



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

**Nigerian Electricity Regulatory Commission
(NERC) Eligible Customer Regulations, 2017**





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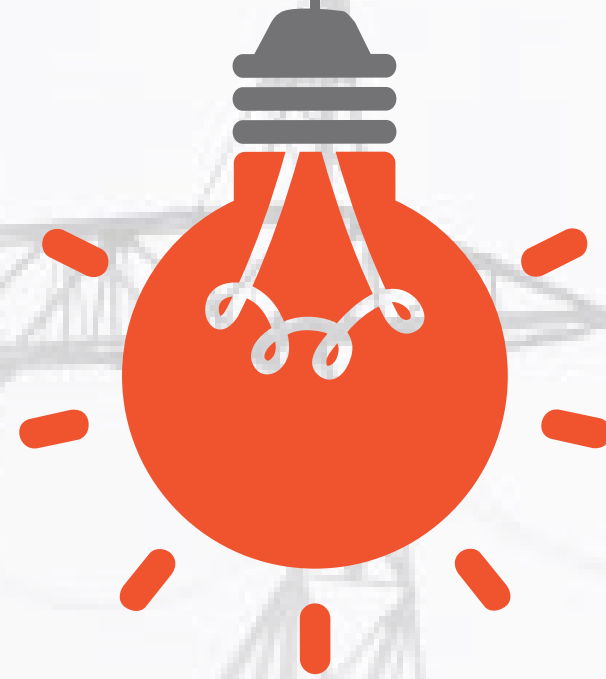
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OVERVIEW

**Nigerian Electricity Regulatory Commission
(NERC) Eligible Customer Regulations, 2017**



The Eligible Customer Regulations was promulgated in 2017 as an instrument providing directives to stakeholders in the power sector acting in the capacity of Eligible Customers, following the Eligible Customer Declaration made in 2017 by the then Minister of Power, Works, and Housing – Hon. Babatunde Raji Fashola. The Declaration established a spectrum of participants in the electricity industry allowed to purchase electricity directly from generation licensees or trading licensees for the purpose of bettering the financial liquidity of the power sector. The Glossary of Terms used in the Regulation and referenced in this guide can be found in the main Regulation¹ and in our [Glossary of Industry Terms](#).



The Electric Power Sector Reform Act² which vests in the Nigerian Electricity Regulatory Commission, the power to make regulations, serves as the legal backing for the promulgation of the Eligible Customer Regulations.³ [Please refer to EL's guide on the Electricity Act.](#)



OBJECTIVE

**Nigerian Electricity Regulatory Commission
(NERC) Eligible Customer Regulations, 2017**



The rationale behind the promulgation of the Eligible Customer Regulations includes the following:⁴

- Creation of more competition in the supply of electricity.
- Promoting the increment of generation capacity and opportunities for improvement in quality of electricity supply.
- Promoting third party access to transmission and distribution infrastructure as a catalyst towards full retail competition in the electricity market.
- Allowing licensed generation companies with uncontracted capacity to access an additional range of customers thus improving the financial liquidity of the electricity market; and
- Enhancing the stability and efficiency of generation companies.



KEY PROVISIONS

**Nigerian Electricity Regulatory Commission
(NERC) Eligible Customer Regulations, 2017**

KEY PROVISIONS



The following are the key provisions in the Eligible Customer Regulations which must be noted by persons looking to participate in the Nigerian Electricity Supply Industry:

Declaration by the Minister

The following are the classes of customers declared by the Minister of Power as end users who can apply for eligibility status ⁵

A customer or group of end-use customers registered with the Commission, whose consumption is more than 2 MWh/h over the course of one month, and is connected to a metered 11kV or 33kV delivery point on the distribution network of a distribution licensee under a distribution use of system agreement with such distribution licensee for the connection and for the delivery of electrical energy.

A customer or group of end-use customers registered with the Commission connected directly to a metered 132kV or 330kV delivery point on the transmission network under a transmission use of system agreement for the connection and for the delivery of electrical energy.

