ELECTRICITY LAWYER

SIMPLIFIED LEGAL *And* REGULATORY GUIDE:

Nigerian Electricity Regulatory Commission (NERC) (Independent Electricity Distribution Networks) Regulations, 2012

CONTENTS

OVERVIEW

Nigerian Electricity Regulatory Commission (NERC) (Independent Electricity Distribution Networks) Regulations, 2012

OVERVIEW

The Nigerian Electricity Regulatory Commission (Independent Electricity Distribution Networks) Regulations[1] was introduced on the 31st of January 2012 as a regulatory framework for providing guidelines relating to the issuance of distribution licenses to qualified entities for the purpose of engaging in electricity distribution, independent of the distribution system operated by the Distribution Companies (DisCos) in Nigeria. It is divided into six (6) parts consisting of a total of twenty-six (26) sections.

The Glossary of Terms used in the Regulation and referenced in this guide can be found in the main Regulation[2] and in our Glossary of Industry Terms.

ENABLING LAW

NERC is empowered by the Electric Power Sector Reform Act, 2005 (EPSRA), as the major agency with the responsibility of formulating regulations, to facilitate the implementation and enforcement of the provisions of the Act. NERC is vested with the authority to develop regulations relating to areas of administration, licensing, market structure, procurement procedures, pricing, and tariffs, etc.[3] The Independent Electricity Distribution Networks Regulation is one of many Regulations promulgated under the ambit of the Commission's powers enshrined in the EPSRA. Please refer to EL's guide on the Electricity Act.

OBJECTIVE

**Nigerian Electricity Regulatory Commission (NERC)
(Independent Electricity Distribution Networks)
Regulations, 2012**

OBJECTIVE

Primary objective of the IEDN Regulation	The primary objective of the Independent Electricity Distribution Networks (IEDN) Regulations is to provide standard rules for issuing distribution licenses to eligible operators and licensees to engage in electricity distribution, independent of the distribution system operated by the DisCos.

It should be noted that the Regulations do not apply to the Distribution System operated by the Distribution Company of Nigeria but applies to Independent Electricity Distribution Systems.

KEY PROVISIONS

Nigerian Electricity Regulatory Commission (NERC) (Independent Electricity Distribution Networks) Regulations, 2012

KEY PROVISIONS

Characteristics of IEDN

The Regulation classifies an IEDN into three:

- Isolated off-grid rural IEDN
- Isolated off-grid urban IEDN
- Embedded IEDN.

An Embedded IEDN will be required to enter into a service agreement with the Distribution Company supplying electric power, where the embedded IEDN does not have a generator in its network. However, where it has a generator, it will be embedded into the Successor Distribution Company to which the IEDN is connected. The Commission may grant licenses for the exclusive right to construct, own, operate and maintain a Distribution System in a particular geographical area within the operation of a Successor Distribution Company.

Applicants seeking an IEDN license must submit the following descriptions to NERC:

An accurate description of the proposed distribution system

The description of the geographical area in the form prescribed by NERC.

Any affiliate of the IEDN may be granted the licence to engage in other regulated activities, following an application to the Commission, in so far as the Commission is convinced that the applicant will in no way abuse market power to the detriment of customers or that mechanisms exist to prevent any potential abuse of market power. The licensed affiliate is mandated to prepare separate accounts for each of its activities as prescribed by the Company and Allied Matters Act as if the activities are carried out by a separate company.

Licensing

NERC is empowered to grant licences to engage in any operational activity of the electricity distribution system, where there is no existing distribution system in the geographical area of the IEDN. When considering an application, the NERC will determine if the grant of the IEDN license will either increase electricity access or reduce congestion in the distribution network as proposed by the applicant. Where the infrastructure of an existing DisCo is unable to meet existing customer demand in the applicable area, the IEDN Operator can make an application to NERC based on the following laid down requirements:

- Written undertaking that the facility of the existing distribution Licensee will not be used in its operations.
- Ensure that there are no parallel overhead lines to the existing facility.
- Ensure the safety of equipment, workers, and the public.
- Ensure that the minimum distribution capacity of the Independent Electricity Distribution Operator shall be 5000kW, and
- Demonstrate the ability to provide generation capacity for the IEDN.

