



**NERC REGULATIONS ON THE PROCEDURE FOR ELECTRICITY TARIFF
REVIEWS IN THE NIGERIAN ELECTRICITY SUPPLY INDUSTRY 2023**

REGULATIONS ON THE PROCEDURES FOR ELECTRICITY TARIFF REVIEWS IN THE NIGERIAN ELECTRICITY SUPPLY INDUSTRY

In exercise of its powers to make Regulations conferred upon it by Sections 34 and 226 of the Electricity Act ("EA"), the Nigerian Electricity Regulatory Commission issues the following *Regulations on the Procedure for Electricity Tariff Reviews in the Nigerian Electricity Supply Industry 2023*.

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NIGERIAN ELECTRICITY REGULATORY COMMISSION

CHAPTER 1

GENERAL

1. Short Title and Commencement

- (a) These Regulations may be cited as “NERC Regulations on the Procedure for Electricity Tariff Reviews 2023”
- (b) These Regulations shall come into force on the date on which it is approved by a Resolution of the Commission.
- (c) These Regulations shall be signed by the Chairman of the Commission.

2. Objectives

These Regulations seek to:

- (a) Provide detailed procedures for conducting electricity tariff reviews in Nigeria in line with the provisions of the Electricity Act 2023 (the “Act”) and the MYTO Methodology.
- (b) Provide clarity on the responsibilities of parties regarding the tariff review processes, filing arrangements, timelines, fees, and documentation required for the tariff review process in the NESI.

3. Interpretation.

In these Regulations, unless the context otherwise requires:

“Act” means the Electricity Act 2023;

“Applicant” means the licensee applying to the Commission for a tariff review under the provisions of these Regulations;

“Chairman” means the Chairman of the Nigerian Electricity Regulatory Commission;

“Contravention” means as the context requires, non-compliance with or infringement of any of the provisions of the Act, Regulations, Codes, Orders, Licence Terms and Conditions, and other Regulatory Tools of the Commission.

“Commission” means the Nigerian Electricity Regulatory Commission;

"Commissioner" means a person appointed as a Commissioner of the Commission under Section 35 of the Electricity Act 2023;

"Competent Authority" means the Chairman, Commissioner, or such other Officer of the Commission designated from time to time for the purpose of the Commission under these Regulations;

"Cost of Service Study" means a study conducted by a licensee to determine the cost of providing service to different customer categories and the associated tariffs payable to recover these costs;

"Days" means calendar days excluding public holidays declared by the Federal Government of Nigeria;

"Distribution Licence" means a Licence granted under Section 68 of the Act;

"Distribution Licensee" means a holder of a Distribution Licence granted under Section 68 of the Act;

"Extraordinary Tariff Review" means the review of the current tariff of a licensee outside the scheduled Minor and Major Reviews of tariffs under the MYTO;

"Expert Witness" means a person invited by the Commission, a Licensee, or an Intervener to provide specialized information relevant to the tariff application before the Commission;

"Generation Licence" means a Licence granted under Section 65 of the Act;

"Generation Licensee" means a holder of a generation licence granted under Section 65 of the Act;

"Information" means data or facts required under these Regulations;

"Intervener" means an interested individual(s), or group(s) not affiliated with the Licensee or the Commission, but who have been granted permission by the Commission to participate in a tariff review process upon application to the Commission;

"Licence" means a licence issued by the Commission under Part VI of the Act.

"Licensee" means any person who holds a Licence issued under Part VI of the Act;

"Major Review" means the tariff review process under the provision of MYTO methodology and undertaken every five (5) years;

"Minor Review" means a minor adjustment to the tariff every month to reflect the changes in generation capacity, gas price, inflation, exchange rate and other minor review parameters as determined by the Commission from time to time;

"Month" means a Gregorian calendar month;

"MYTO" means the Multi-Year Tariff Order;

"Officer" means a staff or authorized representative of the Commission;

"On Record" includes documents that are filed and before the Commission submitted in support of an application for tariff review;

"Open Book Tariff Setting" means tariff setting carried out for a generation licensee or network provider/operator in line with Section 4 of the tariff methodology or as may be directed by the Commission;