A customer or group of end-use customers registered with the Commission whose consumption is more than 2 MWh/h over the course of one month, that is connected directly to a metered 33kV delivery point on the transmission network under a transmission use of system agreement, and has entered into a bilateral agreement for the construction, installation and operation of the distribution system used to connect the customer to the 33kV delivery point, with the distribution licensee licensed to operate in the location where the customer and the 33kV delivery point are located.

A customer or group of end-use customers registered with the Commission whose consumption is more than 2 MWh/h over the course of one month, that is directly connected through a metered delivery point, to the generation facility of a generation licensee it intends to purchase electrical energy from and has entered into a bilateral agreement for the construction, installation and operation of the distribution system used to connect the customer to the generation facility with the distribution licensee licensed to operate in the location where the generation facility and the customer are located.



The Regulation anticipates a progressive actualization of the various classes of declared eligible customers as a precondition for the introduction of retail competition and licensing of traders in the Medium-Term Market. The above schematic constitutes Phase 1 within the Regulation. Phase 2 on the other hand anticipates that certain conditions listed below would have been met before its implementation can occur:⁶

- Minimum of eleven (11) activated eligible customer transactions spread over a minimum of six(6) Distribution Companies (DisCos).
- A declaration from the System Operator (SO) (verified by the Commission) on the current technical capacity of the Transmission Service Provider and DisCos to manage more Eligible Customers.
- The Commission's review of the impact of phase 1 implementation on the revenue of the distribution companies within six months after the commencement of the initial switch date.
- A review to the satisfaction of the Commission of the revenue impact on DisCos within 6 months after commencement of the initial switch date.⁷

Other Requirements

Site Aggregation

A group of end users can combine multiple sites and apply to the Commission for eligibility status with each application being considered on its own merit. In considering such applications, the applicants will be required to fulfill the following site aggregation requirements –⁸

- Each Eligible Customer in the sites to be aggregated must be connected to the same distribution licensee's network, an Independent Electricity Distribution Network (IEDN), or an off-grid licensee.
- Each Eligible Customer must be connected to the same feeder.
- Each applicant must be a single legal entity which may be a Special Purpose Vehicle that will apply for eligibility status on behalf of the group of end-users and shall execute the transaction documents.
- There must be a minimum consumption of 500KVA at each site to be aggregated, all located within the same geographical network as may be determined by the Commission.



Metering

Furthermore, applicants for eligibility status must procure and install appropriate metering infrastructure at all trading points in compliance with the Metering Code; with such meters possessing remote reading capability for the measurement of active power, reactive power, peak demand, and profiling of real load.⁹

Contractual Requirements

The following contractual requirements must also be met by applicants for eligibility status before approval by the Commission can be given –¹⁰

- Execution of a Power Purchase Agreement (guided by the Commission's standard template) with the prospective Supplier or generation company.
- Execution of Transmission Use of System ("TUoS") agreements with the Supplier and Transmission Service Provider, where applicable.
- Execution of Distribution Use of System ("DUoS") with the Supplier and Distribution Licensee where applicable.
- Execution of market participation agreements with the Market Operator.

- Execution of a bilateral agreement with the distribution licensee for the construction, installation, and operation of a distribution system to be used for the supply to the applicant for eligibility status, where applicable; and
- Execution of other agreements as may be prescribed by the Commission.

Financial Requirements

Finally, applicants for eligibility status will be required to post a Letter of Credit or Bank Guarantee in favour of the Market Operator in accordance with the Market Rules to cover Market administration charges, TUoS charges and other charges as may be approved by the Commission.¹¹

Intending suppliers must also possess either a generation licence or a trading licence in line with the relevant provisions in the Electric Power Sector Reform Act, 2005.¹²



Procedure for Grant of Eligible Customer Status

Before approval and grant of Eligible Customer Status can be given by the Commission, the applicant and supplier (generation or trading licensee) must provide documentary evidence proving that both parties have met their respective requirements under the Regulations.¹³

Such documentary evidence must also include the provision of the following supporting documents:¹⁴

I. For Eligible Customers (three copies of the documents are to be submitted) –

- A copy of the applicant's certificate of incorporation.
- Tax clearance certificate.
- Memorandum and Articles of Association.
- Forms CAC2 and CAC7.
- Board resolutions approving the application.
- Copies of documents showing that the applicant/supplier have satisfied safety and technical requirements.
- Utility bills.
- Letter of introduction from bankers and other financial support documents.

