



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

**Nigerian Electricity Regulatory Commission  
(NERC) Regulation on Procedure for Electricity  
Tariff Review, 2014**





# CONTENTS

[Overview](#)

[Enabling Law](#)

[Objective\(s\)](#)

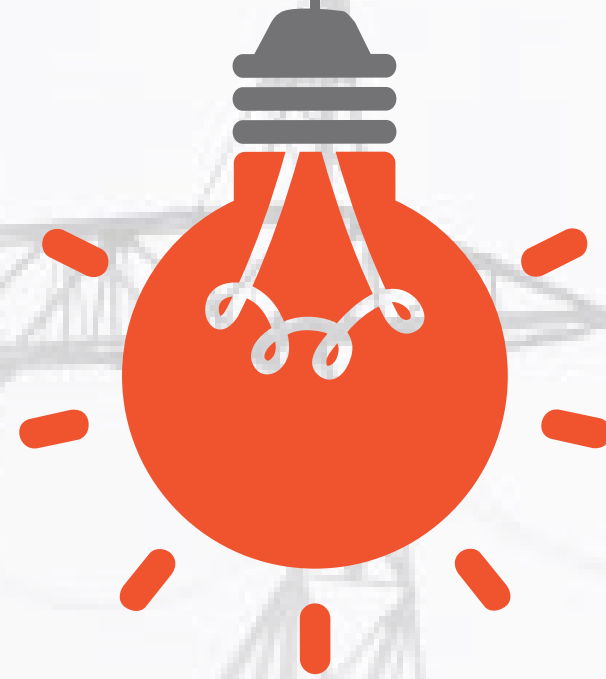
[Key Provisions](#)

[Key Stakeholders](#)

[Pricing and Tariffs](#)

[Incentives and Investment Opportunities](#)

[Sanctions and Penalties](#)



# OVERVIEW

**Nigerian Electricity Regulatory Commission  
(NERC) Regulation on Procedure for  
Electricity Tariff Review, 2014**



The NERC Regulations on the Procedure for Electricity Tariff Review (“the Regulation”) came into force on the 24<sup>th</sup> of December 2014 to regulate the process of reviewing electricity tariffs in the Nigerian Electricity Supply Industry (NESI). The Regulation includes the responsibilities of tariff review applicants, timelines, costs, submission requirements and detailed guidelines. It contains six (6) chapters and a schedule totaling twenty-six sections (26). The Glossary of Terms used in the Regulation and referenced in this guide can be found in the main Regulation<sup>1</sup> and in our [Glossary of Industry Terms.](#)



The 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, 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.<sup>3</sup>The Regulation on the Procedure for Electricity tariff review 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

**Nigerian Electricity Regulatory Commission  
(NERC) Regulation on Procedure for  
Electricity Tariff Review, 2014**

# OBJECTIVE

---

A decorative graphic on the left side of the slide consists of several concentric circles. The innermost circle is blue, and the surrounding rings are grey, creating a target-like effect.

**The primary objective of the Regulation is:**

- To provide detailed procedures to be followed in conducting electricity tariff reviews in line with the EPSRA and the Multi-Year Tariff Order (MYTO) methodology.<sup>4</sup>



