



SIMPLIFIED LEGAL *And* REGULATORY GUIDE:

Nigerian Electricity Regulatory Commission
(Acquisition of Land and Access Rights for
Electricity Projects) Regulations, 2012





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OVERVIEW

**Nigerian Electricity Regulatory Commission
(Acquisition of Land and Access Rights for
Electricity Projects) Regulations, 2012**



The Nigerian Electricity Regulatory Commission (Acquisition of Land and Access Rights for Electricity Projects) Regulations, 2012 – hereinafter referred to as ‘the Regulations’ – is an instrument providing guidelines to Licensees and participants in the electricity industry on land acquisition for electricity projects in Nigeria. The Regulation consists of five (5) parts and 31 sections.

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](#).



ENABLING LAW

The Electric Power Sector Reform Act (EPSRA), 2005² is the enabling law for the Regulations, serving as the legal backing for its existence. NERC formulated the Regulations based on powers conferred on it by the EPSRA. [Please refer to EL's guide on the Electricity Act.](#)



OBJECTIVE

**Nigerian Electricity Regulatory Commission (Acquisition
of Land and Access Rights for Electricity Projects)
Regulations, 2012**

OBJECTIVE



The Regulation was promulgated with the following objectives forming the rationale behind its establishment: the provision of a legal and regulatory framework³ for the purpose of regulating:

- The acquisition of land and access rights for electricity projects
- The provision of compensation and resettlement to third parties affected by the acquisition of land for electricity projects; and the compliance of project designs of Licensees with environmental standards



KEY PROVISIONS

**Nigerian Electricity Regulatory Commission (Acquisition
of Land and Access Rights for Electricity Projects)
Regulations, 2012**

KEY PROVISIONS



The following are the key provisions contained in the Regulation which must be noted by Licensees or persons looking to participate in the electricity industry and actualize electricity projects:

Procedure for Land Acquisition and Access Rights

A Licensee seeking to embark on any electricity project(s) is expected to notify the land owner(s) of its intention to undertake such projects on the land, where the land does not belong to the licensee, for the purpose of obtaining a 'Free Prior Informed Consent' from the land owner(s)..⁴ In acquiring land for the purpose of actualizing an electricity project, the Licensee is expected to follow the state and federal laws applicable to the administration of the land in question, and the applicable provisions as contained in the Regulations.⁵ There must also be a written agreement between the owner of the land and the Licensee allowing entry into and use of the land.⁶

Prior to the land acquisition for the electricity project, the Licensee will be expected to submit a project design to the Commission for evaluation;⁷ to ascertain any potential adverse social and environmental impact of the project.⁸ In cases where the potential hazards associated with the project are large scale, the Commission will mandate the Licensee to undertake an alternative project design in order to undertake the electricity project.⁹

In the acquisition of land by a Licensee, the Commission will also require the submission of a Resettlement Action Plan (RAP) by the Licensee which will show the measures to be taken to restore the owners of the land – also known as Project Affected Persons (PAPs) – to their pre-displacement positions.¹⁰ The RAPs must show the following:¹¹



1. The entitlements of PAPs under applicable laws and regulations
2. The resettlement plan and evidence showcasing that the PAPs will be restored to their pre-displacement status
3. The measures proposed to bridge any gap between such entitlements and the regulations
4. The financial implications of the resettlement to the Licensee; and
5. Implementation plan of the Licensee and other identified persons.

Apart from the Resettlement Action Plan which the Licensee will be required to submit to the Commission, the Licensee will also be required to ensure that PAPs are given proper alternative dwellings of comparable standards with their former dwelling. The alternative dwelling must be reasonable in comparison to the former dwelling of the PAP, decent, safe and clean, adequate in size, not subject to adverse environmental conditions, more desirable than the PAP's former location, and financially maintainable by the PAP for the purpose of long-term occupation.¹² Resettlement must also notably occur before the commencement of the electricity project;¹³ and the Licensee will be required to provide preferential employment opportunities, counseling and other activities as corporate social responsibility to ameliorate the hardship of PAPs.¹⁴

