



ELECTRICITY  
LAWYER

# **SIMPLIFIED LEGAL *And* REGULATORY GUIDE:**

Business Rules of the Nigerian Electricity  
Regulatory Commission (NERC), 2006





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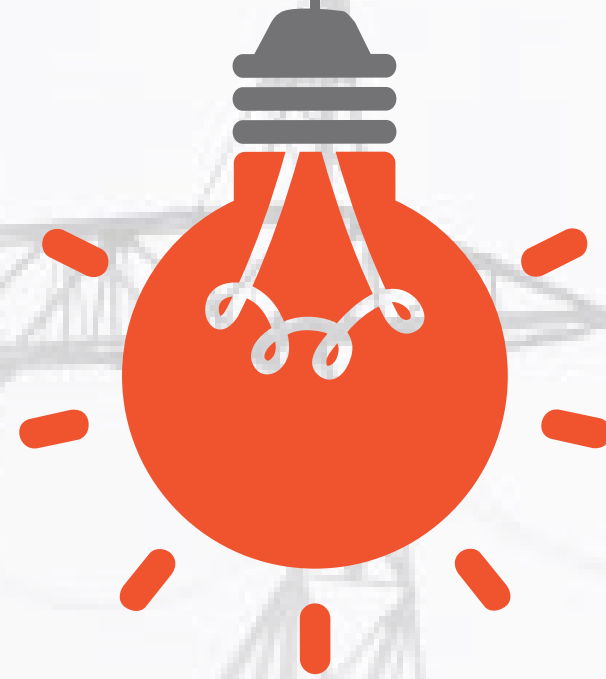
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# OVERVIEW

Business Rules of the Nigerian Electricity  
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The Nigerian Electricity Regulatory Commission ('NERC' or 'the Commission') Business Rules ("the Rules") were introduced in 2006 to serve as guidelines for the conduct of the proceedings and discharge of the functions of the Commission. The Rules provide that the Commission follow specific framework for the discharge of its duties which include investigations and carrying out inquiries, dispute resolution through arbitration, issuance of orders and Practice Directions, etc. The Rules contain four (4) chapters and a Schedule totaling forty-two (42) sections.

The Glossary of Terms referenced in this guide can be found in the main Rules<sup>1</sup> and in our [Glossary of Industry Terms](#).



NERC is empowered by the Electric Power Sector Reform Act, 2005 (EPSRA)<sup>2</sup>, as the major agency with the responsibility of formulating regulations and guidelines to facilitate the implementation and enforcement of the provisions of the Act for the conduct of its affairs. NERC is vested with the authority to develop regulations relating to areas of administration, billing, licensing, procurement procedures, pricing and tariffs, electric fencing, etc.<sup>3</sup> The Electric Fencing Regulations is one of the many regulations formulated within the ambit of the Commission's powers. [Please refer to EL's guide on the Electricity Act.](#)



# OBJECTIVE

Business Rules of the Nigerian Electricity  
Regulatory Commission (NERC), 2006

# OBJECTIVE



The primary objective of the Business Rules of the NERC is:

- To serve as a guideline for the conduct of the affairs of the Commission.



