



SIMPLIFIED LEGAL *And* REGULATORY GUIDE:

**Nigerian Electricity Regulatory Commission -
Electricity Industry (Enforcement) Regulations,
2014**





CONTENTS

Overview

Enabling Law

Objective(s)

Key Provisions

Key Stakeholders

Pricing and Tariffs

Incentives and Investment Opportunities

Sanctions and Penalties



OVERVIEW

**Nigerian Electricity Regulatory Commission
- Electricity Industry (Enforcement)
Regulations, 2014**

OVERVIEW



The Electricity Industry (Enforcement) Regulations¹ was promulgated in 2014 by the Nigerian Electricity Regulatory Commission ('NERC' or the 'Commission') as a set of directives providing guidance for stakeholders or licensees towards strict adherence regarding certain technical, financial, and safety-oriented criteria required of such stakeholders or licensees. The Regulation focuses on the enforcement of license conditions, the Market Rules, conduct of investigation, administrative sanctions, etc.

The Glossary of Terms referenced in this guide can be found in the main Regulation² and in our [Glossary of Industry Terms](#).



The enabling law for the Electricity Industry (Enforcement) Regulations is the Electric Power Sector Reform Act of 2005³ which vests the power to make regulations with the Nigerian Electricity Regulatory Commission (NERC). [Please refer to EL's guide on the Electricity Act.](#)



OBJECTIVE

**Nigerian Electricity Regulatory Commission
- Electricity Industry (Enforcement)
Regulations, 2014**



The objectives and rationale behind the promulgation of the Regulations include the following:⁴

- To ensure adherence by licensees and other market participants in the electricity market to the provisions of the Act and other Regulatory instruments for the purpose of achieving the following objectives:
- The creation, promotion and preservation of an efficient electricity industry and market.
 - The fostering of a culture of regulatory compliance by licensees and stakeholders.
 - The facilitation of the swift investigation and resolution of incidences of regulatory non-compliance and the fair and transparent determination of rights and obligations.
 - The maintenance of a predictable, stable, and effective system for the assessment of compliance in the Nigerian electricity industry and the proper allocation of responsibility.
 - The establishment of a system for the sanction of acts or omissions which constitute non-compliance with the regulatory framework established by the Electric Power Sector Reform Act and Regulatory instruments made pursuant thereto.



KEY PROVISIONS

**Nigerian Electricity Regulatory Commission
- Electricity Industry (Enforcement)
Regulations, 2014**

KEY PROVISIONS



Initiation of the Enforcement Process

It must be noted that in line with the Electric Power Sector Reform Act (EPSRA),⁵ the Nigerian Electricity Regulatory Commission (NERC) will exercise its enforcement powers

—⁶

- On its own initiative, where the Commission has grounds to believe that a breach of the provisions contained in the EPSRA has been, is being or will be committed; or
- In response to a complaint made by a person who believes that a breach of the provisions contained in the EPSRA has been, is being, or will be committed.

Any complaints made by person concerning such breach must be made in the form and manner specified in Form EF1 which can be found in the Schedule to the Regulations. NERC will then make use of Form EF2 in the Schedule to the Regulations, to acknowledge receipt of any complaints.⁷

Investigation

Investigations can be initiated by the Commission who may authorize any of its officials or appoint an inspector⁸ to investigate any as referred to it based on the provisions of the Regulations.⁹

It must be noted that once a complaint is made, the Commission will first consider if the complaint is worth investigating before taking any further steps to remedy the complaint.¹⁰

In cases where the Commission decides that investigation need not be made for a complaint, the Commission will within 90 days from the date of receipt of the complaint and in any form or manner it sees fit, inform the complainant and the subject of the complaint, of its decision and the reason for its decision.¹¹ If on the other hand, the Commission decides to investigate the complaint, the Commission is to inform the subject of the complaint that the matter is to be investigated.¹²

In carrying out the investigation, it must be noted that the Commission may appoint professional or technical experts to advise and assist with the procedure¹³ and any person authorized by the Commission to support with an investigation, will have the power to obtain information from the concerned persons as they deem fit.¹⁴

Following the conclusion of the investigation, a report of the investigation is to be submitted to the Commission, which will include information concerning the following:¹⁵



- the conduct of the investigation.
- any findings made based on the investigation.
- the evidence and other material on which those findings were based; and
- such other matters relating to, or arising out of, the investigation as the Commission thinks fit.

