



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

Nigerian Electricity Regulatory Commission  
(NERC) – Regulations for the Investment in  
Electricity Networks, 2015





# CONTENTS

Overview

Enabling Law

Objective(s)

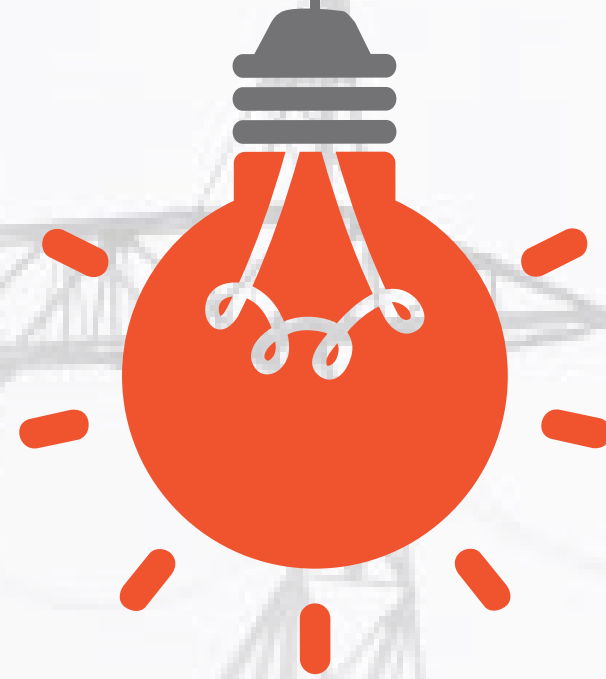
Key Provisions

Key Stakeholders

Pricing and Tariffs

Incentives and Investment Opportunities

Sanctions and Penalties



# OVERVIEW

**Nigerian Electricity Regulatory Commission  
(NERC) – Regulations for the Investment in  
Electricity Networks, 2015**



The Investment in Electricity Networks Regulation ('the Regulation') was established in 2015 by the Nigerian Electricity Regulatory Commission ('NERC' or 'the Commission') and provides the procedure for investing in electricity networks in Nigeria. With nine chapters and twenty sections, the Regulation covers the field of investments by licensees and non-licensees, technical planning for network system connections, investment planning, construction and commissioning, contractual frameworks, roles of the Commission in investment actualization, the process for procurement, offences, and penalties, etc.

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](#).



# ENABLING LAW

The Regulation was established by the Commission in accordance with the rights vested by the Electric Power Sector Reform Act (EPSRA).<sup>2</sup> The EPSRA thus serves as the enabling law underscoring the legitimacy and objectives<sup>3</sup> of the Regulation. [Please refer to EL's guide on the Electricity Act.](#)



# OBJECTIVE

Nigerian Electricity Regulatory Commission (NERC) –  
Regulations for the Investment in Electricity Networks,  
2015

# OBJECTIVE



The primary rationale behind the establishment of the Regulation by NERC includes:

- Provision of guidelines on the procedure for investing in electricity networks in Nigeria
- Send the right investment signals to the Transmission Company of Nigeria (TCN) and the Distribution Companies (DisCos) for capacity expansion within the projected revenue requirement for the sector
- Ensuring the optimal utilization of resources and at the same time protecting the consumers
- Establishing a framework through which NERC can adequately supervise investment processes
- Ensuring regulatory certainty for the regulator in achieving the balance between investments and prudent cost recovery by utilities
- Promoting adherence to the principles of transparency and accountability by utilities
- Reformation of operations within the electricity industry to suit the Nigerian business environment.



# KEY PROVISIONS

Nigerian Electricity Regulatory Commission (NERC) –  
Regulations for the Investment in Electricity Networks,  
2015



# KEY PROVISIONS



NERC's Investment in Electricity Networks Regulation was created with the ultimate objective of encouraging well-coordinated investments into electricity networks in Nigeria. In pursuit of this goal, the Regulation has a set of key provisions worthy of note by entities looking to contribute to the growth and development of the Nigerian Electricity Supply Industry (NESI) via investments in the electricity networks. These notable provisions include:

## ***Investments by Network Licensees***

The Regulation provides for investments processes to be undertaken by licensed participants in the electricity supply industry, subject to approval by the Commission; which can occur in any of the Grid controlled or independent electricity transmission or distribution networks, in addition to other network configurations specified by the Commission. Investments are subject to the provisions of all Technical Codes, Regulations, Rules and Orders of the Commission and also the License Terms and Conditions, Market Rules, Multi-Year Tariff Order (MYTO) or other approved tariff review procedures

In the process of investment, the licensed investor is expected to comply with certain procedures subject to the Commission's approval which include:

1. Completion and Submission of Application Form annexed to the Regulation
2. Submission of Investment Plan and Milestones
3. NERC to acknowledge in writing within 7 days of submission of application
4. NERC to communicate reasons for approval or refusal within 30 days of submission of the application
5. Licensee can apply for a review of NERC's decision where unsatisfied
6. Licensee is to comply strictly with the terms of approval where NERC approves the application
7. NERC's approval must be sought by the Licensee in the event of anticipated deviations from the approved plan and milestones.