# KEY PROVISIONS

**Nigerian Electricity Regulatory Commission  
(NERC) Regulation on Procedure for  
Electricity Tariff Review, 2014**

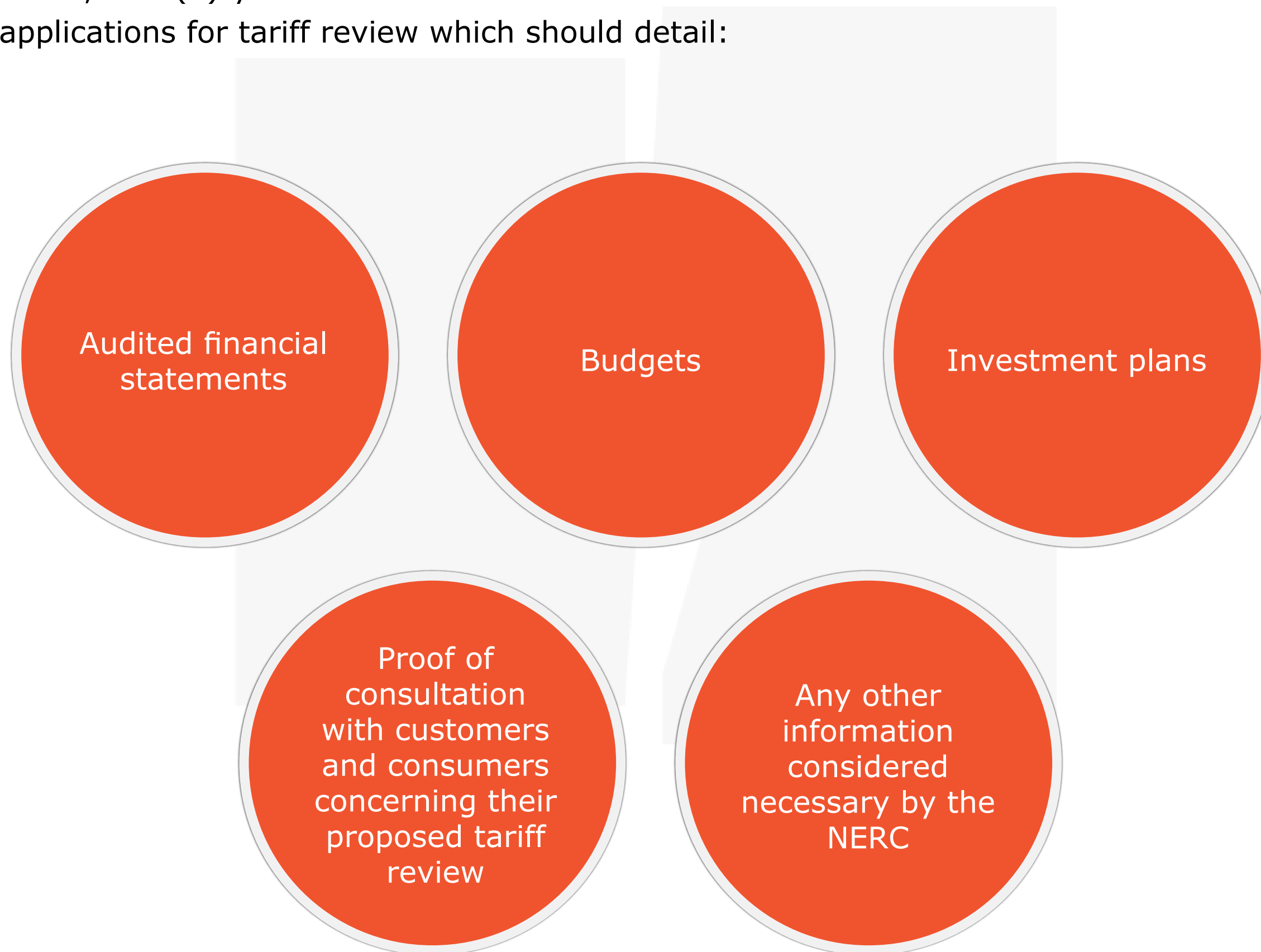


# KEY PROVISIONS



## *Procedure for Major Tariff Review*

The Commission is mandated to issue a notice to all Licensees about its intention to commence a major review of the existing tariff, one (1) year before the termination of the MYTO in force. The notice would request for the submission of applications for tariff review which should detail:





Actions	Timelines
The Commission must receive the application	180 days after the notice is issued. <sup>5</sup>
The Commission sends acknowledgement letters to licensees	Within five (5) days of receiving the application
Reviewing the application	This should not exceed four (4) months
The Consultation Paper should be published on the official website of the Commission and comments must be requested from the public	For a period of twenty-one (21) days
A public hearing would be conducted	Two (2) months after comments have been received from the public <sup>6</sup>
The Commission will develop the tariff Order	Within three (3) months of publishing the Consultation Paper
The Commission will be required to publish a Notice of Proposed Rule Making (NOPR) informing the Public of the draft Tariff Order and the date of consultation of the Order and directing the, to download the Order while forwarding their comments	Within fourteen (14) days
The Commission will collate all comments and prepare the final Tariff Order which will be published in the official Gazette and two (2) national newspapers.	After the public engagement.