The requirements for granting licence are specified under the Application for Licenses (Generation, Transmission, System Operation, Distribution and Trading) Regulations, 2010.

In addition to the above requirements, the Commission may consider the expansion plan of the existing DisCos when assessing the IEDN license application, to prevent possible encroachment to the intended plans of the DisCos seeking to expand their network within the expected five (5) years industry timeline.

The licensee is mandated to construct, operate, and maintain the Distribution System in accordance with the relevant Technical Codes and Standards. The licensee shall also maintain insurance policies and the integrity of the Distribution System based on directives issued by the System Operator. The licensee is required to observe all the provisions of the EPSRA, the terms and conditions of the license, the rules and regulations and the decisions, orders, and directions of the Commission.[4] In addition, the licensee is to provide non-discriminatory access to the Distribution System, in so far as it has the capacity to do so.

License fees must be paid in accordance with the License and Operating Fees Regulations, 2010.[5] Separate accounts are required to be kept and maintained for each business of the Distribution System in accordance with the Companies and Allied Matters Act. Accounting statements must be prepared for each financial year that includes a true and fair view of the revenue, costs assets, liabilities, and reserves in accordance with the business in the distribution system.[6] Inspection will be carried out periodically by the Commission and the licensee will be required to submit information to the Commission or System Operator for the purposes of supervision and control of the grid.[7]

Requirements for license application under the Application for Licenses Regulation, 2010

- Completed Application Form.
- Certificate of Incorporation and Memorandum and Articles of Association, or Deed of Partnership, or Deed of Trust.
- Registered Title Deed to Site, or Sale Agreement, or Deed of Assignment/Gift, or evidence of submission of a title deed to a relevant land processing agency (as applicable).
- Tax Clearance Certificate for immediate past three (3) years.
- Ten-year Business Plan.
- Power Purchase Agreement with Generating Licensee or Resale Agreement with Trading Licensee.
- Network Agreement with Transmission Licensee.
- Retail Agreement with end-user for supply of power.
- Memorandum of Understanding (MOU) with or Letter of intent from Engineering Procurement Contract (EPC) Contractor (if applicable).
- MoU with or Letter of Intent from the technical partner (if applicable).
- Financing Agreements or Letter to fund the project from financial institution(s).
- A detailed forecast of the demand for electricity in the area of supply.
- Project location.
- Line Voltage Level (33KV, 11KV, 415V & 230V).
- Connection Point(s).
- Pole type (wood, Concrete, Steel, etc).
- Installation method (overhead, underground, etc).
- Detailed project design: o Site map o Single line Diagram o Control Rooms o Sub-stations
- Line Length.
- Distribution Environmental Impact Assessment.
- Transformer(s) type & data (attach nameplate data of all transformers).
- Connection agreement with TCN.
- Impact of connecting the distribution system to TCN networks.
- Projected Peak Load to be connected.
- Maximum Capacity of Network (MW, MVar).
- Bill of Engineering Measurement and Evaluation (BEME) of the project.
- Details of protection Equipment.
- Health and Safety Policy.

Operation of the Distribution Network

The distribution licensee has the responsibility of designing, constructing, testing, commissioning, managing, and maintaining the distribution network facilities in compliance with the Technical Codes, Standards, terms, and conditions of the license.[8]. The IEDN operator is expected to curtail network losses through the observance of the standards stipulated in the Distribution Code within the allowable range set by the Commission. It should be noted that losses that are above the MYTO limit will not be capable of being passed down to end-users.[9]

Under certain specified circumstances, a licensee may be permitted to interrupt or curtail the transfer of electricity to or from a connection, to provide access services for a connection in line with the Distribution Code, connection agreement and the terms and conditions of the Distribution Licence. The interruption may emanate because of carrying out planned or unplanned improvement, maintenance, repair; a breakdown or damage to the distribution system or one of its parts; or in the event of a force majeure[10] that prevents the licensee from transferring electricity or providing access service. Prior notice of a minimum of ten (10) working days must be given to users- before any interruption.