- Statement from the System Operator or Distribution System Operator (as the case may be) indicating the structures to which the Eligible Customer is connected and stating that the Eligible Customer meets the conditions prescribed by the relevant Technical Codes and general conditions for delivery and supply of electricity.
- Letter of clearance from Disco of non-indebtedness of the Eligible Customer; and
- Draft PPA, TUoS, DUoS and Market Participation Agreement.

II. For Suppliers (three copies of the documents are to be submitted) –

- Draft PPA, TUoS, DUoS and Market Participation Agreement; and
- Evidence of excess capacity over and above that contracted with NBET (for Successor GenCos).

Following the submission of the above documents by respective parties, the applicant and supplier will also be required to perform the following:¹⁵



- The execution of a Power Purchase Agreement.
- The execution of a TUoS agreement and DUoS agreement as may be required for the delivery of energy to the Eligible Customer; and
- Filing an application to the Commission for Eligibility Status with all supporting documents with the Commission.

Following the performance of the above requirements, the Commission will verify and examine the application and give a decision no later than 30 days from the date of receipt of the application. Any applications for licences by prospective suppliers will be considered by the Commission on its own merit.¹⁶

Rights and Obligations of Eligible Customers

Eligible Customers have the following rights –

- Right to access the transmission and distribution networks for the purpose of electricity supply pursuant to the execution of the TUoS and or DUoS agreement as applicable;¹⁷ and
- Right to freely choose a supplier and contract the pricing, quantity, and time of supply pursuant to the Grid Code, Market Rules and general conditions for delivery and supply of electricity.¹⁸

Before these rights can be exercised however, the Eligible Customer must meet the following obligations which include¹⁹

- Entering a supply contract with the holder of a Generation or Trading Licence.
- Entering a contract to access the transmission and distribution network (as may be required) and in compliance with technical codes, general conditions for delivery and supply of electricity and the terms of the Power Purchase Agreement.
- Complying with the requirements for off-take on contracted quantities of electricity and peak capacity at each connection point.
- Meeting all financial obligations in accordance with the agreements for the supply of electricity and in a timely manner; and
- Notifying the Commission of any change in its (eligible customer's) corporate identity, address, and service location.

Switching of Suppliers

Eligible Customers may switch suppliers at any period subject to the following rules –



- Before a new supplier can commence power delivery to the Eligible Customer, the Commission must approve all Power Purchase Agreements between both parties to that effect.²⁰
- A 3 months' notice must be given to the distribution licensee whose supply the Eligible Customer intends to exit from;²¹ and
- A 3 months' notice must also be given to a distribution licensee whose supply the Eligible Customer wishes to reconnect to.²²

It must also be noted that any Eligible Customer who intends to switch suppliers must inform their current supplier in writing of the intention to switch suppliers at an agreed date, subject to the termination clause under the PPA and the Commission's approval of the new contract for supply.²³

Contributions by Eligible Customers

The Commission has the authority to determine the rate of contributions to be made by Eligible Customers to the Power Consumer Assistance Fund in accordance with Section 84(1) of the EPSRA²⁴ and the Rural Electrification Fund in accordance with Section 89 of the EPSRA.²⁵

Treatment of Energy Differences

Energy differences occur when the Eligible Customer is unable to take the generated contracted quantities; or a generator is unable to deliver contracted quantities. Such differences are to be settled in accordance with the provisions under the Power Purchase Agreement between the eligible customer and the supplier, and the balancing mechanism developed by the Market Operator pursuant to the provisions in the Market Rules.²⁶

Supplier of Last Resort

In the event of a failure by a contracted supplier to deliver contracted quantities of power, the Eligible Customer can procure power from a supplier of last resort who will act as its contingent supplier.²⁷

A distribution company will act as a supplier of last resort to an Eligible Customer operating within its network coverage area and the service of supply shall be provided under a provisional arrangement at a price to be mutually agreed upon by the contracting parties.²⁸