# KEY PROVISIONS

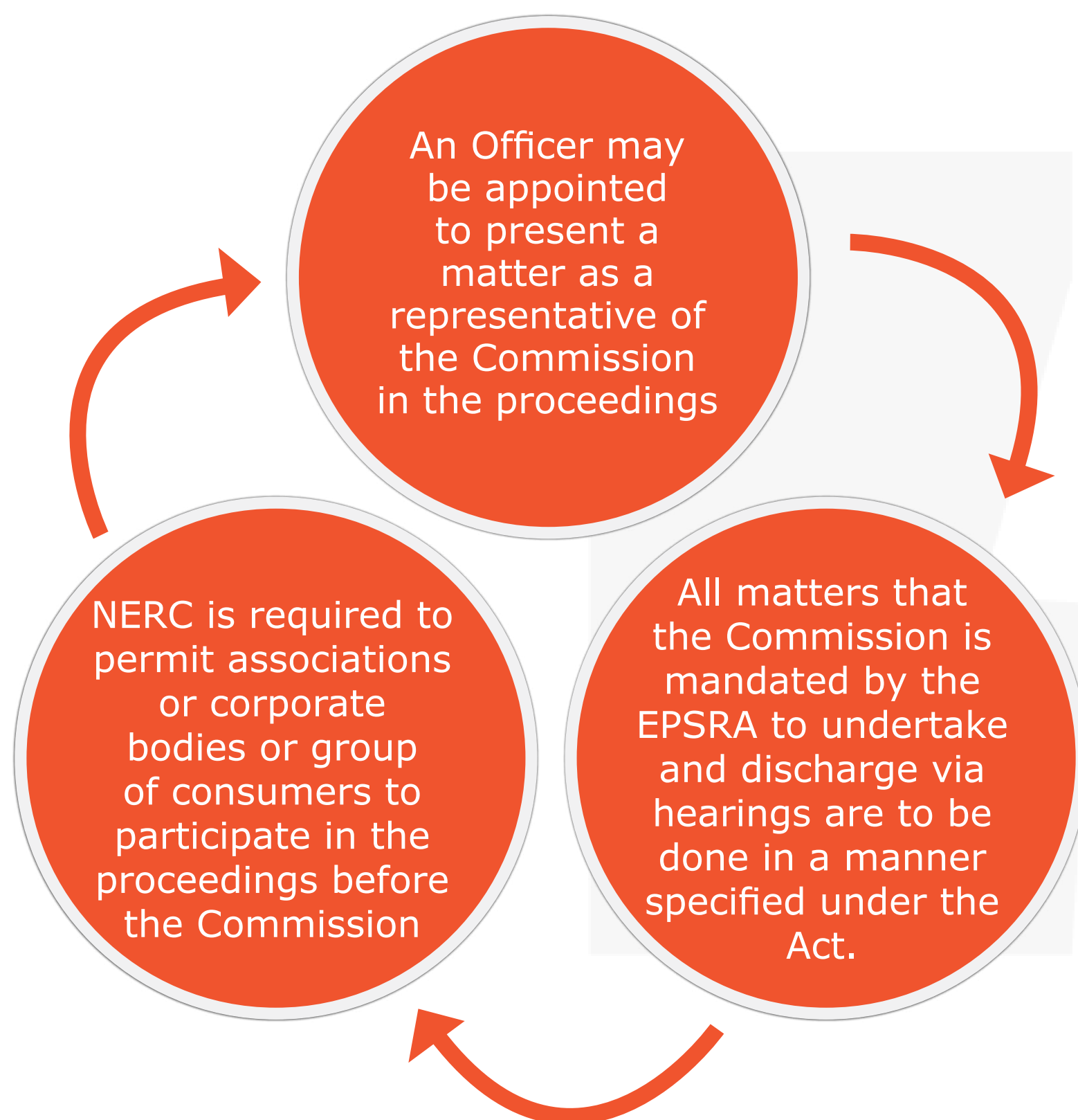
**Business Rules of the Nigerian Electricity  
Regulatory Commission (NERC), 2006**



# KEY PROVISIONS



## *Proceedings before the Commission<sup>4</sup>*



## *Authority to Represent*

Representation is permitted under the Business Rules of the Commission. The Rules provide that a person is empowered to appoint a legal practitioner or a member of any professional body that is statutorily recognized to represent him, act, and plead on any of the proceedings before the Commission. The person may also appear himself or authorize any of his employees to appear, act and plead on his behalf. NERC may specify the terms and conditions for such authorization periodically.<sup>5</sup>

## *Burden of Proof<sup>6</sup>*

The burden of proof shall be on the person seeking approval, making an application, filing a case or making a complaint before the Commission.