Following its receipt of the report, the Commission will issue a notice in writing to the Complainant and the Respondent, alongside the report of the investigation. This notice will invite the complainant and respondent to make written submissions in respect of the matter investigated within a period of not less than 21 days following the service of the notice.¹⁶ The Commission will subsequently consider the submissions made before arriving at a decision.¹⁷

At its discretion, the Commission may hold a hearing on any matter investigated before making a decision on the matter(s).¹⁸

Enforcement of Rules, Conditions, and Requirements

The Regulations provides that where any matter referred to the Commission deals with the breach of the conditions of a licence by a licensee, the procedure for enforcement

shall be as dictated within the Electric Power Sector Reform Act.¹⁹

Where a matter referred to the Commission however deals with the Market Rules,²⁰ the Commission will in turn, refer such matter to the Market Surveillance Panel established within the Market Rules, to conduct investigation on the matter in accordance with the Market Rules.²¹ A report of the output of such investigation shall be submitted by the Panel to the Commission, following which the Commission will consider the report alongside the response made by the Market Participant investigated, before making its decision.²²

Also, where a matter referred to the Commission deals with a possible contravention of S.62 of the Electric Power Sector Reform Act or any regulatory instrument requiring the issuance of a licence or permit by the Commission for any business or activity, the Commission may determine whether a person is engaging or about to engage in a business or activity for which a licence or permit is required²³ and will make such orders as may be necessary to prevent the reoccurrence of the breach.²⁴

It is worthy of note that the Commission can make interim orders pending the conclusion of the enforcement process, if it deems that action is urgently required regarding a certain matter referred to it.²⁵



Compliance

NERC may in certain instances, issue directions requiring a licensee or participant in the electricity industry to take certain specified action, for the purpose of ensuring that the licensee or participant does not breach or contravene the provisions contained in the EPSRA or other regulatory instruments.²⁶ If such directions are not complied with, it would amount to a breach which would be met with sanctions administered by the Commission.²⁷

In ensuring that a licensee complies with the decisions and orders of the Commission, it is worthy of note that the Commission may institute civil proceedings in court against such person; such proceedings may be instituted to enforce compliance with its decisions, orders, and directions, including recovery of administrative fines.²⁸

It must also be noted that no licensee will be deemed liable to any other licensee regarding the taking of any action, or omission, that is reasonably necessary for compliance with a decision or order made by the Commission.²⁹

Any unpaid sum due to be paid by a licensee to the Commission, will constitute a debt and will bear interest at the prevailing prime lending rate until such debt is paid.³⁰

Changes in Board and Management of Licensees

NERC can by written notice, require that a licensee make changes to its Board of Directors or Management as the Commission may consider necessary.³¹ Within 10 days from the date of receipt of the notice, the licensee will be required to notify the Commission of its compliance with the decision of the Commission.³²

It must be noted that the Commission will require the removal of any member of the Board of Directors or management staff of the licensee who 'does not or ceases' to meet the minimum qualifications for such positions prescribed in the Commission's Guidelines and Assessment Criteria for Fit and Proper Persons for Corporate and Individual Participation in Regulated Electricity Undertakings.³³

Assistance by Law Enforcement Agencies

NERC or any authorized person acting on its behalf can seek the assistance of any law enforcement agency to enforce compliance with any of the decisions, orders, or directions of the Commission.³⁴



Sealing off Premises and Seizing of Equipment

In exercising its monitoring and enforcement powers, the Commission and any other person authorized on its behalf may demand the use of any facility, equipment, or apparatus in the possession of other persons. Such equipment, apparatus or facility may be detained in the custody of the Commission for a certain period and on certain deemed necessary by the Commission.³⁵ A court