The Licensee will also be expected to undertake internal monitoring of the resettlement and rehabilitation operation, at a cost to be borne by the Licensee.¹⁵ The Licensee will also be required to commission an independent auditor to carry out an audit of the resettlement as evidence showing that resettlement has been implemented and executed properly.¹⁶ This audit will take place after the Resettlement Action Plan has been executed and before any financial commitments are made to the electricity project, to leave room for corrective actions to be undertaken on recommendation by the auditors.¹⁷

The Licensee will also be required by the Commission to incorporate in its RAP or Corporate Policy on Land and Access Rights Acquisition, a Corrective Action Plan (CAP) which will do the following:¹⁸



- Identify gaps in the implementation of the resettlement exercise; and
- Provide solutions to be adopted for persons and business holders affected by the electricity project.

Compulsory Acquisition of Land

In the land acquisition processes, the Commission is required to encourage voluntary land acquisition;¹⁹ however, in certain instances, compulsory acquisition will be allowed in the following instances –:²⁰

- A Licensee is an entity owned wholly or partly by a state or the federal government
- The electricity project cannot be actualized on any other site other than on the land to be acquired
- The owner of the land to be acquired has not given the Licensee a 'Free Prior Informed Consent' allowing the Licensee to voluntarily acquire the land
- The Commission determines that the land is necessary for the project after reviewing the project design submitted by the Licensee.

It is also worthy of note that per the Regulations, any compulsory acquisition of land to be carried out under its provisions, must be done in accordance with the provisions of the Land Use Act, 1978.²¹

Applications to the Commission following Refusal of Consent by the Occupier/Landowner

In cases where the owner of a land refuses to give consent to the Licensee for entry into the land within a reasonable time, the Licensee can make an application to the Commission for a declaration to the effect that the land is required for the purpose of generating, transmitting, or distributing electricity.²² Such application must be set in the form established by the Commission.²³ In addition to the Resettlement Action Plan (RAP) which the Licensee will be expected to submit as stated beforehand, the Licensee will also be expected to submit a Project Impact Assessment (PIA) Report with the application.²⁴ The PIA will showcase the following:²⁵



- An estimate of the number of persons likely to be affected by the electricity project;
- Persons who will have to be compensated in the execution of the project;
- Categories, needs, and preference of PAPs;
- The financial costs that will be expended for the compensation;
- The mode of payment for the compensation;
- Extract of each persons' title to land;
- Any other existing forms of interests in the land by any person other than the owner or occupier;
- A list of owners, description and the number of economic trees and crops that will be affected by the project;
- Business owners who will be affected by the project; and
- Any other necessary information which may be required by NERC to effectively take a decision regarding the application.

Once the application is submitted by the Licensee to the Commission, the Licensee shall, based on the form set out by the Commission in the Regulations, inform the landowner of its application to the Commission for a declaration that the land is required for the electricity project concerned. The Licensee must also inform the landowner of his or her right to make representations to NERC within thirty (30) days from the date of the receipt of the notification from the Licensee.

Such representations may involve the landowner restating its refusal to give consent to the acquisition by the Licensee, and its reasons for the refusal.

Appeals

Persons or Licensees aggrieved with the decisions made by the Commission regarding the compulsory acquisition of land may appeal against such decisions in line with the relevant provisions contained in the Electric Power Sector Reform Act.



Access Rights

Licensees are expected to process access rights for the purpose of land acquisition in accordance with the procedure set by the Office of the Surveyor-General of the Federation. In addition to this, the Licensee will also be required to submit the following –

- An environmental impact clearance certificate;
- The approval of the Office of the Surveyor-General for the project;
- The final Right-Of-Way (ROW) map for the facility;
- A statement of the project impact with a list of qualified or eligible persons for compensation; and
- Any other documents which would be relevant to the acquisition of access rights.

Enumeration and Appraisals

Licensees will be expected to provide an 'Informational Notice' to Project Affected Persons (PAPs), which will inform the latter of the enumeration and appraisal process, and of their right to accompany the appraiser or appoint their own representatives to do so on their behalf. This enumeration and appraisal process shall be done by the Licensee, in conjunction with a qualified independent appraiser approved by the Commission and shall include:

- The listing of the assets on the land;
- The fair market value of the land;
- Value of economic trees and crops on the land; and
- A cut-off date which will be indicated in the form prescribed within the Regulations.