Connection requirements for Generating Units

For every generating unit with a capacity of 20 MW	a 33 kV Medium Voltage Distribution will be used for its evacuation to the IEDN
For Embedded IEDN, with Embedded Generating units of more than 1 MW but less than 6 MW	Connection will be done on11 kV networks of the IEDN

Embedded generation units above 5 MW shall be in compliance with the Grid Code Embedded generating units above 5 MW and 20 MW or less	Will be connected to 33 kV IEDN networks
Operators of Renewable Energy Power Systems	Operators of Renewable Energy Power Systems (REPS) must ensure that where storage is not required, a flexible generation exists to allow intermittent and uncertain power to be absorbed into the network on a priority basis.[11]

Where it is in the interest of the public, or in the process of ensuring the security of the Distribution System, the licensee may be allowed to establish or remove a connection, disconnect a connection, take a plant or equipment out of or into service, commence operation of any plant or equipment among other things. The timeline for compliance will be specified in a direction. Where a user fails to observe a direction as specified, the licensee may appoint another person or any of its employees to carry out the direction. In addition, the Regulations do not limit any power conferred on the licensee or user by any other law or by agreement.[12]

The licensed IEDN operator is expected to operate in the geographical area specified in the license. The Operator may also enter agreements for providing open access to licensed generators, distributors or the transmission company as approved by the Commission.[13]

Where augmentation or interconnection with a transmission system is required, the System Operator shall coordinate the scheduling of such activities with the affected licensees; where a larger Distribution System is required, the distribution licensee of the larger size (kVA) will coordinate the scheduling of activities with the affected licensees; and where it is

for another IEDN of similar size (kVA), the IEDN granting access will coordinate the operations. All interconnections must however be approved by the Commission.

Connection Agreements

Connection Agreements can be signed by an IEDN licensee with every user who accepts to connect to the network at a rate approved by the Commission. Metering and setting of metering schedules shall be conducted in accordance with the Connection and Disconnection Procedures for Electricity Services[14] and other NERC directives, orders, and regulations.

For off-grid rural and off-grid urban IEDN, the IEDN Operator will be responsible for the procurement, certification, installation, and maintenance and vending of all meters in the network. However, for Embedded IEDN, the Successor Distribution Company will be responsible for meter procurement, certification, installation, maintenance, and vending.[15]

Complaints Procedure

Customer complaints are resolved in accordance with the NERC's Regulation on Customer Complaints, Standards and Handling procedure.[16] Unresolved complaints by and IEDN must be referred to the nearest forum office within the IEDN operational area. Customer Service Standards of Performance for Distribution Companies[17] relating to reconnection and metering shall apply to an IEDN.[18]

Dispute Resolution Mechanism

Disputes between market participants are resolved in accordance with the provisions of the Market Rules[19].[20] The Market Rules state that disputes between the System Operator. Transmission Service Providers and Market Operators on matters relating to its provisions or established Grid Codes should be settled through Mediation/Conciliation or Arbitration in accordance with the rules of procedure as provided for in its provisions.[21]

KEY STAKEHOLDERS

Nigerian Electricity Regulatory Commission (NERC)
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Nigerian Electricity Regulatory Commission

The primary agency for the supervision and control of the Regulations as specified in the EPSRA is NERC. The Commission 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.[22]

NERC is vested with the responsibility of monitoring and overseeing IEDN activities to facilitate competition and prevent abuse of market power. In its process of monitoring IEDN operations, NERC is entitled to request for information and other materials from license holders. Where the Commission determines that there has been an abuse of market power, NERC is vested with the power to issue cease orders and levies accordingly.[23]The Commission has the power to amend or revoke the whole Regulation or a part of it.[24]

PRICING
AND TARIFFS

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PRICING AND TARIFFS

The tariffs, fees, and any other charges for the access to the distribution network are to be determined in accordance with the rate of charges approved by the Commission pursuant to the provisions of the EPSRA.[25] However, a licensee may propose charges and tariffs that are outside the scope of the EPSRA to the Commission under special circumstances.

The procurement process for the supply of electric power to an IEDN by a generator is to be competitive and in accordance with the Bulk Power and Ancillary Services Procurement guidelines[26] approved by the Commission.