"Participant" means an Applicant or Intervener in a hearing or proceeding pursuant to a tariff review application;

"Person" includes an individual, a company, a partnership, or any association of individuals whether incorporated or not;

"Rate Case Hearing" means a Public Hearing organised by the Commission pursuant to a Major or Extraordinary tariff review process in line with the Business Rules of the Commission;

"Receiving Officer" means the staff of the Commission authorized to receive and acknowledge receipt of Application for Tariff Review and perform other responsibilities assigned to him by the Commission according to these Regulations;

"Regulation" or **"Regulations"** means any Regulation that has been approved by the Commission under the Act;

"Retail Tariffs" means the final tariff to be paid by electricity consumers. It includes the generation, transmission, distribution, and all other associated costs;

"System Operation Licensee" means the holder of a Licence granted under Part IV of the Act;

"Tariff" means prices approved by the Commission in respect of any regulated activities of the electricity market;

"Tariff Review" means the review of macro-economic indices and cost components of a licensees tariff;

"Trading Licence" means a Licence granted under Section 69 of the Act;

"Trading Licensee" means a holder of a Trading Licence granted under Part IV of the Act;

"Transmission Licence" means a Licence granted under Section 66 of the Act;

"Transmission Licensee" means a Transmission Licence granted under Section 66 of the Act;

"Unauthorised" means an act or omission not within the scope of a licence, the Act, or any subsidiary legislation;

"Unlawful" means any act in contravention of the Act or any Regulation made thereunder, and/or any other law in force in Nigeria.

4. Applicability

- (a) All definitions in the Act shall have the same meanings and intendment in these Regulations as in the Act.
- (b) Words importing any one gender includes the other gender and the singular includes the plural and vice versa.
- (c) Words or expressions used in the Regulations but not defined, unless the context otherwise requires, shall have the same meanings respectively assigned to them in the Act.
- (d) These Regulations are meant to supplement the provisions of the MYTO Methodology (Amended 2012).

CHAPTER 2

TARIFF REVIEW METHODOLOGY AND PROCEDURE

5. Context

Pursuant to the provisions of the Electricity Act 2023, the Commission is obligated to review and approve a fair tariff to allow the recovery of prudent costs and a reasonable return on capital invested in the business by licensees for the provision of electricity services. Section 116(1) of the Act provides that activities in the generation, transmission, distribution, trading, supply, system operation, and electricity distribution franchising shall be subject to tariff regulation. Section 116(2) further provides for the Commission to develop a tariff methodology that allows licensees operating efficiently to recover the full efficient costs of their business activities, plus a reasonable return on investments by shareholders.

In exercise of the powers conferred in Section 116 of the Act, the Commission has developed and adopted the Multi-Year Tariff Order ("MYTO") Methodology as an incentive-based price regulation framework for the determination and projection of tariffs payable in the Nigerian Electricity Supply Industry. The underlisted approaches and procedures shall be undertaken for the review of tariffs chargeable by the licensees.

5.1 Types of Tariff Review

- (a) Minor or other short period the Commission may determine
- (b) Major Review: A comprehensive review of all tariff assumptions
- (c) Extra-Ordinary Review

5.2 Review Method

- (a) Cost of Service
- (b) Open Book
- (c) Bilateral Negotiation

CHAPTER 3

PROCEDURE FOR MONTHLY/MINOR REVIEW OF TARIFF

This Chapter provides the procedure for the Monthly(Minor) review of electricity tariffs to accommodate majorly changes in macroeconomic parameters and other tariff review parameters including pass-through costs in the tariff model as the Commission may determine from time to time.

6. Indices for Monthly/Minor Review

- (a) The Commission shall, on a monthly basis, review the prevailing operating end-user tariffs and changes may be made thereto to account for changes in generation fuel costs, the Nigerian and United States inflation rates, United States Dollar exchange rate to the Naira, and average generation availability relative to the preceding month.
- (b) The monthly review shall include the review and approval for migration or classification/reclassification of distribution feeders based on the availability of supply on the feeders, where applicable.
- (c) The Commission may, at its discretion, conduct the minor review of end-user tariffs at other short periods but no longer than six months.
- (d) The source of data for the minor review shall be obtained from the underlisted institutions.