## *Petitions and Proceedings*

The Rules empower the Commission to initiate proceedings after a complaint has been made by an affected person. Such initiation must be done by issuing a notice by the Secretary of the Commission and NERC may give Orders



and directions as it deems necessary for service of notices to the affected or interested parties for the filing of replies and rejoinders either in support or opposition of the Petition or subject matter of the proceedings.<sup>7</sup>

All Petitions are expected to be filed before the Commission and they must be typed with each page numbered sequentially. The content of the Petition must also be divided into distinct paragraphs that are to be numbered serially.<sup>8</sup> The General Heading of all Petitions before the Commission and in advertisements and notices must be in the form set out in the Rules.<sup>9</sup>

In addition, all Petitions filed before the Commission must be supported by an affidavit.<sup>10</sup> The requirements for the affidavit are that it should be drawn up in the first person and it must state the full name, age, occupation and the address of the deponent and the capacity in which he is signing and must be signed and sworn before a legally authorized person. The affidavit must indicate statements which are true to the knowledge of the deponent; information received by the deponent; and belief of the deponent. Also, the source of information of the affidavit must be disclosed.<sup>11</sup>

The presentation and scrutiny of Petitions must take the following steps:



Petitions shall be filed in one (1) original and eight (8) copies along with an electronic version or as may be specified by the Commission. Each set of the Petition must be complete in all respects. The fees, as may be prescribed by the Commission, where applicable, shall be payable along with the Petition.



Upon the receipt of the Petition, the Receiving Officer shall acknowledge receipt by stamping and endorsing the date on which the Petition has been presented and shall issue an acknowledgement with stamp and date to the person filing the Petition.



In case the Petition is sent by ordinary mail or courier, a self-addressed and stamped envelope shall be included for acknowledgement. The date on which the Petition is actually received at the office of the Commission shall be taken as the date of the presentation of the Petition.



The Receiving Officer shall verify the Petition for completeness and shall advise the person filing the Petition, in writing, of the defects in the Petition filed.



If on scrutiny no defect in the Petition is found, the Petition shall be duly registered by the Commission.



The Petition shall be scheduled for hearing within forty-five (45) days from the date it is registered by the Commission. Where the Commission is unable to schedule the Petition for hearing within this period or where the Petitioner requests for extension of time, the Commission may extend the time limit for such additional period as it may specify and shall give reasons for such extension; Provided however, that any such extension shall be preceded by at least seven-day notice prior to the expiration of the forty-five (45) days. An extension shall not be for more than thirty (30) days and the number of such extensions shall not exceed three (3). The Commission shall issue hearing notices.

A Petitioner may withdraw his Petition at any time before it is scheduled for hearing by serving a notice to the Commission stating an intention not to proceed with the Petition. A Petition which is withdrawn is deemed struck out.

The Commission may admit the Petition for hearing without requiring the attendance of the Petitioner. The Commission shall not make an Order refusing admission without giving the Petitioner an opportunity of being heard.

If the Commission admits the Petition, it may give such Orders and directions, as may be deemed necessary, for

service of notices to the respondent and other affected or interested parties, for the filing of replies and rejoinder in opposition or in support of the Petition in such form as may be prescribed by the Commission.<sup>12</sup>:

### ***Services of Notice and Processes***

The Rules state that any notice or process that is issued by the Commission must be served by hand delivery through the following means:

- A messenger
- Courier with due acknowledgement
- Publication in a newspaper in the case of notices or in cases where the Commission is satisfied that it is not reasonably practicable to serve the notices, processes etc.

