



SIMPLIFIED LEGAL *And* REGULATORY GUIDE:

Nigerian Electricity Regulatory Commission
(NERC) – Regulation for the Granting of Permits
for Captive Power Generation, 2008





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 for the Granting of Permits
for Captive Power Generation, 2008**



The Nigerian Electricity Regulatory Commission's (Permits for Captive Power Generation) Regulations ('the Regulation') was established in 2008 as a guiding instrument for applications made by participants in the power sector towards the receipt of permits enabling such participants engage in captive power generation.¹ Its seven chapters and seventeen sections focus on significant areas involved in such applications, cutting across the process of permit application, generation of surplus power, terms and conditions of permits, amendment or renewals of permits, cancellation of permits, appeals, etc. The Glossary of Terms used in the Regulation and referenced in this guide can be found in the main Regulation² and in our [Glossary of Industry Terms](#).



ENABLING LAW

The Regulation was promulgated pursuant to the Electric Power Sector Reform Act (EPSRA) of 2005³ which vests legislative powers with the Commission for the purpose of maintaining efficient industry and market structures, ensuring the reliability and quality of service in the production and delivery of electricity to consumers, and supervising persons engaged in the generation, transmission, distribution, and trading of electricity.⁴ The EPSRA thus serves as the legal backing for the legality of the Permits for Captive Power Generation. [Please refer to EL's guide on the Electricity Act.](#)



OBJECTIVE

**Nigerian Electricity Regulatory Commission (NERC) –
Regulation for the Granting of Permits for Captive Power
Generation, 2008**

OBJECTIVE



The Regulation was established to:

- Serve as a guide regarding the process of application for permits to engage in captive power generation.



KEY PROVISIONS

**Nigerian Electricity Regulatory Commission (NERC) –
Regulation for the Granting of Permits for Captive Power
Generation, 2008**

KEY PROVISIONS



There are various key provisions in the Regulations to be noted by participants in the electricity supply industry looking to engage in the generation of electricity for self-consumption. These key provisions include:

Application Process

With regard to the application process for a permit, the foregoing must be noted:

- An applicant must fill an application form in accordance with the particulars specified in the First Schedule to the Regulations.
- This application form may be obtained from the office of the Commission or downloaded from NERC's website.
- This application must be signed and dated by the applicant or an authorized representative of the applicant; and must be addressed to the Secretary of the Commission and delivered by hand, mail or courier to NERC's office headquarters.
- The submission of the application must be done in three hardcopy forms and one electronic copy (Microsoft Office) format.
- The application must also be accompanied by a non-refundable application fee which will be determined by the Commission for processing the application.

Generation of Surplus Power

Applicants who are granted permits would have the authorization to generate electricity for self-consumption. However, in cases where surplus power is generated (not exceeding 1MW) which such permit holders seek to sell to credible off-takers, written consent must be secured from the Commission. Where the surplus power exceeds 1MW, the permit holder must apply for a generation licence in line with the EPSRA before supply to an off-taker can occur.

Supervisory Role of NERC

The supervisory role of the Commission includes:

- Permit holders operating Captive Power Plants must provide annual information to the Commission regarding the operation of the plant; these would include information regarding compliance with the health and safety standards of the Commission, environmental issues, production rate, amongst other information which may be required by the Commission from time to time.
- NERC has the authority to enter and inspect the premises of the captive power facility at any time; such inspections are normally undertaken in determining whether the power plant operations occur in accordance with established standards by the Commission and the terms and conditions set out in the permit.



Upon receipt by the Commission of the application thereafter:

- The Commission will note the date of its receipt and notify the applicant of its acknowledgement of the submission.
- The Commission will subsequently undertake an examination of the documents submitted by the applicant and inform the applicant of any inadequacies in his or her submission within a time frame not later than a month from the date of the submission.
- If the Commission finds the submission adequate without any flaws, it will notify the applicant; stating in writing that the applicant's submission warrants the issuance of a permit.
- Within three months from the date of receipt of acknowledgement by NERC, the Commission would furnish the applicant with their decision to either issue the permit or otherwise. This must be done in writing stating the reasons for its decision.
- In cases where the Commission decides to grant the permit, it would furnish the applicant with information regarding its decision and fees to be paid before the grant of the permit.
- In cases where NERC refuses to grant the permit, the applicant would be notified of same, coupled with the Commission's reasons for the decision.
- Where the Commission refuses to grant the permit, the applicant would have a 21-day time frame from the date of receipt of the statement of the Commission's refusal, in which he or she would have the opportunity to make representations to the Commission for a review of the decision. If the representation is unsuccessful, the applicant would be further notified by NERC of its decision and the rationale behind the decision.



Generation of Surplus Power

- If any major modifications are to be done to the captive power plant, consent must be secured by the permit holder from NERC, which will give its decision upon receipt of the request within five (5) days from the date of receipt of the request for consent.
- With regard to other modifications or augmentations of the Captive Power Plants' capacity, the permit holder must report to the Commission within 24 hours of the said modifications or augmentations.