### ***Procedure for Minor Tariff Review***

The existing tariff must be reviewed twice every year and changes may be made to the tariffs if any or all the generation wholesale contract price fuel costs, the Nigerian inflation rate, United States dollar exchange rate, average daily peak generation capacity for the previous six (6) months period and accompanying Capex and OPEX requirements have varied significantly from what was used in the computation of the tariff.

The Commission will issue a notice in two (2) national newspapers and on its official website of its intention to commence minor review of the existing tariff, three (3) months before the end of the six (6) months minor review period. Comments from the public must be submitted to the Commission within three (3) weeks after the publication of the notice.

The Commission will review submissions to the notice and request for necessary information for the adjustment from relevant organizations including:

The Transmission company of Nigeria (TCN)

National Bureau of Statistics (NBS)

Central Bank of Nigeria (CBN)

A stakeholder consultation will take place in the public after approval of the Commission within two (2) months from the date of publication. The amended tariff Order is to be approved by the Commission within ten (10) days from the submission date of the amended tariff Order and published in the official Gazette, two (2) national newspapers, the Commission's website and sent to all licensees by mail, courier, or electronic mail.<sup>7</sup>

### ***Application for Extraordinary Tariff Review***

It should be noted that the Regulation under this instance does not apply to the reviews provided for in the MYTO, namely Major Reviews, Minor reviews, and Open book tariff setting. The Regulation only applies to the following:



licensees requesting reviews in line with section 6.3 of the MYTO methodology

1

licensees whose proposed additional investments into their facilities or networks have not been factored in their existing approved tariffs, including emergency expansions, and prudent replacement costs

2

licensees who have encountered significant unforeseen operational legal or regulatory cost which can be reasonably passed on to consumers.

3

2. A statement that the forecast of all proposed expenses in respect of transmission tariff and distribution tariff are true and support same with relevant and credible studies and verifiable source documents.

3. A statement that the forecast or actual expenditure and plants characteristics in respect of generation tariff are true and supported with relevant verifiable source documents; and

4. Full report on public consultation with consumers on proposed tariff increase in at least three (3) locations of the Distribution Company (The NERC must be notified before the consultation).