Table 1: Data Sourced for Monthly/Minor Reviews

Indices	Source/Institution
Available Generation	Independent System Operator
Nigerian Inflation Rate	Central Bank of Nigeria or National Bureau of Statistics
Foreign Exchange rates	Central Bank of Nigeria
US Inflation Rate	United States Bureau of Labour Statistics

7. Submission and Review of Relevant Data

- (a) A Licensee seeking a specific review of certain tariff indices/components other than parameters listed in Table 1 to be effective next month shall file with the Commission data relevant/required, including feeders for reclassification, no later

than the 25th of the current month or as may be determined from time to time by the Commission.

- (b) The Commission shall review all submissions in line with the provisions of the MYTO Methodology and relevant regulations.

8. Approval of the Tariff Order

Upon satisfactory review and consideration, the Commission shall:

- (a) approve the new tariff(s) for the licensee and issue an updated Tariff Order covering the next review period.
- (b) direct licensee to publish on their website the new tariff schedule and effective implementation date.
- (c) direct licensee to notify its customers of the new rates.

CHAPTER 4

PROCEDURE FOR MAJOR REVIEW OF TARIFF

The MYTO methodology provides for a major review of electricity tariffs every five years whereby all tariff assumptions are subject to review to ensure the viability and efficiency of the Nigerian Electricity Supply Industry.

9. Filing of Application for Major Tariff Review

- (a) The Commission shall, one year prior to the expiration of the Major Tariff Review Order in force or as may be considered necessary, issue a notice to all licensees about its intention to commence the process for a Major Review of the existing tariff. The notice shall be published in three national dailies and on the website of the Commission.
- (b) The Notice shall request for submission of applications for the review of tariffs supported with documentation that includes but not limited to Audited Financial Statements, Budgets, Investment Plans (in line with prevailing Guidelines on Performance Improvement Plans), and proof of wide consultation with customers in the licensees' service area concerning the proposed filing of the application for tariff review and any other information as deemed necessary by the Commission.
- (c) The deadline for the submission of applications for Major Review of tariffs by licensees shall be one hundred and twenty (120) days after the Notice is issued by the Commission.

10. Review of Applications and development of Consultation Paper

- (a) The Commission shall, within five (5) days of receipt of the applications, send acknowledgment letters to the licensees.
- (b) An initial review of the major tariff review applications shall be completed by the Commission and a Consultation Paper developed no later than 90 days after the deadline for the submission of the applications.

- (c) The Consultation Paper developed by the Commission shall outline the basis for the tariff review applications by the licensees including their proposals on capital investments, service improvements, new connections, loss reductions, reset of tariff assumptions if any, and possible impact on rates payable by the affected customers.
- (d) The Consultation Paper shall be published on the Commission's website and public notices issued soliciting comments with a timeline of twenty-one (21) days for submission by stakeholders.
- (e) The Commission shall within 90 days from the publication of the Consultation Paper review all comments and schedule and conclude a Rate Case Hearing, having regard to the stakeholders' responses to the Consultation Paper.
- (f) All comments and observations received from the public on the Consultation Paper and the Rate Case Hearing shall be examined and considered in the development of a draft Tariff Order for the consideration of the Commission.

11. Approval of Major Tariff Review Order

- (a) Upon due consideration of the outcomes of the general stakeholders' presentation and the Rate Case Hearing, the Commission shall consider and approve a Major Tariff Review Order within thirty (30) days from the date of the Rate Case Hearing held at the Commission.
- (b) The Tariff Orders approved by the Commission shall be published on the Commission's website and sent to all licensees by courier or electronic mail.
- (c) Any licensee whose tariffs have been reviewed shall communicate the outcome of the tariff review to its customers vide its website and other communication channels.

CHAPTER 5

PROCEDURE FOR EXTRAORDINARY TARIFF REVIEW

12. Eligibility and Form of Application

The provisions of the Regulations in this section shall only be applicable under the following situations.