Amendments and Renewals of Permits

NERC may choose to amend the terms and conditions of a permit based on a request from the permit holder, complaints from consumers or off-takers regarding the efficiency of the permit holder, or based on its own initiative. In cases where the permit holder seeks such amendments, a written application must be made to the Commission, accompanied by a fee prescribed by the Commission. Such an application must take the form set out in the Second Schedule to the Regulations.

On the other hand, applications for renewals must be made at least three (3) months from the date of the permit's expiration and must take the form set out in

the Third Schedule to the Regulations. Such applications must also be accompanied by a prescribed fee and will undergo the same application process stated beforehand for grant of permits.

Appeals

Persons who are aggrieved with the decision of the Commission regarding the grant, amendment, renewal, or cancellation of a permit are allowed to apply to the Commission for a review of its decision within thirty (30) days after the person is notified of the decision. The Commission will review the application and make a decision within sixty (60) days from the date the application for rehearing or review is submitted.



KEY STAKEHOLDERS

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Nigerian Electricity Regulatory Commission (NERC)

For the purposes of the enforcement of the Regulation, the Commission has amongst other authorizations:

- The power to determine whether a person or entity is about to venture into a business for which a permit is required; this is in line with its mandates which include the provision of adequate and reliable electricity supply, maintenance of the electricity industry market structure, regulation of participants in the electricity industry, etc.
- Permit holders are also mandated to follow orders and notices given by the Commission to the letter, even if the permit holder looks towards challenging such orders through legal action; this however will not be the case where such duty to comply is stayed by a court of competent jurisdiction.

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 but slightly to the right, extending from the bottom towards the top of the frame. The tower's structure is composed of numerous intersecting lines forming a triangular and rectangular lattice pattern.

PRICING **AND TARIFFS**

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PRICING AND TARIFFS



The Regulations does not provide on Pricing and Tariffs. These are contained in other regulatory instruments of the Commission.⁵

INCENTIVES AND INVESTMENT OPPORTUNITIES

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INCENTIVES AND INVESTMENT OPPORTUNITIES



The Regulation provides an opportunity for investment in its provision on the generation of surplus power.¹³ Captive Power Generation Permit holders will be allowed to supply surplus power not exceeding 1MW to an off-taker.



SANCTIONS AND PENALTIES

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SANCTIONS AND PENALTIES



NERC has various powers in the form of imposing sanctions and penalties on permit holders who default in following the provisions of the Regulation.

The Commission has the authority to penalize permit holders for the violation of any of the terms and conditions set out within the permit; such penalties could include a cancellation of the said permit.⁶ Cancellation could occur based on the Commission's initiative or the receipt of a complaint from a consumer concerning the efficiency of the permit holder.⁷

It is also worthy of note that in situations where a captive power generation permit holder seeks to initiate or initiates legal proceedings challenging an order of the Commission, the permit holder is required to nonetheless follow such orders or written notices by the Commission unless such orders are stayed by a court of competent jurisdiction.⁸

The Commission also has the authority to order any person who fails to obtain any permit before embarking on captive power generation, to cease operations, or the authority to make other orders as may be necessary to prevent further delinquent activity by the offender.⁹

Where any person violates any of the provisions in the Regulation and there are no specified penalties, such a person will be liable to a fine not exceeding N100,000 or to an imprisonment term not exceeding one year or liable to both; this is the case for first offenders.¹⁰ For subsequent offenders, however, such persons would be liable to a fine not exceeding N500,000 or an imprisonment term not exceeding three years or both.¹¹

Furthermore, in cases where a person fails to supply information to the Commission in the manner and time prescribed or gives false information, willfully obstructs an inspector or police officer from the efficient performance of his duties, or refuses to give information to such inspectors or police officers when required to do so in line with the EPSRA; such persons are offenders and are liable on conviction to a fine not exceeding N100,000 or to an imprisonment term not exceeding one year or liable to both.¹²

Referenced Statutory Instruments

- Electric Power Sector Reform Act (EPSRA), 2005¹⁴

Endnotes

1 Captive Power Generation means the production of electricity exceeding 1MW for the purpose of self-consumption by the generator and not sale to third parties.
2 NERC, Regulation for Captive Power Generation. Available at <https://nerc.gov.ng/index.php/library/documents/func-startdown/48/>
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/)
4 Sections 32(1)(a) & (c); S.32(1)(e); S.32(2)(d); S.96(1), EPSRA
5 For instance, the Multi Year Tariff Order (MYTO)
6 Section9(d)
7 Section14(a)
8 Section10(b)
9 Section10(c)
10 Section11(a)(i)
11 Section11(a)(ii)
12 Section11(b). See Sections 94 and 95 of the EPSRA
13 Section8
14 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/)

DISCLAIMER

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