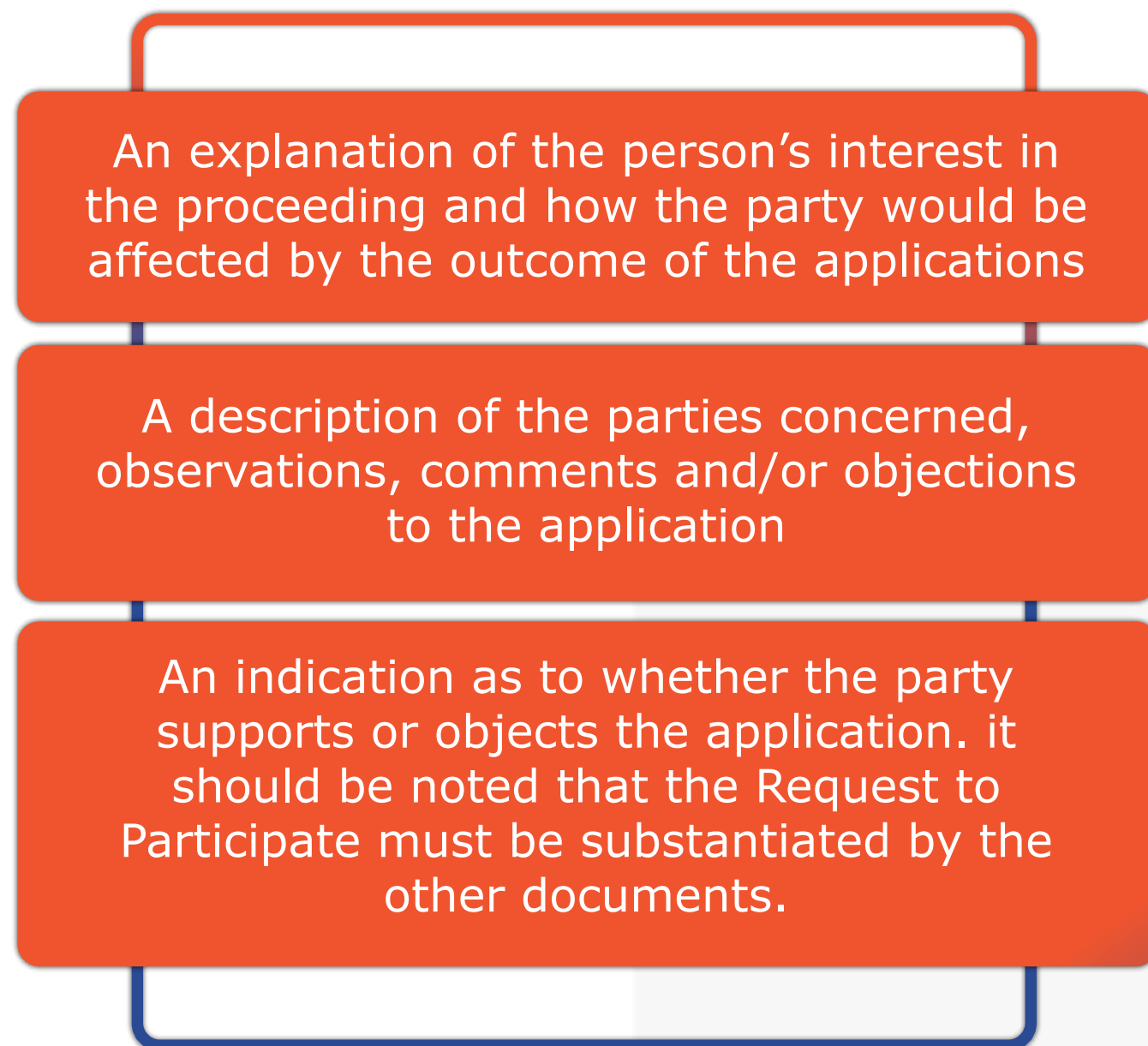
An application for tariff review must comply with the requirements made under the provisions of Revenue, Tariff Design and Generation Tariff contained in the Schedule to the Regulations.<sup>8</sup> An applicant would be expected to implement the previous order for at least three (3) years before requesting for a review unless under unforeseen circumstances.

Each application must include:<sup>9</sup>

1. Evidence that the proposed/requested change to the tariff will ensure the recovery of all prudent costs of providing electricity services to customers.

The Commission will review the applications and prepare a Consultation Paper that states the need for the Order including its objectives, goals, and contents.<sup>10</sup> Persons who intend to participate in the proceedings must 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. The Request to Participate must be in an electronic copy, a Microsoft Office format or by electronic mail and it should include:





After granting approval to participate, the Commission will circulate the Request to Participate alongside other documents to the applicants and other approved Interveners.<sup>11</sup>

An applicant is empowered by the Regulation to appoint a representative to stand in his stead during the hearing, but the notice of representation must be furnished to the Commission at least seven (7) days to the scheduled hearing date.<sup>12</sup>

The Commission will conduct the hearing of an application for extraordinary tariff review in Panels of three (3) Commissioners, with one Commissioner serving as the Chairman as appointed by the Commission. The Panel would make their decision based on both oral and documentary evidence tendered before it, by the applicant or staff of the Commission, expert witness and/or interveners.<sup>13</sup>