- (a) Where industry parameters have significantly changed thus requiring an immediate consideration for the sustainability of the public utility and the provision of service.
- (b) Licensees whose proposed additional capital investments have not been factored in their prevailing approved tariffs, including emergency expenditure and replacement costs.
- (c) Licensees that have encountered significant unforeseen operational, legal, or regulatory costs that can be reasonably passed on to consumers.
- (d) An application for Extraordinary Tariff Review shall be made by a Licensee under any of the following heads, a combination thereof, or as may be allowed by the Commission from time to time:
 - (i) Revenue Requirement;
 - (ii) Tariff Design; and
 - (iii) Cost of Generation.

CHAPTER 6

GENERAL PROVISIONS FOR MAJOR AND EXTRAORDINARY TARIFF REVIEWS

13. Application

All Tariff Review Applications shall be duly signed and dated by the authorised representative of the Applicant and submitted in three (3) hard copies and one (1) electronic copy in PDF and Microsoft Excel format or as may be specified by the Commission. The application shall be accompanied by relevant supporting documentation as indicated in Section 15 below.

14. Contents of Application

Each hard copy of the application shall be submitted in duly indexed ring binders and shall be properly cross-referenced for ease of review by the Commission. A soft copy of the complete documentation shall also be submitted with the documentation. The basis for the evaluation of the application shall include an evaluation of key data in the NERC's MYTO Financial Model, the impact on wholesale generation tariff and/or the effect of the proposed changes to the Revenue Requirement and Retail Tariff schedules as applicable to the licensee.

15. Supporting Documentation

Each Tariff Review Application shall be supported with the underlisted documentation as applicable depending on the type of application:

- (a) Evidence that the requested change to the tariff provides for the recovery of all prudent costs of providing electricity services to consumers including:
 - (i) The costs and expenses associated with the capital investment programme in line with prevailing Guidelines on the submission of Performance Improvement Plans
 - (ii) Depreciation (return of capital)
 - (iii) Cost of funds for the capital investment.
 - (iv) A fair return on the equity of shareholders
 - (v) Taxes associated with the investment

- (vi) Any costs and expenses incurred as approved by the Commission
- (vii) Any other documentation to support the application.

- (b) A statement that the forecast of all proposed expenses in respect of transmission tariff and distribution tariff are best estimates and support same with credible analysis and verifiable source documents.
- (c) A statement that the forecasted cost of generation are best estimates and supported with relevant analysis and verifiable source documents; and
- (d) Full report on public consultation held with consumers on the proposed tariff application conducted at a minimum of 3 locations within the operating area of the electricity distribution company. The applicant shall notify the Commission prior to each public consultation to validate the stakeholder engagement.

16. Filing Fees for Extraordinary Tariff Review Applications

- (a) The Applicant shall upon submission of the Application Form, pay a non-refundable filing fee of ₦5,000,000.00 (five million Naira) or as may be determined by the Commission from time to time.
- (b) The application fee shall only be a recoverable expenditure where the tariff review application is approved by the Commission.

17. Acknowledgement of an Application

- (a) Upon receipt of an Application, the Commission shall review the documentation for completeness and notify the applicant of the status of the submission within 5 working days.
- (b) Where the submission is found to be incomplete or inadequate, the applicant shall be granted 10 working days within which to provide ALL required documentation required under the provisions of this regulation.

18. Review of Applications and the Development of Consultation Paper

The review of the application for major and extraordinary tariff reviews shall be conducted by the Commission in line with the review processes and timelines provided under section 10(b-f) of these regulations.

19. Request to Participate as Intervenor

- (a) Any person(s) that intends to participate in the Tariff Review proceedings shall be required to register within twenty-one (21) days from the date of publication of the Notice by completing and submitting to the Commission, a Request to participate.
- (b) The Request to Participate shall be submitted in an electronic copy by e-mail in the manner prescribed by the Commission, and shall include the following:
 - (i) An explanation of the person's interest in the proceeding and how the party would be affected by the outcome of the tariff review application;
 - (ii) A description of the party's concerns, observations comments, and/or objections to the application; and
 - (iii) An indication as to whether the party supports or objects to the tariff review application.
- (c) The Commission shall, within 7 days of receiving the request, inform the interested person(s) and the applicant about its decision and reasons.
- (d) An applicant seeking to participate as an intervenor shall indicate those documents that are confidential at the point of submission, where applicable.