Dispute Resolution

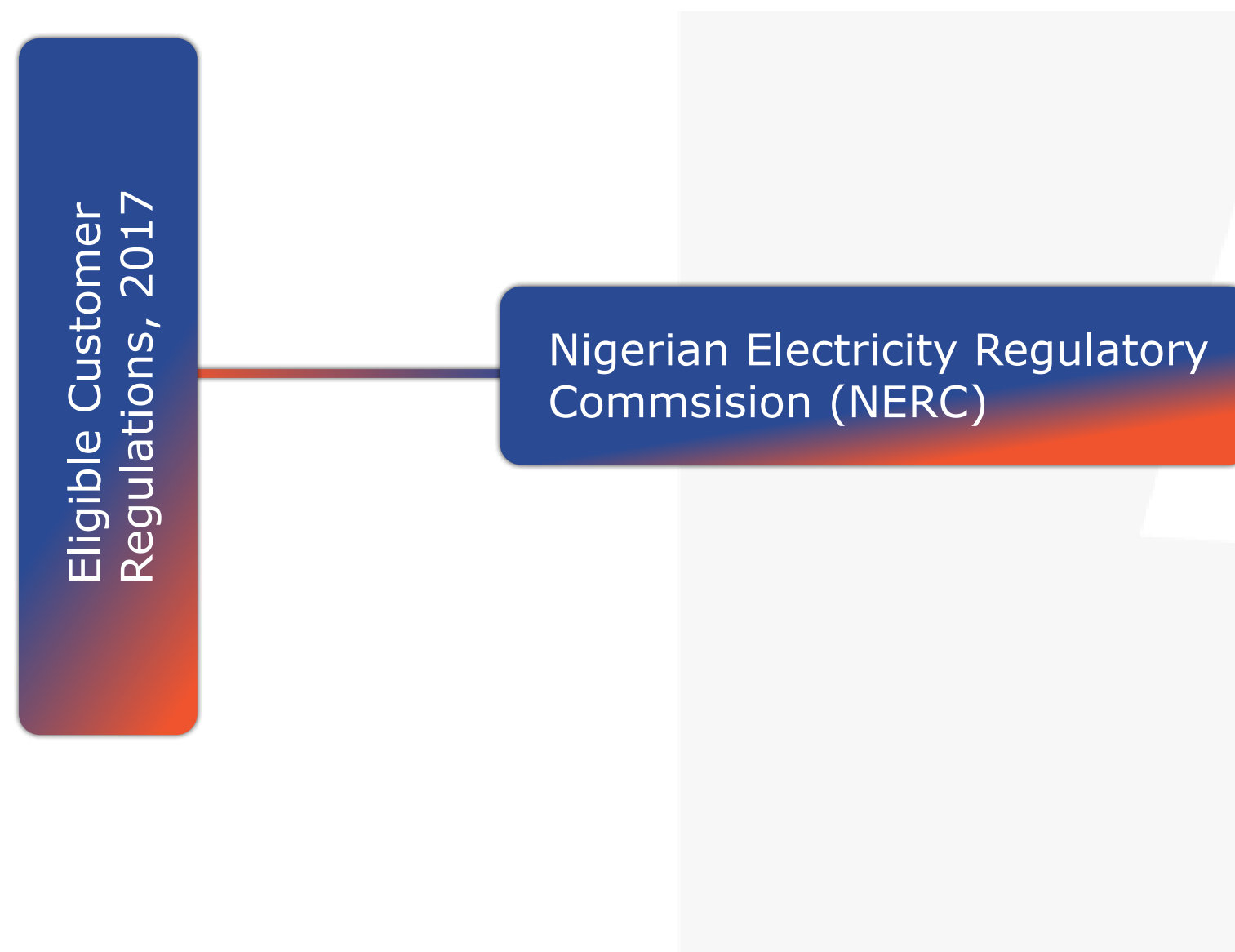
All disputes between parties arising out of or in connection with the provisions contained in the Eligible Customer Regulations will be resolved in accordance with the dispute resolution clauses of the respective agreements governing their relationship and the dispute resolution mechanism in the Market Rules (where applicable).²⁹



KEY STAKEHOLDERS

Nigerian Electricity Regulatory Commission
(NERC) Eligible Customer Regulations, 2017

KEY STAKEHOLDERS



Nigerian Electricity Regulatory Commission (NERC)

NERC is responsible for granting Eligible Customer status to applicants in the electricity industry. The Commission handles the process for the approval and grants of eligibility status and ensures that activities involving electricity supply between Eligible Customers and suppliers are undertaken in an organized manner through agreements, and in accordance with relevant regulations such as the Market Rules, Grid Code, and the Metering Code.