A cut-off date is the date on which the Licensee will conduct the enumeration and appraisal process on the land.

Compensation

A Licensee looking to acquire land will have to submit an offer of compensation and a copy of the appraisal report to the Commission in line with the form set out in the Regulations. The amount specified by the Licensee must not be less than the amount recommended in the appraisal report. Negotiations with the PAP regarding compensation will be handled physically and can also be done with an authorized representative of the PAP in their stead. Once the offer is accepted by the PAP or their representative, the Licensee will make full payment to the PAP before executing the electricity project; following which the Licensee would



notify the Commission of its payment with evidence.

When these have been completed, the PAP will execute a Certificate of Indemnity based on the form set in the Regulations to serve as evidence of acquisition of land and access rights by the Licensee. When the certificate is issued, the Licensee shall inform and file the certificate with the Commission. NERC will subsequently issue a certificate to the Licensee as evidence of land acquisition and access rights.

Where the land is acquired voluntarily, however, the Licensee must execute a Deed of Assignment with the PAP and provide a copy of same to the Commission.

Dispute Settlement

Where a grievance exists between a Licensee and a landowner regarding the amount specified for compensation, the aggrieved party will be expected to apply for a review of the amount by an Appraisal Reviewer appointed by the Commission. Where the aggrieved party is dissatisfied with the review by the Appraisal Reviewer, the aggrieved

party can then make a petition to the Commission within 14 days of the decision of the Appraisal Reviewer. Review proceedings are only permitted following exhaustion of the administrative mechanisms for dispute settlement as enshrined in the Act and under the Regulation.

Duties of Licensees following commencement of the Electricity Project

Once the Licensee begins execution of the electricity project, there is an inherent duty on the Licensee to take all necessary steps in preventing damages to structures and properties encountered in the course of execution of the power project.



It is noteworthy that owners of land in the location where the electricity project is being executed, can make representations to the Commission to alter the place where facilities are to be constructed. Except the Commission decides to the contrary, a Licensee will not be responsible for funding the costs of the alteration and such costs will be borne by the landowner. This will, however, not be the case where the alteration is necessary to prevent a violation or potential violation of the Deed of Assignment entered into between the landowner and the Licensee as part of voluntary land acquisition process. In such instances, the Licensee will be responsible for the funding of the costs of the alteration.

Licensees are required to conduct works and operations in a safe and efficient manner that will not distort any existing infrastructure of licensed utilities. In the event of any likely distortion to the existing infrastructure of licensed utilities, the Licensee is mandated to inform such licensed utilities of its proposed project, after which, the Licensee and the utility licensee will take reasonable steps to resolve the conflict. Where the conflict cannot

be resolved, the Commission would step in to remedy the situation via the issuance of an order which would be binding on the licensees involved in the conflict.

Licensees also have duties with regard to antiquities found on land acquired or accessed and are to comply with federal or state laws relating to the protection and preservation of sites or objects of historical relevance which are uncovered in the process of executing the electricity project. Upon the discovery of such objects, the electricity project must be halted, the objects protected, and the discovery reported to relevant authorities. Work will not resume on the land until the Licensee receives a go ahead based on the advice by the relevant authorities.

Powers of Licensees

A Licensee has the authority to enter a land for ancillary works; however, notice must be given to the occupier of the land in question before entering the applicable land.²⁶



It must be noted that Licensees do not have the authority to construct distribution or transmission lines within or around locations which are under the control of the government or the control of a public authority. In order undertake such construction activity, prior consent or approval must be obtained from the relevant authority on such location.

The above²⁷ also applies to Licensees looking to place electrical cables across any road, above or below water; approvals from relevant government authorities must be secured before such can be done.²⁸ When such approval is granted, the Licensee will publish in two newspapers circulating throughout Nigeria, a notice informing the public of the approval and declaring the area where installation is to occur as secluded.²⁹

Cessation of Power Project

Where the land acquired is no longer required for undertaking the licensed activity by the Licensee, the Licensee will be expected to make an offer of the land to the previous owner in line with the EPSRA.³⁰



KEY STAKEHOLDERS

Nigerian Electricity Regulatory Commission (Acquisition
of Land and Access Rights for Electricity Projects)
Regulations, 2012



Nigerian Electricity Regulatory Commission (NERC)

The key stakeholder involved in the implementation of the provisions of the Regulation is the Nigerian Electricity Regulatory Commission (NERC). The Commission, which is responsible for formulating Regulations, supervises the adherence by Licensees in the Nigerian electricity industry to the provisions of the Regulation.