It should be noted to parties to a Petition before the Commission may appoint an authorized representative to represent him in the Petition or Proceedings, and this representative can also be served notices and processes. In addition, a representative must not contact a Commissioner or Officer of the NERC regarding the merits of the case.<sup>13</sup>





The Regulation permits the filing of replies and objections by persons who are served with the notice of inquiry or the Petition (referred to as the 'Respondent').<sup>14</sup>

### **Hearings**

It is the responsibility of the Commission to determine the time, place, and manner of the hearings and to make it consistent with the specific timing requirements set in the EPSRA. A pre-hearing can be held, if necessary, for the purpose of determining the case for hearing. NERC may also seek expert opinion and may constitute a working group Panel constituting experts for the purpose of establishing facts for hearing. Hearings are to be conducted by a Panel composition of three (3) Commissioners and one of them must be appointed as a Chairman, except determined otherwise by the Commission. Persons may join the Proceedings as observers after seeking permission from the Commission.<sup>15</sup>

### **Power of the Commission to seek Further Information**

Before arriving at a final Decision for issuing Orders, the Commission may seek further information from parties.

Further information may include the following:

- Evidence from witnesses and production of any document or other material objects that can be obtained in evidence
- Requisition of any public record from any office
- Examinations by an Officer of the Commission
- The books, accounts, and other relevant documents in the control of any person which the Commission considers relevant.<sup>16</sup>

### **Questions of Law**

The Rules provide that if an Order or Decision of the Commission raises any question of law, the Commission may reserve that question for the High Court either by its own initiative or at the request of persons directly affected by such Order. Where this question has been reserved, NERC must state the question in the form of a special case and file it with the Registrar of the High Court.<sup>17</sup>

### **Failure to appear for Hearings**

Where a party, his authorized agent or his representative to a hearing fails to appear for hearings on the slated date(s),



the Commission may strike out the Petition or Application if he is the Petitioner or Applicant or proceed ex-parte and hear and decide the Petition where no defence has been provided, except where there is evidence of service of Notice of Hearing to the Respondent. Where a Petition has been struck out because of a failure to appear by a party or authorized agent/representative, the aggrieved person may file an application within thirty (30) days from the date of such Striking out or ex-parte Proceeding, as the case may be, to set aside of the Order made, and the Commission may set aside the Order on such terms as it deems fit, if it is satisfied that there was reasonable and sufficient reason for non-appearance when the Petition was called for hearing.<sup>18</sup>

### ***Orders of the Commission***

NERC is empowered to make Orders and Decisions which must be issued in writing and must contain the basis for the Decision or Order and must be accessible to the public at reasonable times and places. Each of these Decisions or Orders must be signed by the Chairman, Vice Chairman or other Commissioners that conducted the proceedings and an official seal should be affixed on each document. Interim Orders may also be made at any stage by the

Commission to protect the interest of parties to proceedings including consumers or any class(es) of consumers. An Order of the Commission in any proceedings becomes final unless an appeal for review is filed by any of the parties within thirty (30) days of the Order. Finally, an Order of the Commission remains in force unless modified, suspended, vacated, or superseded by a further Order of the Commission.<sup>19</sup>

### ***Rehearing and Appeal***

Within sixty (60) days of making any Decision, direction or Order, the Commission may, at its discretion or on application by any of the concerned parties, reconsider or review its Decision, directions or Orders and make appropriate Orders as it deems fit. An application for review of such decision must be filed in the same manner as a Petition.<sup>20</sup> In addition, the Commission may consider additional evidence not presented during the initial proceedings. It may modify, amend, rescind, or reaffirm the original Order by a new Order.



It should be noted that an application for Rehearing or Appeal shall not act as a stay of the enforcement of an Order of the Commission unless ordered otherwise by the Commission.<sup>21</sup>

### **Public Hearings**

NERC may hold public hearings on matters which it is empowered under the EPSRA to hear and which the Commission determines to be of significant interest to the public. All persons who have an interest in the matter must be notified by the Commission and they must be accorded with the opportunity to make representations if they wish. The notification could be by mail or by paid advertisement published in two (2) newspapers; a national daily newspaper and one having wide circulation in the local area.<sup>22</sup>

### **Investigation, Inquiry, and Collection of Information**

The Rules empower NERC by Order to collect information, conduct inquiry, investigation, entry, search and seizure in accordance with warrants or consent of the person in charge of the premises<sup>23</sup>