The burden of proof is on the applicant to prove that the proposed tariff is just and based on prudent cost. The Panel's decision will be in the form of an Order of the Commission, and it shall be written containing the basis for the decision. The Order of the Commission will be issued on or before thirty (30) days after the hearing date. The decision of the Panel becomes enforceable from the date the Order is issued.<sup>14</sup>

A person that is not satisfied with the Panel's decision may apply to the Panel for a decision review. An application for re-hearing by the applicant must be filed in the same manner as a petition under the Business Rules.<sup>15</sup>

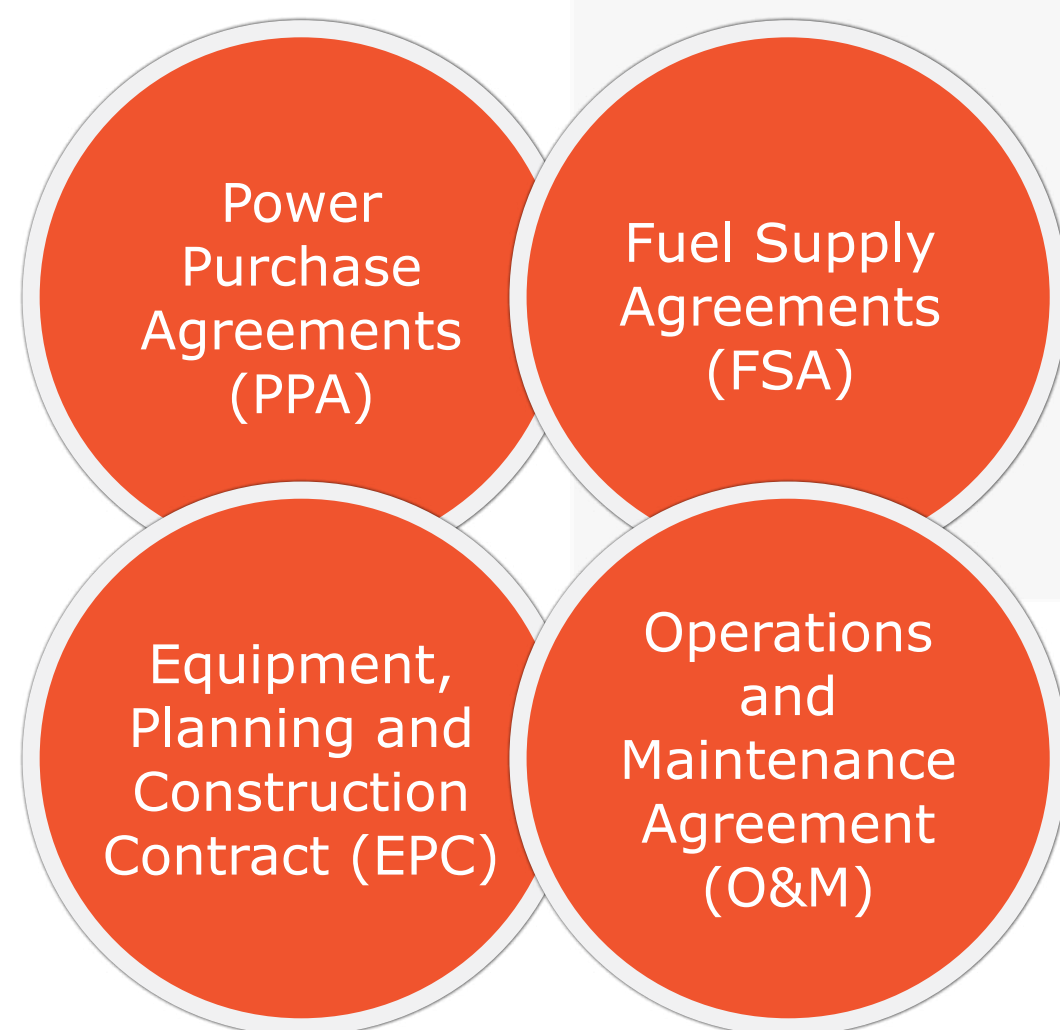
Unless otherwise ordered by the Commission, an appeal for a judicial review in line with the provisions of the EPSRA is not to be interpreted as a stay of the enforcement of the Decision of the Panel.<sup>16</sup>



