



ORDER NO: NERC/2024/095

BEFORE THE NIGERIAN ELECTRICITY REGULATORY COMMISSION
ORDER ON PERFORMANCE MONITORING FRAMEWORK FOR PORT
HARCOURT ELECTRICITY DISTRIBUTION PLC

TITLE


1. This regulatory instrument may be cited as the ORDER ON PERFORMANCE MONITORING FRAMEWORK FOR PORT HARCOURT ELECTRICITY DISTRIBUTION PLC ("PHED") 2024.

COMMENCEMENT

2. This Order shall take effect from 08 July 2024 and shall remain in effect until it is amended or revoked by the Nigerian Electricity Regulatory Commission ("NERC" or the "Commission").

BACKGROUND

3. On 20 December 2021, the Bureau of Public Enterprise ("BPE") vide the letter Ref. No. BPE/PTMD/NERC/20/12/M.1, notified the Commission of the expiration of the term of the Performance Agreement ("PA") executed between BPE and the Distribution Companies ("DisCos") on 31 December 2021. Consequentially, the Commission was required to assume the sole responsibility for setting and monitoring DisCos' performance targets with effect from 01 January 2022.
4. Section 34(1)(a) of the Electricity Act ("EA") provides that one of the principal objects of the Commission is to *"create, promote and preserve efficient industry and market structures and to ensure optimal utilisation of resources for the provision of electricity service"*.
5. Based on the above, on 01 October 2022, the Commission issued the Order No. NERC/325/2022 on Performance Monitoring Framework for Port Harcourt Electricity Distribution Company plc ("PHED" or "the Utility")

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- providing seven (7) Key Performance Indicators ("KPIs") for assessing the performance of the top management of PHED over the period of 01 October 2022 to 30 September 2023.
6. It is noteworthy that Order No. NERC/325/2022 provided a performance monitoring framework for critical operational activities to ensure that PHED improved its operational efficiency and guaranteeing its long-term financial sustainability and the following primary objectives:
 - a. *Ensure that PHED maintains market discipline and operate in compliance with the industry targets.*
 - b. *Ensure improved reliability and quality of supply in accordance with PHED's commitment in the Performance Improvement Plan ("PIP").*
 - c. *Lay the foundation for long term sustainability of PHED.*
 - d. *Hold the Board and management of PHED accountable for meeting operational targets specified herein.*
 7. During the effective period of Order No. NERC/325/2022, the Commission undertook periodic evaluation of the performance of PHED vis-à-vis the set targets and regulatory interventions were taken in line with the provisions of the Order and extant rules of the Commission. A detailed performance report was further shared with the Board of PHED who remain responsible/accountable for managerial performance and setting the overall strategic direction and targets for PHED.
 8. The Commission notes that PHED's inability to fully comply with all the KPIs contained in the Order No. NERC/325/2022 has led to the failure of PHED to meet its operational obligations, widespread customer dissatisfaction, undermined its ability to uphold market discipline and imperiled the long-term financial sustainability of the utility.
 9. Upon the expiration of the Order No. NERC/325/2022, and to reflect the latest developments in the expected evolution of the Nigeria Electricity Supply Industry ("NESI"), it has become imperative for the Commission to develop an updated performance monitoring framework along with a revised list of KPIs against which the management of PHED shall be measured. With the objective of driving operational and financial excellence, the revised KPIs are also focused on PHED's compliance with key regulatory actions of the Commission.

OBJECTIVES

10. This Order seeks to –
 - a. Hold the top management of PHED accountable for the utility's compliance with reporting requirements and implementation of directives of the Commission in line with the terms and conditions of the utility's licence.

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- b. Drive increased operational performance from PHED thereby improving energy delivery to customers under the PHED franchise area.
- c. Drive PHED towards achieving customer-centric operations and enhanced efficiency, which will consequentially boost the satisfaction of customers under the PHED franchise area.
- d. Reinforce market discipline and ensure that PHED's commercial performance sets it on the path of long-term financial sustainability.
- e. Hold the top management of PHED accountable for meeting all targets specified herein.