20. Circularisation of Comments

- (a) Upon granting approval to participate, the Commission shall within seven (7) days notify the applicant of the requests received for participation as intervenors and accompanying documents.
- (b) All intervenors approved by the Commission shall be published on the Commission's website within 7 days of granting the approval.
- (c) All documents submitted by Applicants or by other interested persons "On Record" are deemed to be public documents except otherwise made confidential by any law in force, an Agreement, or an order of the court.

21. Authority to Represent

- (a) In exceptional circumstances, the Commission may consider and approve an Applicant for tariff review to appoint a representative to stand in his stead during the rate hearing.
- (b) Where an applicant appoints a representative, the Notice of Representation shall be served on the Commission at least seven days before the scheduled hearing date.
- (c) The Applicant shall file a Notice of Representation to the Commission by stating the name and contact details (Home Address, Work Address, and Email address) of the representative.

22. Composition of the Rate Hearing Panel

- (a) The Commission shall conduct the hearing of an Application for Major Review and Extraordinary Tariff Review in Panels of FOUR (4) Commissioners, one of whom shall serve as the Chairman appointed by the Commission.
- (b) The decision of the Hearing Panel shall be based on both oral and documentary evidence tendered before it by the applicant, staff of the Commission, expert witness, and/or Intervener(s).

- (c) The decision of the panel members at the rate Hearings shall be based on a simple majority of the Members of the Panel.
- (d) The Hearing Panel shall not be bound to apply the provisions of the Evidence Act in the conduct of its proceedings.

23. Hearing of the Application

- (a) The Panel shall conduct the Hearing of the application in line with the timelines and schedules provided in these regulations.
- (b) The Commission shall determine the place and time of the Hearing.
- (c) The Panel may proceed with the Hearing in the absence of comments from the public and Intervenors and issue its final decision.
- (d) The Panel may allow the Applicant, staff of the Commission, or Intervenors to give oral evidence during the Hearing.
- (e) The Panel may allow the Applicant, staff of the Commission, or Intervenors to invite expert witnesses to give further evidence which may provide further insight on topical issues in the application.
- (f) An expert witness shall only be admitted by the Panel if the Notice of the Intention to Invite an Expert Witness is received at least 14 days before the scheduled Hearing date.
- (g) The Commission shall notify all parties to the application about the participation of the expert's witness within 7 days of receipt of such notification.
- (h) Interlocutory applications may be made by the applicant or intervener during the Hearing, only in the form of submission of additional information to the Commission before a decision is pronounced.
- (i) The submission of additional information shall be only accepted by the Commission no later than 7 days before the date of the hearing.

- (j) Where the Panel is unable to conclude the Hearing on the set date, the Panel may adjourn to reconvene at a later date.

24. Burden of Proof

The burden of proof is on the Applicant to prove that the proposed tariff application is based on a just, reasonable, and prudent cost.

25. Decision of the Commission

- (a) The decision of the Panel shall be in the form of an Order of the Commission which shall be issued in writing and shall contain the basis for the decision. The decision of the panel shall be signed by the members of the Panel.
- (b) The tariff Order of the Commission shall be issued within 30 days after the Hearing date and signed by the Chairman and the Panel Chairman.
- (c) The decision of the Panel is enforceable from the date the Order is issued.

26. Review of the Decision

- (a) Any persons aggrieved by the decision of the panel may apply for a review of the decision no later than 60 days after the execution of the Order.
- (b) The Panel may review its decision based on additional information, analysis or further consultation within the Commission.
- (c) An application for review of the decision of the Panel by the Applicant shall be filed in the same manner as a Petition under Chapter II Section 15 of the Business Rules of the Commission 2006.
- (d) The Panel may reconsider, vary or rescind its decision within thirty (30) days from the date of receipt of such request from the Applicant. The Panel shall only consider additional evidence not presented during the initial proceedings including facts arising after the original proceedings.