All proposals made will be inputted into the Commission's Financial Model to establish wholesale tariff in case of Generation Tariff or the effect of the proposed changes to the Revenue Requirement and Retail Tariff schedules of the DisCos.<sup>17</sup>

### ***Open-Book Tariff Setting***

An applicant for a generation license or a generation licensee may request for a tariff that is higher than the approved benchmark tariffs as stated in the MYTO. This request must be submitted to the Commission, and it shall be accompanied by the following in addition to the information contained in the Schedule 2 of the Regulation:



The submissions will be reviewed by the Commission and a Consultation Paper will be prepared by NERC. Comments obtained from the Consultation will be collated, and any adjustments made to the recommended tariff must be approved by the Commission within ten (10) days from the consultation date and published on the Commission's websites and sent to all licensees by mail, courier, or electronic mail.<sup>18</sup>

### ***Proceedings before the Commission***

Proceedings before the Commission under these Regulations are governed by the Business Rules.<sup>19</sup>



# KEY STAKEHOLDERS

Nigerian Electricity Regulatory Commission  
(NERC) Regulation on Procedure for  
Electricity Tariff Review, 2014

# KEY STAKEHOLDERS



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

The primary agency for the supervision and control of the Regulation as specified in 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.<sup>20</sup> In addition, the Commission is vested with the responsibility of monitoring and overseeing electricity tariff review to facilitate competition and prevent abuse of market power. In its process of monitoring operations of tariff reviews, the Commission

The Commission is entitled to request for information from licensees. Where the Commission determines that there has been an abuse of market power, the Commission is vested with the power to issue cease orders and levy fines.<sup>21</sup> The Commission has the power to amend or revoke the whole Regulation in whole or in parts.<sup>22</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**