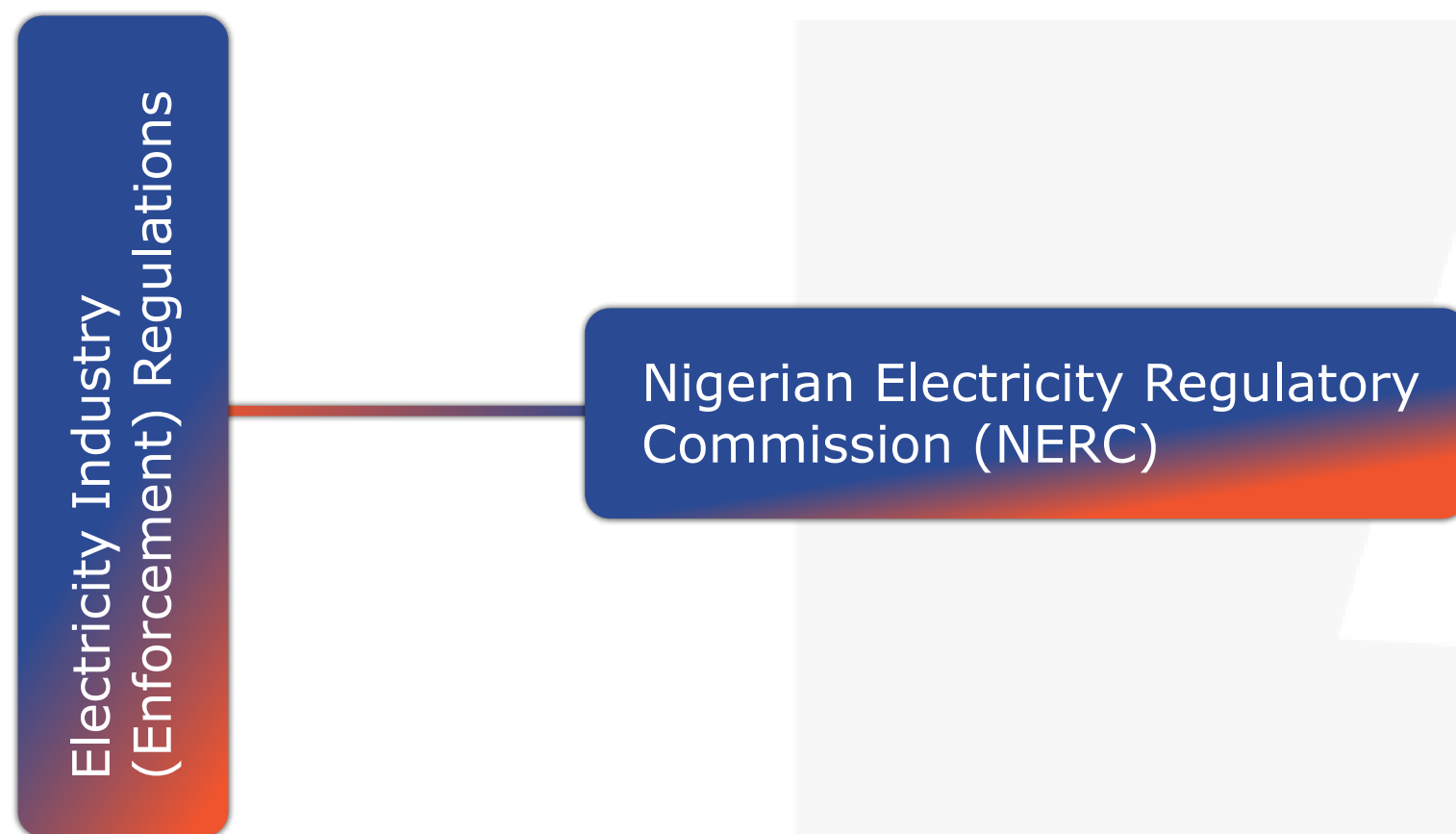
warrant for seizure must be obtained from a Magistrate or a Judge of a court of competent jurisdiction by the Commission or its authorized personnel before items can be seized, detained, or sealed off. In addition, an inventory of the seized items must be provided to the owner of the premises or the owner's agent, except where the items sealed off remain in the custody of the owner or agent.³⁶



