licensees with distribution licensees thus limiting the fiscal exposure of the Federal Government to market risks.

b. Foster a more competitive market structure as envisioned by the EA by repositioning NBET from its current role as the sole bulk electricity trader in NESI.

c. Provide an equal opportunity for all hydro GenCos and thermal GenCos with existing "take-and-pay" contracts with NBET to reduce their contracted capacities by trading directly with DisCos on a bilateral basis.

d. Transition the contractual framework for bulk energy trading in the NESI to "take-or-pay" contracts thereby fostering increased certainty and market discipline among market participants.

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e. Allow DisCos to explore opportunities for increased optimisation/firming up of their wholesale energy off-take, and a reduction of their vesting contract capacity with NBET for "take-and-pay" PPAs, thus providing certainty of availability of generation and the improvement in quality of supply to end-users.

19. **THE COMMISSION HEREBY ORDERS as follows:**

A. NBET shall forthwith cease to enter into new contracts for the purchase and resale of electricity and ancillary services in NESI. ***Any contract executed by NBET in violation of this Order shall not be approved by the Commission and shall be treated as an infraction that is subject to regulatory sanction***.

B. NBET shall, in the interim, continue to administer the fully effective contracts with the 5 (five) GenCos listed in Table 1 based on the minimum "take or pay" capacities contained in their respective PPAs or the average available capacity of the plants in 2023 as provided in Table 1 ("NBET Firm Capacity"). The capacity from the 5 plants shall be vested to DisCos based on the guaranteed share of capacity contained in their respective vesting contracts.

Table 1: Contracted/Vested Capacities of GenCos with fully effective contracts.

	GenCo	Contracted Capacity (MW)	Capacity to be Vested (MW)	Justification
	Azura Power West Africa Ltd. ("APWAL")	450	416	Being the minimum "take or pay" capacity as contained in the respective PPAs
	Omotosho Power Plc.	304	186	
	Olorunsogo Power Plc.	304	186	
	Nigerian Agip Oil. Company Ltd.	480	311	Being the average available capacity of the respective plants in the year 2023
	The Shell Petroleum Development Company of Nigeria Ltd.	650	314	
	Total	**2,188**	**1,357**	

C. By virtue of the capacities contained in Table 1, the System Operator ("SO") is hereby directed to dispatch APWAL at a baseload equivalent to its minimum "take-or-pay" capacity of 360MW. Where other on-grid GenCos are unable to meet their contracted obligations, the SO may issue dispatch instructions to APWAL for increased generation to serve as the supplier of last resort for the affected GenCo(s). The affected GenCo(s) shall be invoiced by NBET for the energy delivered on their behalf by the APWAL.

D. All other power plants with "take and pay" PPAs or interim energy sales agreements with NBET are hereby granted 60 days from the commencement date of this Order to negotiate and contract with DisCos on bilateral agreement basis the capacity currently with NBET ("Contracted Capacity").

E. The Commission's review of GenCo performance in Q1/2024 for power plants listed in Schedule 1 of this Order indicates an average plant availability factor of 23.25%. In view of the significant difference between contracted capacity with NBET and historical available generation, the contract capacity for the GenCos shall be as provided in Schedule 1 of this Order.

F. The GenCos listed in Schedule 1 of this Order shall no later than 30 September 2024 notify NBET of the capacities that have been traded bilaterally with DisCos and/or eligible customers. The GenCos under the schedule shall further seek the approval of the Commission for the bilateral transaction. Any residual capacity that is not traded with DisCos ("Residual Capacity") shall be traded with NBET on an interim agreement basis maintaining the same commercial terms contained in the current contract. The gross residual capacity from all the GenCos shall make up the pool of energy to be traded through NBET on a take-and-pay basis ("NBET interim pool").

G. The hydropower GenCos shall equitably make available their current contracted capacity with NBET to DisCos apportioned based on the shared capacity as contained in the vesting contracts, provided that the net capacity being traded (MWh/h) is not less than the average capacity supplied to the DisCo by the hydropower GenCo in 2023.

H. The maximum capacity a DisCo can trade in the bilateral market ("bilaterally tradable energy" or "BTE") shall be the difference between its energy offtake as contained in the July 2024 MYTO Order and its share of the "NBET Firm Capacity" in Table 2.

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Table 2: DisCos Capacity based on vesting contract

DisCo	MYTO Allocation (MW) [A]	NBET Firm Capacity (MW) [B]	Bilaterally tradeable energy - "BTE" (MW) [A-B]
Abuja	611	162	449
Benin	325	127	198
Eko	513	155	358
Enugu	310	127	183
Ibadan	478	184	294
Ikeja	603	212	391
Jos	225	78	147
Kaduna	258	113	145
Kano	268	113	155
PH	283	92	191
Yola	113	50	63
Nigeria	**3,987**	**1,413**	**2,574**

I. Where the total capacity contracted from the firm capacity of NBET and bilateral contracts is lower than the committed capacity in the July 2024 MYTO Order, the deficit capacity shall be fulfilled from the NBET interim pool on "take and pay" basis.