### **Consultants and Experts**

NERC may request the assistance of any institution, consultants, experts, including engineers, chartered accountants, legal practitioners, surveyors, and such other technical and professional persons, as it may consider necessary, and request them to study, investigate, inquire into any matter, or issue and submit report or reports or furnish any information. The terms and conditions for the engagement of these professionals are to be determined by the Commission. If a report or information is obtained based the terms of the Regulations and is proposed to be relied upon by the Commission in reaching a Decision on any Proceedings, the parties in the Proceedings must be given reasonable opportunity for filing objections and making submissions regarding the report or information.<sup>24</sup>

### **Miscellaneous**

The Rules specify that if any of the parties to the proceedings cease to exist either by death or insolvency or is a Company under liquidation/winding up proceedings, the successors-in-interest, the executors, administrator, receiver, liquidator, or other legal representative of the party may stand in place of the party.



It should be noted that the application for successor-in-interest must be filed within ninety (90) days from the event.

Where NERC does not see the need to bring the successors-in-interest in record to continue the proceedings, the Commission may treat the proceedings as abated and the reasons for doing so must be put in writing.<sup>25</sup>

Proceedings under the Rules must be open to the public unless the Commission orders otherwise with the reason before such order recorded in writing.<sup>26</sup>

In addition, except the parts that are considered confidential or privileged by NERC, the records of the Commission must be open to inspection by all persons subject to payment of prescribed fees and compliance with terms stipulated by the Commission.<sup>27</sup>

Failure to comply with the requirements of the Regulation will not invalidate any existing Proceedings solely based on such failure, unless the Commission is of the opinion that such failure has resulted in miscarriage of justice.<sup>28</sup>

### ***Arbitration of Disputes***

The Regulation provides that disputes arising between licensees from matters within the Market Rules<sup>29</sup> or Grid Code<sup>30</sup> must be referred to the Dispute Resolution Panel established by the Commission.<sup>31</sup> All other disputes between licensees relating to the provisions of the EPSRA must also be settled by arbitration and referred by the parties to the Commission for resolution. Disputes that do not relate to the Market Rules, Grid Code, and EPSRA, must be referred to the Commission for arbitration<sup>32</sup>.



The process for commencing arbitration proceedings is as follows:

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Any party may commence arbitration under the Regulations by serving a Notice of Arbitration to the Commission and the other party to the dispute

**1**

NERC must issue notices to the parties to the dispute subsequently, to show cause (if any) why the dispute should not be settled through arbitration

**2**

The Commission may, after hearing the parties to whom the notices have been issued, and if satisfied that no reason or cause has been shown against the proposed arbitration, make an Order directing that the dispute or the matter be referred for settlement through arbitration by the Commission

**3**

If a party fails to abide by an arbitration award, the Party who is successful must apply to the High Court for the enforcement of the award.<sup>33</sup>



# KEY STAKEHOLDERS

Business Rules of the Nigerian Electricity  
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# KEY STAKEHOLDERS



## ***Nigerian Electricity Regulatory Commission***

The primary agency for the supervision and control of the Rules as specified in the EPSRA is the Commission. NERC was established as a corporate body to regulate the generation, transmission, distribution of electricity in Nigeria through promoting efficiency in industry and market structures, regulating prices and ensuring safety in the production and delivery of electricity.<sup>34</sup> NERC is vested with the responsibility of monitoring and overseeing electricity activities to facilitate competition and prevent abuse of market power and the Rules have been formulated to serve as a guideline for the Commission in discharging its functions. NERC may amend or repeal the provisions of the Rules.<sup>35</sup> In addition, the Commission is empowered by the Business Rules to issue Orders and Practice Directions that relate to the implementation of its Regulations and the procedures that are to be followed on various matters that are subject to the provisions of the EPSRA and its Regulations.<sup>36</sup>

Furthermore, the Commission is expected to ensure the enforcement and compliance of the Orders that are passed by it.<sup>37</sup> NERC may also delegate to any Commissioner, Officer of the Commission, or any other person by a General or Special Order in writing, subject to certain conditions (if any), its powers and functions under the EPSRA. It should be noted that only the power to adjudicate disputes and make final Orders under the EPSRA cannot be delegated.<sup>38</sup>

The background of the slide features a faint, dark silhouette of a high-voltage power transmission tower, also known as a pylon, which is a lattice structure. It is positioned centrally and extends from the bottom towards the top of the frame, serving as a thematic backdrop for the text.