KEY STAKEHOLDERS

Nigerian Electricity Regulatory Commission
- Electricity Industry (Enforcement)
Regulations, 2014

KEY STAKEHOLDERS



The following are the key stakeholders responsible for ensuring that the provisions contained in the Regulations are strictly adhered to by participants in the electricity industry:



Nigerian Electricity Regulatory Commission (NERC)

NERC promulgated the Regulations and thus, enforces its provisions in the electricity industry. As highlighted from key provisions in the Regulations, the Commission possesses various administrative powers which include the power to conduct investigations, effect compliance, and administer sanctions and penalties on defaulting participants. NERC also has the power to amend or repeal the provisions of the Regulations³⁷

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 electricity-related content.

PRICING **AND TARIFFS**

**Nigerian Electricity Regulatory Commission
- Electricity Industry (Enforcement)
Regulations, 2014**

PRICING AND TARIFFS

A large, stylized illustration of a glowing orange lightbulb is positioned on the left side of the slide. The lightbulb has a grey base and is surrounded by several short, orange lines radiating outwards, suggesting it is turned on. The background features faint, grey outlines of buildings and a lightning bolt.

The Regulations do not contain any provisions on pricing and tariffs.

INCENTIVES AND INVESTMENT OPPORTUNITIES

Nigerian Electricity Regulatory Commission
- Electricity Industry (Enforcement)
Regulations, 2014



INCENTIVES AND INVESTMENT OPPORTUNITIES



Given the nature of the Regulations, there are no specific opportunities for investment stated.



SANCTIONS AND PENALTIES

**Nigerian Electricity Regulatory Commission
- Electricity Industry (Enforcement)
Regulations, 2014**

SANCTIONS AND PENALTIES



The Act provides that where the Commission considers that a licensee has committed a manifest breach of his or her obligations regarding a state of affairs for which the licensee is responsible, the Commission will issue a notice to the licensee to show cause in writing, within a period of not less than three (3) working days, why any administrative sanction should not be imposed for such breach by the licensee.³⁸ If the licensee subsequently fails to respond to such notice or gives an unsatisfactory response, the Commission may proceed to administer certain sanctions and penalties against such licensee.³⁹

NERC can impose administrative fines not exceeding N10,000 per minute for a breach.⁴⁰

There are various criteria which are considered by the Commission before the imposition of administrative fines which include:⁴⁸

- the severity of the breach and the need to impose such fine to act as deterrent both to the licensee who committed the breach and other licensees.
- non-discrimination and transparency in the general imposition of sanctions.
- admission of the breach by the licensee being investigated.
- the prevalence of the breach in the Nigerian Electricity Supply Industry generally and the likelihood of repetition by the licensee who committed the breach or other licensees.
- the duration of the breach.
- the circumstances of the occurrence of the breach.
- the record of previous or similar breaches by the licensee.
- the danger to life and property consequent upon the breach.
- the effect of the breach on relevant service provision generally.
- any gain made by the licensee who committed the breach directly or indirectly arising from such breach.
- the degree of harm, injury, discomfort, or the incremental cost caused by such breach to consumers or other stakeholders in the Nigerian Electricity Supply Industry.
- the extent to which any breach by the licensee was caused by a third party or any circumstances beyond its control.
- the absence, ineffectiveness or repeated failure of internal mechanisms or procedures required to prevent the breach by the licensee.
- whether or not the breach was of a minor nature and the consequences and effect thereof were equally minor in nature.
- whether or not the licensee who committed the breach took immediate steps to remedy the breach soon after having knowledge of the breach; and
- such other factors as the Commission may, from time to time, determine.