NERC also has other functions which include:

- Making no land acquisition and access declarations upon applications made by Licensees unless representations from landowners against such acquisition have been considered.³¹
- Considering the Resettlement Action Plans and the Project Impact Assessment Reports submitted by the Licensee; ensuring there is no adverse issues before making a declaration allowing for the compulsory acquisition of land by the Licensee.³²
- Approving fees for the processing and issuance of approvals, fees required for the registration of appraisers and consultants to be employed in the appraisal process of land acquisition.³³
- Amending or revoking any part of the Regulations which prevents the smooth implementation of the Act.³⁴

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 (Acquisition
of Land and Access Rights for Electricity Projects)
Regulations, 2012**

PRICING AND TARIFFS



The Regulations do not contain any express provisions on Pricing and Tariffs.

INCENTIVES AND INVESTMENT OPPORTUNITIES

Nigerian Electricity Regulatory Commission (Acquisition
of Land and Access Rights for Electricity Projects)
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INCENTIVES AND INVESTMENT OPPORTUNITIES



Due to the nature of the Regulations and its provisions, it does not provide specific opportunities for investment.



SANCTIONS AND PENALTIES

**Nigerian Electricity Regulatory Commission (Acquisition
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Where a Licensee is responsible for any damage done to the infrastructure of licensed utilities, the Licensee will be expected to immediately contact the concerned utility and arrange for repairs or replacement of the damaged assets.³⁵

Also, the licence of a Licensee may be suspended or cancelled if the provisions contained within the Regulations are not adhered to, in accordance with the procedures stated in the NERC Application for Licences Regulations 2010.³⁶

Furthermore, a Licensee who contravenes the provision in the Regulations commits an offence and will be liable on conviction to the punishments dictated in the EPSRA.³⁷

Referenced Statutory Instruments

- Electric Power Sector Reform Act (EPSRA), 2005

Endnotes

1 NERC, NERC (Acquisition of Land and Access Rights for Electricity Projects) Regulations, 2012. Available at [https://nerc.gov.ng/index.php/component/remository/Regulations/NERC-\(Acquisition-of-Land-and-Access-Rights-for-Electricity-Projects\)-Regulations-2012/?Itemid=591](https://nerc.gov.ng/index.php/component/remository/Regulations/NERC-(Acquisition-of-Land-and-Access-Rights-for-Electricity-Projects)-Regulations-2012/?Itemid=591)

2 Section 77(10) and 96(1), EPSRA 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 1

4 Section 3(1)

5 Section 3(2)

6 Section 3(4)

7 Section 3(5)

8 Section 3(6)

9 Section 3(7)

10 Section 4(5)

11 Section 4(6)

12 Section 16

13 Section 17

14 Section 18

15 Section 19(1) & (2)

16 Section 21(1) & (2)

17 Section 21(3)

18 Section 22

19 Section 4(1)

20 Section 4(2)

21 Section 4(14)

22 Section 4(3)

23 See First Schedule to the Regulations

24 Section 4(7)

25 Ibid

26 Section 25(1) & (2)

27 Section 25(4)

28 Section 26(1)

29 Section 26(2)

30 Section 27; See Section 77(11) of the EPSRA

31 Section 4(11)

32 Section 4(12)(d)

33 Section 28(2)

34 Section 29

35 Section 12(6)

36 Section 23; NERC, NERC (Acquisition of Land and Access Rights for Electricity Projects) Regulations, 2012. Available at [https://nerc.gov.ng/index.php/component/remository/Regulations/NERC-\(Acquisition-of-Land-and-Access-Rights-for-Electricity-Projects\)-Regulations-2012/?Itemid=591](https://nerc.gov.ng/index.php/component/remository/Regulations/NERC-(Acquisition-of-Land-and-Access-Rights-for-Electricity-Projects)-Regulations-2012/?Itemid=591)

37 Section 24;

38 See Section 94 of the EPSRA

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