## ***Investments by Non-licensees***

The Regulation also provides for investments by non licensees; however, for a non-licensee to engage in investment processes, such entities must enter into project agreements with licensed participant(s) maintaining the network in question which the non-licensee seeks to invest in. This agreement must subsequently be submitted by the licensed participant to the Commission for approval, following which within thirty (30) days from the date of submission, the Commission would communicate its decision on the application to the participant. A dissatisfied licensee has the option of applying for a review of the decision of the Commission.

Notably, if after thirty (30) days the Commission's decision has not been communicated, the parties to the project agreement may proceed with executing the particulars contained within the agreement. The licensee would also be required to receive consent from the Commission before any deviation from the provisions in the project agreement can occur. Upon completion of the project, the licensee will be expected to furnish the Commission with a notice of completion, geographical drawings, investment costs, commissioning period, amongst other information required by the commission.

Such project agreements must include particulars on feasibility studies, planning and design, construction standards, procurement process, financial viability of the entity in line with the MYTO, amongst others



## **Requirements of Licensees in Technical Planning**

Technical planning for connections to transmission and distribution networks takes different paths depending on the network choice segment for investment.

For a **distribution network**, the licensee will be expected to:

- Forecast future demand on the distribution network
- Analyze the feasibility of adding new connections to the system
- Identify problems with the distribution system and take corrective measures; and
- Plan the expansion of the system in line with the demand forecasts and connection feasibility analysis undertaken.

The **distribution licensee** shall also be expected to:

- Conduct an annual system plan which indicates the capacity requirement of the distribution system over a five-year period
- Provide technical information to entities looking to add new connections to the distribution system under its management; and
- Undertake performance analysis and meter customers in line with the service standards of the NERC.

**Transmission licensees** on the other hand would be expected to:

- Undertake a forecast analysis of the load of the transmission system alongside the impact of new connections, the level of system adequacy required for the system to balance demand with supply, and system planning to eliminate constraints in the network
- Produce an annual system plan in accordance with the provisions of the Grid Code
- Conduct an assessment in relation to transmission expansion needs
- Provide technical information to all entities looking to connect to the transmission system; and
- Meter all connection points in accordance with the Grid Metering Code.



## **Construction and Commissioning**

Network constructions and the commissioning of investment plans which have been approved by the Commission must be done in compliance with relevant codes established by the Commission. Based on this, network connections must be tested and commissioned by the Commission; with the licensee providing thirty (30) days' notice to the Commission prior to the planned date of commissioning. If the Commission fails to present itself on the decided date, commissioning will go on as planned and parties will be at liberty to execute the relevant agreements. Following verification by the Commission that the project falls in line with established standards, the Commission will issue a Commissioning Certificate authorizing the connection of the project to the network. Notably, the Commission can order the disconnection of the project from the network system, if such would be necessary for the furtherance of public interest; the Commission however would have to publish the reasons for such disconnection in two national newspapers no later than five (5) business days from the date of the disconnection. Licensees are to maintain up to date maintenance plans of their network to be made available to the Commission on request.

## **Network Investment Structure**

Investment planning process must be open, transparent and cost effective (in line with the MYTO) at all times and may be funded from the debt and equity capital markets subject to licensing terms and conditions. The need for risk allocation in cases where the project is undertaken by non-licensed participants, is also sacrosanct to the sustainability of the project's viability with well-defined prospects for project completion and the attendant milestones to achieve anticipated completion. In cases where the project is heralded by only a licensee(s), such entities may enter into investment agreements with corporate bodies or individuals through a special purpose vehicle (SPV) which serves as a hub for all investors involved in the project to pool their resources under a single entity. The Business Plan is to adequately reflect cash flow and capital requirements and should be submitted to the Commission with the funding sources adequately backed with secured Shareholders Agreement and Debt Repayment Agreements (where necessary). Also, provisions need to be made for contingency funding in cases of delay or cost overruns; such funding should constitute no less than N50 million. In situations where a distribution licensee however decides to invest through a third party such as a contractor or consultant; such entities must be engaged through a transparent procurement process for the network project;





following which the licensee would still remain accountable to the Commission for the completion of the project in line with the standards established in the applicable Codes, License Terms and Conditions, the MYTO and other attendant Regulations. Contract awards given to third parties must be backed with an Engineering, Procurement, and Construction (EPC) Contract. The terms for the disbursement of funds in line with EPC milestone payment terms will be articulated in the direct agreement.