- (e) Where the Panel determines that a Hearing is required as part of the review process, the Panel shall conduct a re-hearing for which the procedure and composition of the Panel shall be mutatis mutandis with the initial proceedings, except where the Commission decides otherwise.
- (f) Except where the Commission orders so, an Appeal for Judicial Review pursuant to Section 49 of the Act shall not act as a stay of the enforcement of the decision of the Panel.

CHAPTER 7

COST OF SERVICE STUDY

27. Cost of Service Study

- (a) A licensee may apply to or be directed by the Commission to conduct a cost-of-service study in support of its application for the determination of the licensee's tariff.
- (b) Where the Commission approves this approach for rate determination, the licensee shall be required to submit the outcome of the study conducted by the licensee detailing the operational expenses, capital investments, maintenance costs and customer service costs for a specified period as may be determined by the Commission and apportionment to different customer classes, where applicable.
- (c) The Commission shall review the outcome of the study in its current form or following adjustments to the findings for the determination of the revenue requirement of the licensee.
- (d) The Commission shall consider and approve the tariff design that allows for the recovery of costs from each customer category and ensure that the licensee's revenue requirement provides for recovery of prudent costs, including a reasonable return on investment.
- (e) The provisions of these regulations regarding filing processes, reviews, communication, consultation and decision making etc. shall apply in evaluating a submission under this approach.

CHAPTER 8

OPEN BOOK REVIEWS AND BILATERAL NEGOTIATIONS

28. Open Book Tariff Review

- (a) An applicant for a generation licence or holder of a generation licence may request a tariff review for energy and capacity higher than the approved benchmark tariff as provided in the MYTO in force at the time as provided by section 5 of the MYTO methodology (as amended).
- (b) Without prejudice to provisions in these regulations, the Commission may elect to conduct an open-book review (based on available records and data) for the determination of prudent costs, revenue recovery and tariffs of a licensed network provider/operator as may be deemed necessary by the Commission.
- (c) The schedule and rate review process for the application shall be as provided in these regulations, including the development of a Consultation Paper and stakeholder engagement.
- (d) The Commission shall not decide on an application until all comments, objections, or representations received by the Commission have been considered.
- (e) The Commission may, at its discretion, hold a Public Hearing before approving tariffs under the Open Book approach.

29. Bilaterally Negotiated Tariff

- (a) Parties to a transaction may bilaterally negotiate a tariff on a willing-buyer willing-seller basis.
- (b) The negotiated tariff shall be subject to the Commission's review and approval prior to implementation.

CHAPTER 9

TREATMENT OF GRANTS AND DONATIONS

30. Treatment of Grants and Donated Assets in Tariff determination

The underlisted assets shall not be recognized in the Regulatory Asset Base of a licensee, thus no allowance shall be made for return on capital and depreciation in the revenue requirement of the licensee. The Commission may, at its discretion, approve a reasonable provision for the operation and maintenance costs of such assets to the extent of providing service to customers.

- (a) Assets funded by customer contributions, unless the cost of such assets/investments are being refunded by the public utility.
- (b) Assets that are financed through grants provided by the federal and state governments with no obligation for refund of acquisition costs.
- (c) Assets deemed not prudently procured and/or not contributing directly towards the provision of service to customers.

CHAPTER 10 MISCELLANEOUS PROVISIONS

31. Proceedings before the Commission.

All proceedings before the Commission under these regulations shall be governed by the Business Rules of the Commission, and any amendments thereto.

32. Amendment or Repeal

The Commission may amend or repeal, in whole or in part, the provisions of these Regulations pursuant to the resolution of the Commission.

SIGNED BY THE ORDER OF THE COMMISSION

Dated this 28th day of December 2023



Sanusi Garba
Chairman 

SCHEDULES

Schedule 1 – Application Form

Schedule 2 – Required documents and information

Schedule 3 – Report Summary Form

Schedule 4 – Form for Request to Participate

Schedule 5 – Notice of Representation