The Commission maintains a list of all Eligible Customers and their licensed suppliers on its website;³⁰ and has the power to amend or repeal in whole or in part, provisions in the Regulations.³¹

The background of the slide features a dark, monochromatic image of a high-voltage power transmission tower, also known as a pylon. The tower's lattice structure is visible, with multiple cross-arms extending outwards. The image is slightly faded and serves as a backdrop for the text.

PRICING **AND TARIFFS**

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PRICING AND TARIFFS



Prices and tariffs charged by suppliers to Eligible Customers for the delivery of power to Eligible Customers in addition to the energy charges negotiated in the PPA between both parties which include TUoS Charges (where applicable), DUoS Charges (where applicable), Regulatory fees, Ancillary Service Charges, and Market Administration and System Operation Charges.³²

The Minister of Power may also issue directives for the collection of Competition Transition Charges from Eligible Customers in accordance with S.28 of the EPSRA.³³

Also, metering, billing, and settlement of invoices for Eligible Customers are to be undertaken in accordance with the provisions of the Market Rules and the Metering Code.³⁴

INCENTIVES AND INVESTMENT OPPORTUNITIES

Nigerian Electricity Regulatory Commission
(NERC) Eligible Customer Regulations, 2017



INCENTIVES AND INVESTMENT OPPORTUNITIES



The Regulation consolidates the Eligible Customer Declaration of the Ministry of Power, Works, and Housing; thus, providing an avenue for persons to participate in the power sector as Eligible Customers on the one hand, or Generation licensees, Trading licensees and Distribution Licensees serving as suppliers of electricity to Eligible Customers on the other hand.³⁵

Also, end-use customers that meet the criteria specified in the Declaration by the Minister (classes of eligible customers) can apply for eligibility status, with the ability to purchase electricity directly from generation licensees or trading licensees.³⁶ The relevant requirements stated beforehand as part of the key provisions of the Regulation must however be followed before such eligibility status can be granted by the Commission.³⁷



SANCTIONS AND PENALTIES

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SANCTIONS AND PENALTIES



The Regulation provides that parties denied access to transmission and distribution networks can file a petition to the Commission against the denial; and, where a network licensee is found to have unreasonably restricted a third party from access to the transmission or distribution network, the Commission will issue an order granting such access and will sanction the licensee for denying access.³⁸

Referenced Statutory Instruments

- Electric Power Sector Reform Act, 2005
- Metering Code for the Nigerian Electricity Supply Industry – Version 01, 2013
- Grid Code for the Nigeria Electricity Supply Industry (NESI) – Version 03, 2018
- Market Rules for the Nigerian Electricity Supply Industry, 2009

Endnotes

1 NERC, NERC Eligible Customer Regulation 2017. Available at <https://nerc.gov.ng/index.php/library/documents/Regulations/NERC-Eligible-Customer-Regulation-2017/>

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

3 Section 96, EPSRA

4 Section 2

5 Section 5

6 Section 36

7 Schedule II

8 Section 6

9 Section 7

10 Section 8

11 Section 9

12 Sections 10-12

13 The requirement for suppliers is they must have been issued a generation or trading license in accordance with the EPSRA. Sections 11 & 12 of Eligible Customer Regulations

14 Schedule I

15 Section 14

16 Ibid

17 Section 15(1)(a)

18 Section 15(2)(a)

19 Section 16

20 Section 23

21 Section 24

22 Section 25

23 Section 26(1)

24 Section 30

25 Section 31

26 Section 33

27 Section 37

28 Section 38

29 Section 40

30 Section 39

31 Section 42

32 Section 28(1)

33 Section 29

34 Section 32

35 Sections 10, 11 & 12

36 Chapter II

37 Sections 5, 6, 7, 8, 9 & 34

38 Section 27(1)(e)

DISCLAIMER

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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



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