### ***Role of the Commission***

NERC plays a major regulatory role in the execution of investment plans and project agreements. This regulatory role involves approvals of expansion and refurbishment plans of licensees in line with the Grid Code, analysis and approval of investment plans, draft project agreements, amongst others. The Commission is also tasked with the role of ensuring that investment plans are in accordance with the MYTO, and that construction and operation works are executed in line with the relevant Codes, Rules and Regulations established by the Commission.

### ***Procurement Process***

The procurement process<sup>4</sup> for contractors in the execution of the project agreement or investment plans is expected to be open, transparent and competitive in nature.

### ***Conflict of Laws***

In instances where the Regulation is found to be in conflict with the NERC's Market Rules,<sup>5</sup> Grid Code,<sup>6</sup> Grid Metering Code,<sup>7</sup> or the terms and conditions within a licence, the provisions of the latter would take precedence over the Regulations.<sup>8</sup>



# KEY STAKEHOLDERS

Nigerian Electricity Regulatory Commission (NERC) –  
Regulations for the Investment in Electricity Networks,  
2015



### ***Nigerian Electricity Regulatory Commission (NERC)***

NERC's Investment in Electricity Network Regulations is enforced by the Commission. The Commission is tasked with the execution of investment plans and project plans, which underscore the rationale behind the creation of the Regulation. NERC primarily serves as a supervisory agent, ensuring that the provisions within the Regulation are carried out to the letter.

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 electricity-related content.

# **PRICING** **AND TARIFFS**

**Nigerian Electricity Regulatory Commission (NERC) –  
Regulations for the Investment in Electricity Networks,  
2015**



# PRICING AND TARIFFS



Because the aim of the Regulation is the creation of an investment inducing environment for the power sector, it follows that the pricing structure for the actualization of investment projects must be adequate. Therefore, the Regulation provides that investments must not only be cost effective but must be in conformity with MYTO provisions.<sup>9</sup>

# INCENTIVES AND INVESTMENT OPPORTUNITIES

Nigerian Electricity Regulatory Commission (NERC) –  
Regulations for the Investment in Electricity Networks,  
2015



# INCENTIVES AND INVESTMENT OPPORTUNITIES



By virtue of the Regulations, opportunities for investment in the Nigerian electricity network by network licensees<sup>12</sup> are available in several areas within the Regulation including:

- The National Grid
- Grid Controlled Distribution Networks
- Independent Transmission Networks
- Independent Distribution Networks

Investment opportunities for non-licensees are restricted to only networks owned, operated, and maintained by licensees.<sup>13</sup>



# **SANCTIONS AND PENALTIES**

**Nigerian Electricity Regulatory Commission (NERC) –  
Regulations for the Investment in Electricity Networks,  
2015**

# SANCTIONS AND PENALTIES

---



Any entity that violates any of the provisions of the Regulation would be regarded as having committed an offence and would be liable to a penalty in line with the EPSRA, NERC's Enforcement Regulations<sup>10</sup> and any other applicable regulatory instruments.<sup>11</sup>

## Referenced Statutory Instruments

- Electric Power Sector Reform Act (EPSRA), 2005
- Market Rules for the Nigerian Electricity Supply Industry, 2009
- Metering Code for the Nigerian Electricity Supply Industry – Version 01, 2013
- Electricity Industry (Enforcement) Regulations, 2014
- Nigerian Electricity Health & Safety Code, 2014
- Grid Code for the Nigeria Electricity Supply Industry (NESI) – Version 03, 2018
- Distribution Code for the Distribution Sector of the Nigeria Electricity Supply Industry – Version 02, 2019

### Endnotes

- 1 NERC, NERC Investment in Electricity Networks Regulation 2015. Available at <https://nerc.gov.ng/index.php/component/remository/Regulations/NERC-Investment-in-Electricity-Networks-Regulation-2015/?Itemid=591>
- 2 Section 9(6)(1) & (2), EPSRA
- 3 Section 4
- 4 Section 16
- 5 NERC, NESI Market Rules. Available at <https://nerc.gov.ng/index.php/library/documents/func-startdown/312/>
- 6 NERC, Grid Code. Available at <https://nerc.gov.ng/index.php/library/documents/Codes-Standards-and-Manuals/Grid-Code/>
- 7 NERC, Metering Code. Available at <https://nerc.gov.ng/index.php/library/documents/Codes-Standards-and-Manuals/Metering-Code/>
- 8 Section 18
- 9 Section 12(b)
- 10 NERC, Electricity Industry Enforcement Regulation. Available at <https://nerc.gov.ng/index.php/component/remository/Regulations/Electricity-Industry-Enforcement-Regulation/?Itemid=591>
- 11 Section 17
- 12 Section 6
- 13 Section 7(i)

# 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