J. Energy contracted bilaterally and NBET Firm Capacity shall be prioritised by the SO over residual "take and pay" capacity with NBET in the merit order dispatch of generation plants.

K. The SO shall dispatch GenCos in the NBET interim pool in response to a demand of DisCos and the electricity market.

L. Within 3 (three) months of the commencement of bilateral contracting, all GenCos capacity under bilateral contracts shall be supported by firm GSAs on a "take or pay" basis with adequate provision for liquidated damages ("LDs") for supplier defaults to sustain the bilateral market.

M. With respect to the administration of the PPAs with Omotosho Power Plc and Olorunsogo Power Plc, the following shall apply:

(i) In the absence of a bank guarantee supporting the payment obligation of NBET under its PPA with Pacific Energy Ltd, the payment waterfall shall rank the payment obligation to Pacific Energy Ltd *pari passu* with

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the bilaterally contracted energy by DisCos as a proxy for payment assurance.

(ii) The SO shall ensure that the Olorunsogo and Omotosho power plants operated by Pacific Energy Ltd are dispatched no lower than their respective "take or pay" capacity of 186MW.

(iii) Pacific Energy Ltd shall, within 6 weeks of this Order, file with the Commission evidence of securing a firm "take or pay" GSA covering its capacity delivery obligation of 186MW for each power plant under its PPA with NBET.

(iv) Consequentially and effective from 1 October 2024, Pacific Energy Ltd shall take responsibility for the combined mechanical and gas availability of the plants i.e. the availability for both plants shall be determined on the basis of their combined mechanical and gas availability. In line with international best practices, failure of either plant to achieve an average availability of 186MWh/h over a calendar month shall result in the payment of liquidated damages to the market on the terms contained in the respective PPAs.

N. For energy invoicing and settlement, the following shall apply:

(i) In pursuit of the objective of steering the market to bilateral contracts and the current central role of NBET in managing the funding of tariff shortfall (subsidies), it is expected that the firm contracts of NBET would largely be funded through the PRSP Financing Plan. Accordingly, the disbursement waterfall of the DisCo revenue collections for energy/capacity payments shall rank as follows:

a. Bilaterally traded energy between DisCos and GenCos.

b. Firm contracts of the NBET with 5 GenCos.

c. NBET pool energy under interim "take & pay" framework PPAs.

(ii) In ensuring market discipline by all parties, the firm bilaterally contracted capacity by all DisCos shall be fully aligned with the allowed recoverable generation cost from the end-user tariffs of the DisCo thus mitigating the risk of payment default.

(iii) The monthly tariff reviews undertaken by the Commission shall continue to consider and accommodate changes in macroeconomic indices to ensure that DisCo's allowed tariff is sufficient to meet its contracted BTE costs.

(iv) Where the allowed tariff of a DisCo provides revenues for the generation component of its revenue requirement in excess of its BTE, the Commission shall provide regulatory direction on the amount payable to NBET under its contract with the DisCos.

(v) Where the FGN tariff reform policies allow for more revenues from the market, DisCos shall be directed by the Commission to bilaterally contract for additional capacity on firm basis from the NBET Interim pool.

(vi) The Commission and the NBET shall closely work together with all relevant government MDAs to ensure the provision of a credible Financing Plan in support of any tariff policy approved by the FGN.

Dated this 25th day of July 2024

Sanusi Garba
Chairman

Dafe C. Akpeneye
Commissioner
Legal, Licensing & Compliance

Schedule 1: GenCo capacities available for offtake

	GenCos	Plant	Contracted Capacity (MW)	Peak monthly average capacity (MW) in 2023
1.	Egbin Power Plc.	Egbin_1	1100	800.88
2.	Sapele Power Plc	Sapele Steam_1	1020	134.53
3.	Transcorp Power Limited	Delta_1	900	495.86
4.	Afam Power Plc.	Afam_1	776	78.93
5.	Geregu Power Plc	Geregu_1	414	262.01
6.	Geregu Generation Company Limited	Geregu_2	434	125.00
7.	Ogorode Generation Co. Ltd	Sapele_2	450	136.71
8.	Alaoji Generation Co. Ltd	Alaoji_1	960	86.61
9.	Olorunsogo Generation Co. Ltd	Olorunsogo_2	675	77.90
10.	Omotosho Generation Co. Ltd	Omotosho _2	500	159.63
11.	Benin Generation Company Limited	Ihovbor_1	450	78.19
12.	Calabar Generation Company Limited	Odukpani_1	563	372.90
13.	Gbarain Generation Company Limited	Gbarain_1	225	0.00
14.	Ibom Power Company Limited	Ibom Power_1	190	169.77
15.	First Independent Power Company Limited	Omoku_1	150	56.13
16.	First Independent Power Company Limited	Trans Amadi_1	130	39.97
17.	First Independent Power Company Limited	Rivers_1	360	141.40
	Total		**9,297**	**3,216.41**

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