# **PRICING** **AND TARIFFS**

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# PRICING AND TARIFFS



The Rules specify that costs of all Proceedings must be awarded at the discretion of the Commission and the Commission has the power to determine the way such costs are to be paid. The costs must be paid within thirty (30) days from the date the Order was issued or within the time stipulated by the Commission. It should be noted that the Order of the Commission for awarding costs is expected to be treated and executed in the same manner as the Order of a High Court in Nigeria.<sup>39</sup>

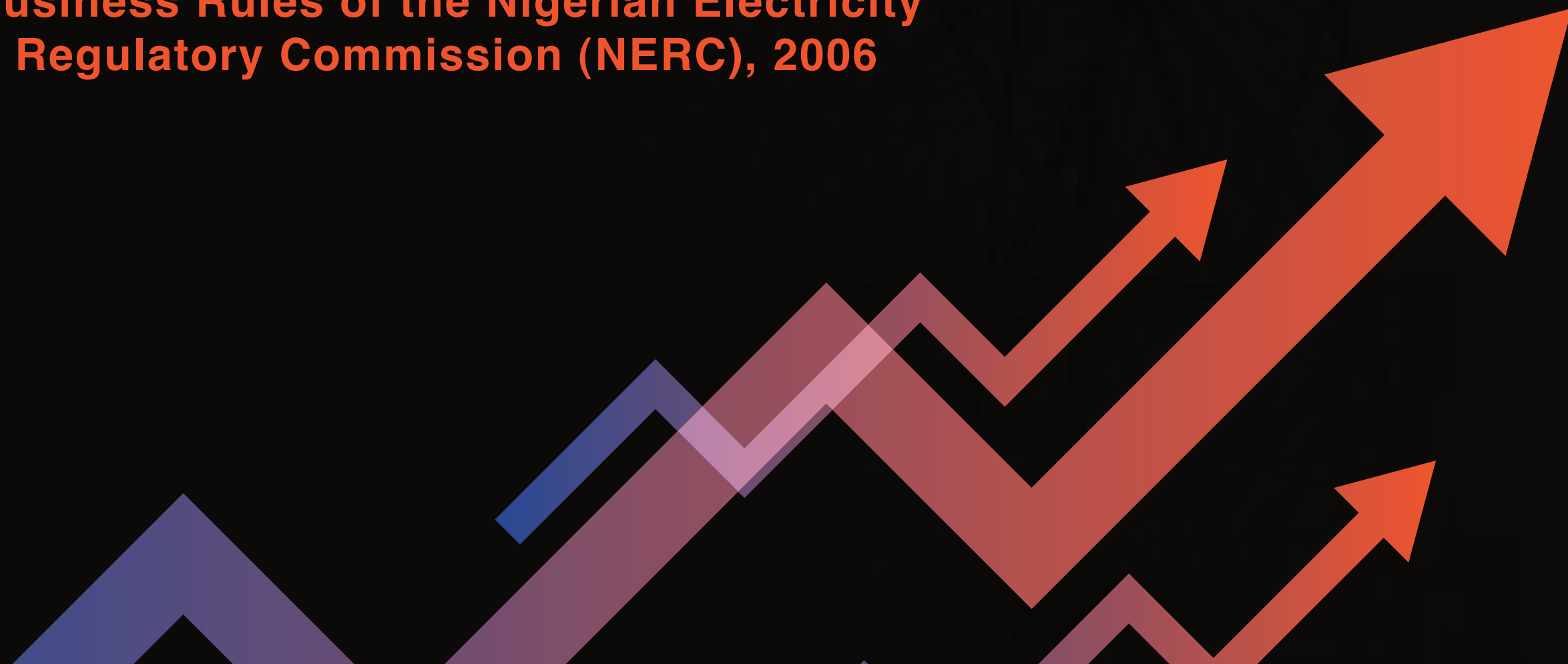
In addition, the Rules provide that the Commission prescribes the fees that are payable by a Claimant for filing a Notice for Arbitration. If the dispute is resolved prior to the appointment of an Arbitrator by the Commission, or the dispute is not considered suitable for determination, the fees must be refunded net of any cost to the Commission. In addition, the cost of the arbitration procedure includes fees, the Arbitrator's fees and expenses and other administrative costs in accordance with the rates fixed by the Commission.