Feed-In-Tariffs for renewable energy supply systems connected to an IEDN are determined by the Commission.

Eligible Customers connected to an IEDN are required to pay a Distribution Use of System Charge (DUOS) to the IEDN operator (IEDNO).[27].

INCENTIVES AND INVESTMENT OPPORTUNITIES

Nigerian Electricity Regulatory Commission (NERC)
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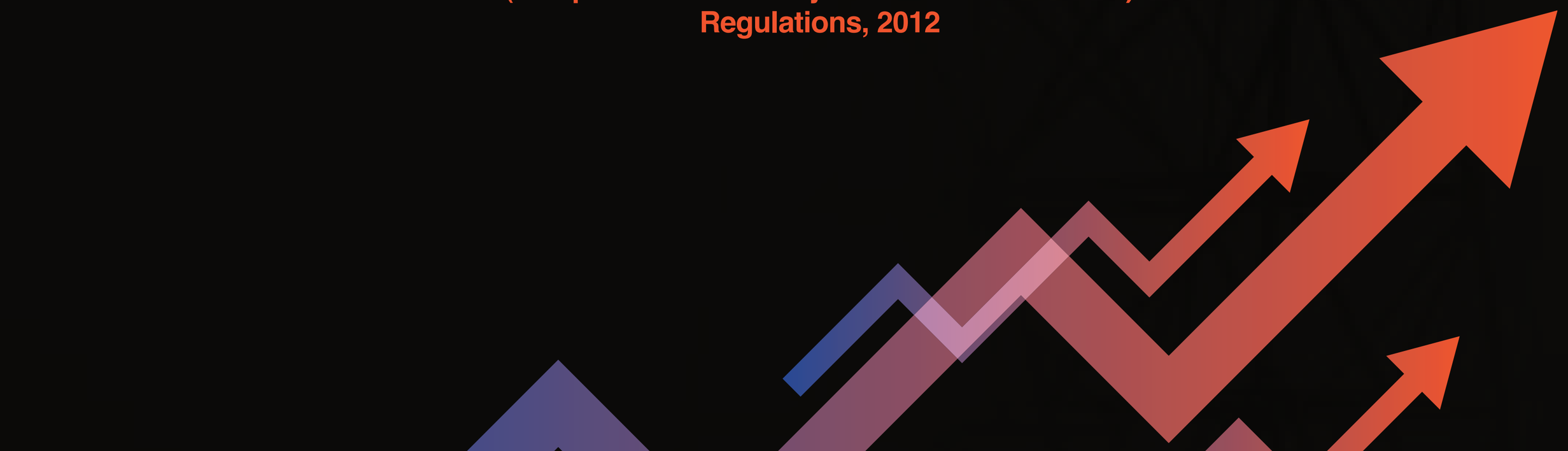

INCENTIVES AND INVESTMENT OPPORTUNITIES

Below are the opportunities for investments detailed in the provisions of Regulations:

- The Regulation allows for a power procurement process that is competitive and in accordance with bulk power and ancillary services procurement guidelines approved by the Commission. From an investment perspective, this would go a long way in encouraging participation and access to an open market[32]
- Provisions for Feed-In-Tariffs are stipulated to encourage the development of renewable energy in the Nigerian Electricity Industry[33]
- The Regulation provides that Connection Agreements should include options for cost-recovery to enable parties to the Agreement gain effectively from their operations[34]
- The provisions of the Regulations are directed towards the reduction of system losses in the Distribution Network of Nigerian electricity sector, and this gives room for active participation both at private and public levels to undertake loss reduction measures[35]

SANCTIONS AND PENALTIES

Nigerian Electricity Regulatory Commission (NERC) (Independent Electricity Distribution Networks) Regulations, 2012

SANCTIONS AND PENALTIES

Where the Commission is satisfied that the distribution licensee has breached or is likely to breach the terms and conditions of the license agreement, it may upon receipt of evidence, issue an Order to the licensee to do or not to do the things that are contained in the Order for the purpose of rectifying or preventing the breach within a specified period. If nothing is done as regards complying with the Order, the Commission may enforce the Order through established enforcement mechanisms.[28]

In addition, where the Embedded Generator is unable or intentionally fails to fulfill the general requirements of the Regulations, is in breach, the IEDN licensee must notify NERC, the Embedded Generator and any other persons affected, and advice on policy, dispute resolution mechanisms. Affected persons can also report the breach of the Regulation to the Commission. [29]

All proceedings of NERC under these Regulations will be governed by the Business Rules[3031] of the Commission.