**Nigerian Electricity Regulatory Commission  
(NERC) Regulation on Procedure for  
Electricity Tariff Review, 2014**

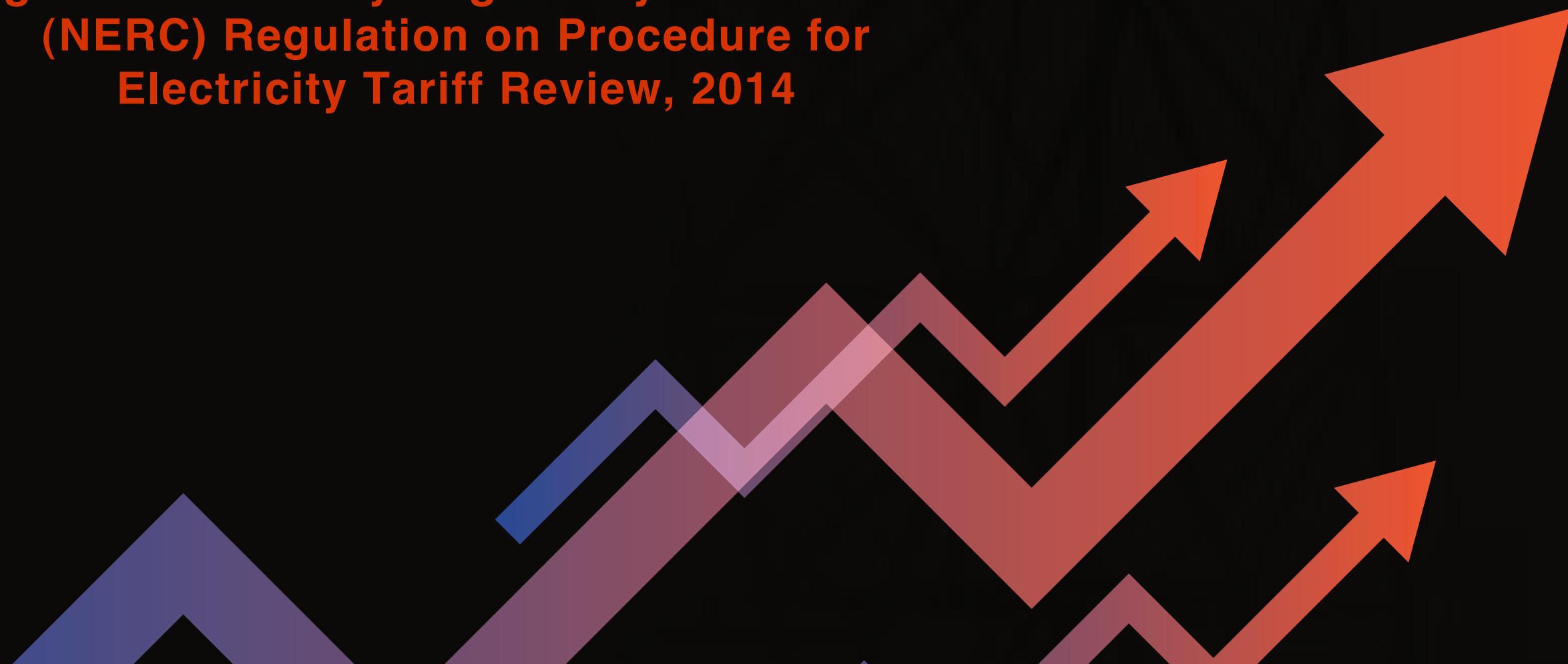
# PRICING AND TARIFFS

A large, stylized illustration of a lightbulb. The bulb is orange and hangs from a thin black cord. It is surrounded by several grey, rounded rectangular shapes that resemble light rays or reflections. The background is a light grey gradient.

The MYTO methodology is applied in setting tariffs in the Nigerian power sector.<sup>23</sup> Also, upon submitting the application form, the applicant will be required to pay a non-refundable filing fee of five million naira (₦5,000,000) or as may be prescribed by the Commission periodically. In addition, this fee can only be recovered if the tariff review is approved by the Commission.<sup>24</sup>

# INCENTIVES AND INVESTMENT OPPORTUNITIES

Nigerian Electricity Regulatory Commission  
(NERC) Regulation on Procedure for  
Electricity Tariff Review, 2014



# INCENTIVES AND INVESTMENT OPPORTUNITIES



There are no opportunities in the Regulation due to the nature of its provisions.



# **SANCTIONS AND PENALTIES**

**Nigerian Electricity Regulatory Commission  
(NERC) Regulation on Procedure for Electricity  
Tariff Review, 2014**

# SANCTIONS AND PENALTIES

---



The Regulations do not provide for sanctions and penalties.

# Referenced Statutory Instruments

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

Endnotes

1 NERC Official website, available at <https://nerc.gov.ng/doclib/regulations/259-regulations-on-procedure-for-electricity-tariff-reviews-in-the-nigerian-electricity-supply-industry-a/file>

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 See Section 76 and Section 96 Electric Power Sector Reform Act (ESPRA), No. 6 LFN 2005

4 Section 2 of the Regulations on the Procedure for Electricity Tariff Review, 2014

5 Section 4

6 Section 5

7 Section 8

8 Schedule 2

9 Section 10

10 Section 13

11 Section 15

12 Section 16

13 Section 17

14 Section 20

15 Section 21

16 Section 21 (g)

17 Section 9 (l)

18 Section 23

19 Section 25

20 Sections 31-61 of the EPSRA

21 Section 82 of the ESPRA

22 Section 26

23 Ibid

24 Section 11

25 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](mailto:ask@electricitylawyer.com)

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

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



ELECTRICITY  
LAWYER