11. The key performance indicators as measured by the indices defined in Table 2 shall be as follows:

Table 2: Definition of Indices

Index	Definition
Energy Off-take Relative to PCC	Measures the proportion of energy PHED delivered to its customers relative to the total energy available and nominated for distribution by PHED.
Revenue Recovery Rate	Measures the ratio between the amount of revenue realised by PHED for each unit of energy consumed relative to the amount it is allowed to recover per unit based on the extant tariff order.
Compliance with Reporting of USoA	Measures the timeliness, accuracy and completeness of PHED's USoA submissions to the Commission pursuant to extant rules/regulations.
Compliance with API Feeder Streaming	Evaluates the ratio between the actual number of streams and the expected number of streams from PHED's 11kV and 33kV feeders over a given period via the API system as prescribed by the Commission.
Compliance with the Order on Capping of Estimated Bills	Measures PHED's compliance with the periodic capping orders issued by the Commission both at an individual level (monthly energy billed to each customer) and a gross level (total energy billed to all unmetered customers via estimation).
Compliance with the Implementation of Forum Decisions	Measures the rate and completeness with which PHED implements the ruling of forum decisions.
Resolution of Complaints received through the NERC Contact Centre and NERC HQ	Measures the rate with which PHED resolves customer complaints within the customer service standards provided in the Customer Protection Regulation 2023 ("CPR").

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KEY PERFORMANCE INDICATORS

12. The Commission hereby orders as follows:

- a. The performance of PHED’s management team shall be assessed with the following KPIs (full definition of each KPI is contained in Table 2):
 - i. Energy off-take relative to Partial Contracted Capacity (“PCC”)
 - ii. Revenue recovery rate
 - iii. Compliance with reporting of Uniform System of Accounts (“USoA”)
 - iv. Compliance with API feeder streaming
 - v. Compliance with the Order on capping of estimated bills
 - vi. Compliance with the implementation of forum decisions
 - vii. Compliance with service standards for the resolution of complaints received through the NERC contact centre and NERC HQ
- b. The KPIs specified herein shall, with effect from 08 July 2024, be included in the basis for managerial performance measurement and may be amended or revoked by subsequent Orders issued by the Commission.
- c. The Commission may issue updated targets, attainment trajectories and review periodicity for any of the KPIs, having regard to the evolution of the wider NESI and overarching policy environment.
- d. The PHED’s management team shall be held accountable for achieving the KPIs specified in Table 3 and their performance shall be assessed periodically based on the review cycle for each KPI.
- e. Where PHED fails to achieve any target on a consecutive basis, the utility and its top management shall be liable for the consequential regulatory intervention specified in this Order.

Table 3: KPI Targets for PHED

KPI Targets for PHED Effective 08 July 2024			
i. Energy Offtake (Monthly) Target			
Baseline: Average (October – December 2023)			Minimum Monthly Target effective 08 July 2024
Avail. Nomination (MW)	Energy Offtake (MWh/h)	% of Energy Offtake to PCC	% of Energy Off-take Relative to PCC
273.20	256.81	94.00%	100.00%
ii. Revenue Recovery (Quarterly) Target			

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KPI Targets for PHED Effective 08 July 2024						
Baseline: Average (October – December 2023)			Minimum Recovery Targets			
Allowed Tariff (₹/KWh)	Revenue Recovered (₹/KWh)	Recovery Rate (%)	Q3/2024	Q4/2024	Q1/2025	Q2/2025
61.40	34.32	55.90%	T0 ¹	T1 ²	T2 ³	T3 ⁴
iii. Reporting Submission of USoA (Monthly) Target						
Baseline: March 2024 USoA			Minimum Monthly Target			
Timeliness	Completeness	Accuracy	Timeliness	Completeness	Accuracy	
Yes	Yes	Yes	Yes	Yes	Yes	
iv. API Streaming (Monthly) Target						
Baseline: Average (July - September 2023)			Minimum Monthly Target			
Feeder Type	No of Feeders	Streaming Rate	Feeder Type	Streaming Rate		
33kV	72	30%	33kV	100%		
11kV	142	90%	11kV	100%		
v. Capping of Estimated Bills (Monthly) Target						
Baseline: Average (April - June 2023)			Minimum Monthly Target			
Customers billed within cap			Customers billed within cap			
79%			100%			
% Gross energy billed relative to allowed cap (April - June 2023)			% Gross energy overbilled relative to allowed cap			
75%			0%			
vi. Implementation of Forum Office Decisions (Monthly) Target						
Baseline: Average (July - September 2023)			Minimum Monthly Target			
Compliance Rate			Compliance Rate			
85%			100%			
vii. Resolution of Complaints through NERC Contact Centre and NERC HQ						
Baseline: December 2023			Monthly Target			
Complaints Resolved within timelines (SLA)			Complaints Resolved within timelines (SLA)			
72%			100%			

CONSEQUENTIAL REGULATORY INTERVENTION

10. The management of PHED shall be held accountable for achieving the KPIs specified in Table 3 above and the top management shall be liable to the consequential regulatory interventions listed in Table 4 for failure to achieve the specified targets.