It should be noted that the arbitration cost before the Commission must be borne by parties and in the amount prescribed by the Commission.

When making the award, the Arbitrator may expect that one party pay any part of the costs of the other party where the former has acted unreasonably in any manner.<sup>40</sup>

# INCENTIVES AND INVESTMENT OPPORTUNITIES

Business Rules of the Nigerian Electricity  
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# INCENTIVES AND INVESTMENT OPPORTUNITIES



The Regulations do not specifically provide for opportunities for investment.



# **SANCTIONS AND PENALTIES**

**Business Rules of the Nigerian Electricity  
Regulatory Commission (NERC), 2006**



# SANCTIONS AND PENALTIES

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The Rules empower the Commission to impose penalties as it deems fit to facilitate compliance and effective discharge of its duties under the EPSRA and the Rules. NERC has the authority to impose penalties for violations of terms and conditions of licences and for failure to comply with license provisions, NERC Regulations, Codes, and other instruments that is issued by the Commission.<sup>41</sup>

Referenced Statutory Instruments

- Electric Power Sector Reform Act (EPSRA) No.6 LFN 2005

Endnotes

1 NERC, Official website available at <https://nerc.gov.ng/doclib/regulations/228-bussiness-rules/file>

2 NERC, Official website available at [https://nerc.gov.ng/index.php/comment/remository/Regulations/Electric-Power-Sector-Reform-Act-\(EPSR\)-2005/?Itemid=591](https://nerc.gov.ng/index.php/comment/remository/Regulations/Electric-Power-Sector-Reform-Act-(EPSR)-2005/?Itemid=591)

3 See Section 96 (2)a of the EPSRA, No 6 LFN 2005

4 Section 7

5 Section 8

6 Section 9

7 Section 10

8 Section 11

9 Section 12 (see Annexure I, Form 1)

10 See Annexure II, Form 2

11 Section 13

12 Section 14

13 Section 15

14 Section 16

15 Section 17

16 Section 18

17 Section 19

18 Section 20

19 Section 21

20 Ibid

21 Section 22

22 Section 24

23 Section 25

24 Section 26

25 Section 27

26 Section 28

27 Section 30

28 Section 38(1)

29 NERC, Official website, available at <https://nerc.gov.ng/index.php/library/documents/func-startdown/312/>

30 NERC, official website, available at <https://nerc.gov.ng/doclib/codes-standards-and-manuals/23-gridcodevo3-01-08-2018-compressed/file>

31 The Dispute Resolution Panel is established in accordance with the Market Rules and it resolves disputes through arbitration

32 Schedule 1, Section 1-2

33 Schedule 1, Section 6

34 Sections 31-61 of the EPSRA

35 Section 42

36 Section 31

37 Section 40

38 Section 41

39 Section 39

40 Schedule 1, Section 5

41 Section 32

# DISCLAIMER

This document titled the “Simplified Legal and Regulatory Guide” of the referenced country is not expected to form the basis of, or be construed as standard legal advice; nor should any of its contents and representations be strictly relied upon for any activities. Electricity Lawyer (EL) will not be liable for decisions whatsoever that are made based on the contents of the document.

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