Referenced Statutory Instruments

- Electric Power Sector Reform Act (EPSRA) No. 6 LFN 2005
- Nigerian Electricity Regulatory Commission (Business Rules of the Commission) Regulations, 2006
- Distribution Code 2008
- Metering Code 2008
- Market Rules for the Transitional and Medium-Term Stages of the Nigerian Electrical Power Sector, 2010
- NERC Regulations for the Application for Licence (Generation, Transmission, System Operations, Distribution & Trading) 2010
- NERC Regulations for Licence and Operating Fees 2010
- NERC Regulations for Embedded Generation 2012
- Company and Allied Matters Act (CAMA) LFN 2020[36]

Endnotes

1 NERC Independent Electricity Distribution Networks (IEDN) Regulations, No. 115 of 2012
2 NERC, NERC IEDN Regulations, 2012. Available at https://nerc.gov.ng/index.php/component/remository/Regulations/NERC-(Independent-Electricity-Distribution-Networks)-Regulations-2012/?Itemid=591
3 See Section 96 (1) and (2) Electric Power Sector Reform Act (ESPRA), No. 6 LFN 2005
4 Section 8
5 NERC, NERC Licenses and Operating Fees Regulations, 2010 available at https://nerc.gov.ng/index.php/component/remository/Regulations/NERC-Licence-and-Operating-Fees-Regulation-2010/?Itemid=591
6 Section 9
7 Section 11
8 Section 12
9 Section 13
10 By virtue of the Regulation, A force majeure means force majeure as defined by the parties in their agreement and it includes a natural disaster or act of God beyond human control.
11 Section 16
12 Section 17
13 Section 18
14 NERC, NERC Connection and Disconnection Procedures for Electricity Services, 2012. Available at https://nerc.gov.ng/index.php/component/remository/Regulations/Connection-and-Disconnection-Procedures/?Itemid=591
15 Section 15
16 NERC, NERC Regulation on Customer Complaints, Standards and Handling procedure. Available at https://nerc.gov.ng/index.php/component/remository/Regulations/Customer-Complaints-Handling-Standards-and-Procedures/?Itemid=591
17 NERC, NERC Customer Service Standards of Performance for Distribution Companies. Available at https://nerc.gov.ng/index.php/component/remository/Regulations/Customer-Service-Standards/?Itemid=591
18 Section 21
19 Market Rules, 2009. Available at https://nerc.gov.ng/index.php/component/remository/Tariff-Charges--and--Market-Rules/NESI-Market-Rules/?Itemid=591
20 Section 23
21 See Rule 43 of the Market Rules for the Transitional and Medium-Term Stages of the Nigerian Electrical Power Sector, 2010
22 Sections 31-61 of the EPSRA
23 Section 82 of the ESPRA
24 Section 24
25 Section 76 (1)b EPSRA
26 NERC, NERC Bulk Procurement Guidelines and Codes, 2012. Available at https://nerc.gov.ng/index.php/component/remository/Tariff-Charges--and--Market-Rules/Tariff-Charges-and-Market-Rules/Bulk-Generation-Procurement-Guidelines--and--Codes/?Itemid=591
27 Section 19
28 Section 20
29 Section 16
30 NERC, NERC Business Rules, 2006. Available at https://nerc.gov.ng/index.php/component/remository/Regulations/NERC-Business-Rules/?Itemid=591
31 Nigerian Electricity Regulatory Commission (Business Rules of the Commission) Regulations, 2006
32 Section 6
33 Section 19
34 Section 15
35 Section 13
36 Corporate Affairs Commission (CAC), CAMA Act, 2020. Available at https://www.cac.gov.ng/wp-content/uploads/2020/12/CAMA-NOTE-BOOK-FULL-VERSION.pdf

DISCLAIMER

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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

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