11. Without prejudice to the provisions of the Electricity Industry (Enforcement) Regulations 2014, this Order specifies a clear/empirical basis for the achievement of each KPI and shall therefore be treated as strict liability infractions by the utility/management team which shall neither require the issuance of a Notice of Intention to Commence Enforcement ("NICE") action from the Commission nor

¹ T0 = RRR (%) is sufficient to finance market invoices

² T1 = RRR (%) is sufficient to cover T0 and OPEX

³ T2 = RRR (%) is sufficient to cover T1 and Depreciation

⁴ T3 = RRR (%) is sufficient to finance T2 and Return on Investment

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written defense/justification from the management team prior to the exercise of any consequential regulatory intervention specified herein.

Table 4: Consequential Regulatory Interventions

Indicator	Evaluation Frequency	Primary Penalty -1 st Instance of Non-compliance	Secondary Penalty - Subsequent Instance(s) of Non-compliance
Energy Offtake Relative to PCC	Monthly	Failure to offtake up to 95% of available nomination in any month: <i>Issuance of a rectification directive.</i>	Failure to offtake up to 95% of available nominations in 2 of the 3 months in any quarter: <i>Downward adjustment of DisCos guaranteed Admin OPEX by 5% for the next quarter.</i>
Revenue Recovery Rate	Quarterly	Failure to meet performance target within a quarter: <i>Issuance of a rectification directive by the Commission and notification of the Board (as required).</i> <i>The quarterly targets are as follows:</i> <ul style="list-style-type: none"> • <i>Jul – Dec 2024 RRR% to meet T0 threshold</i> • <i>Jan – Mar 2025 RRR% required to meet T1 threshold</i> • <i>April – June 2025 RRR% required to meet T2 threshold</i> • <i>From Jul 2025: RRR% required to meet T3 threshold</i> 	
Reporting Compliance with Submission of USoA	Monthly	Failure to meet 100% reporting compliance within a month: <i>Issuance of a rectification directive.</i>	Failure to meet 2 monthly compliance targets within a quarter: <i>The Commission may take other enforcement actions including the withdrawal of the "Fit and Proper" approval of the CFO's or its</i>

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Indicator	Evaluation Frequency	Primary Penalty -1 st Instance of Non-compliance	Secondary Penalty - Subsequent Instance(s) of Non-compliance
			<i>equivalent position in the utility.</i>
API Feeder Streaming	Monthly	For each feeder not communicating with the Commission's system via API: <i>Daily fines of ₦10,000.00 per day per feeder.</i>	
Capping of Estimated Bills	Monthly	For any instance of customer overbilled: <i>10% of the Naira value of the total over-billing for the period to be deducted from the DisCo's annual Admin OpEx allowance during the next tariff review; and credit adjustment for overbilled customers.</i>	If the energy overbilled is >20% of allowed cap or number of customers overbilled represent >20% of unmetered customer base: <i>The Commission may take other enforcement actions including the withdrawal of the KYL of the Head of Billing or the officer responsible for the billing function in the utility.</i>
Compliance with Forum Decisions	Monthly	For each forum decision that is neither appealed nor complied with: <i>Daily fines of ₦10,000.00 per day per case.</i>	Failure to comply with >25% of rulings issued over any quarter: <i>The Commission may take other enforcement actions, including the withdrawal of the "Fit and Proper" approval of the Head, Regulatory and Compliance or its equivalent in the utility.</i>
Compliance to Resolution of Complaints through	Monthly	Penalties to be charged for non-resolution after	Failure to meet targets within 2 consecutive months:

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Indicator	Evaluation Frequency	Primary Penalty -1 st Instance of Non-compliance	Secondary Penalty - Subsequent Instance(s) of Non-compliance
NERC Contact Centre and NERC HQ		expiration of timelines in the CPR: <ul style="list-style-type: none"> • <i>Billing:</i> ₦10,000.00/day • <i>Disconnection:</i> ₦2,000.00/day • <i>Interruption:</i> ₦2,000.00/day • <i>Metering -</i> ₦1,000.00/day • <i>Delay in Connection:</i> ₦1,000.00/day • <i>Voltage:</i> ₦1,000.00/day 	<i>The Commission may take other enforcement actions including the withdrawal of the KYL of the Head of Customer Service or the officer responsible for resolving customer complaints in the utility.</i>

12. The imposition of the consequential regulatory interventions specified in this Order shall not be construed as a limitation or foreclosure of the power of the Commission to impose any other enforcement sanction under the Electricity Act or any other regulatory instrument.

13. This Order is issued without prejudice to the existing obligations and commitment of PHED as provided in executed contracts and extant rules in the NESI.

Dated this 5th day of July 2024



 Sanusi Garba
 Chairman



 Dafe C. Akpeneye
 Commissioner
 Legal, Licensing & Compliance