Any fine(s) imposed will be payable by the licensee within 14 days from the date of the decision or the date of service of notice of the decision where the licensee was absent at the time of the decision.⁴¹ If the fine is not paid within the duration stated, the licensee required to pay the fine will be liable to an imprisonment term of three (3) months upon conviction.⁴²

Also, the Regulations provides that the Commission may suspend a licence if in its opinion:⁴³

- the licence was issued based on fraud, or the misrepresentation or nondisclosure of a material fact by the licensee; or
- the licensee has been found to have breached any provision of the EPSRA or any other Regulatory instrument applicable to the licensee; or
- the licensee has been found to have breached any term or condition of its licence, the breach of which is expressly declared by the licence terms and conditions to render it liable to suspension or cancellation; or
- the financial position of the licensee is such that the

licensee is unable to fully and efficiently discharge the duties and obligations imposed by the licence.

Before suspension occurs however, the Commission will notify the licensee in writing of its intention to suspend the licence, and its reasons for doing so. The licensee will be allowed to prove to the Commission within 30 days from the date of receipt of the notice, that the issue has been resolved which would absolve the need for a suspension.⁴⁴

The Commission may also cancel any licence on the grounds and in the manner specified in S.74 of the EPSRA.⁴⁵

The Regulation also provides that any person who assaults, obstructs, resists or aids any other person to assault, obstruct or resist any authorised person acting on behalf of the Commission in the exercise of its monitoring and enforcement powers under the EPSR Act or the provisions within the Regulations, commits an offence punishable under section 94 of the EPSR Act.⁴⁶ Also, any person who impersonates any authorised person acting on behalf of the Commission commits an offence punishable under section 94 of the EPSR Act.⁴⁷

Referenced Statutory Instruments

- Electric Power Sector Reform Act, 2005

Endnotes

1 NERC, Electricity Industry Enforcement Regulations. Available at <https://nerc.gov.ng/index.php/component/remository/Regulations/Electricity-Industry-Enforcement-Regulation/?Itemid=591>

2 NERC, Electricity Industry Enforcement Regulation. Available at <https://nerc.gov.ng/index.php/component/remository/Regulations/Electricity-Industry-Enforcement-Regulation/?Itemid=591>

3 NERC, Electric Power Sector Reform Act (EPSR), 2005. Available at [https://nerc.gov.ng/index.php/library/documents/Regulations/Electric-Power-Sector-Reform-Act-\(EPSR\)-2005/](https://nerc.gov.ng/index.php/library/documents/Regulations/Electric-Power-Sector-Reform-Act-(EPSR)-2005/) Section 96, EPSRA

4 Section 4

5 Section 32(2), EPSRA

6 Section 5(1)

7 Section 5(2)

8 Pursuant to Section 95, EPSRA

9 Section 6(1)

10 Section 6(2)

11 Section 6(3)

12 Section 6(4)

13 Section 6(5)

14 Section 6(6)

15 Section 6(7)

16 Section 7(1)

17 Section 7(2)

18 Section 7(3)

19 Section 75, EPSRA; Section 8 of the Regulations

20 NERC, NESI Market Rules. Available at <https://nerc.gov.ng/index.php/library/documents/Tariff-Charges--and--Market-Rules/NESI-Market-Rules/>

21 Section 9(1)

22 Section 9(2)

23 Section 10(1)

24 Section 10(2)

25 Section 12

26 Section 13(1)

27 Section 13(2)

28 Section 14(4)

29 Section 14(3)

30 Section 14(5)

31 Section 18(1)

32 Section 18(2)

33 Section 18(4)

34 Section 20

35 Section 21(1)

36 Section 21(3)

37 Section 24

38 Section 11(1)

39 Section 11(2)

40 Section 16(2)

41 Section 16(4)

42 Section 16(7)

43 Section 17(1)

44 Section 17(2)

45 Section 19(1)

46 Section 23(1)

47 Section 23(2)

48 Section 16(3)

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.

For Enquiries and/or Advisory Services, kindly reach out to us at our e-mail address: ask@electricitylawyer.com

For Research and Insights, kindly reach out to us at our email address: insights@electricitylawyer.com

For Training and Capacity Building, kindly reach out to us at our email address: trainings@electricitylawyer.com



ELECTRICITY
LAWYER