



SIMPLIFIED LEGAL *And* REGULATORY GUIDE:

**Nigerian Electricity Regulatory Commission
(Application for Licences (Generation,
Transmission, System Operations, Distribution &
Trading) Regulations, 2010**





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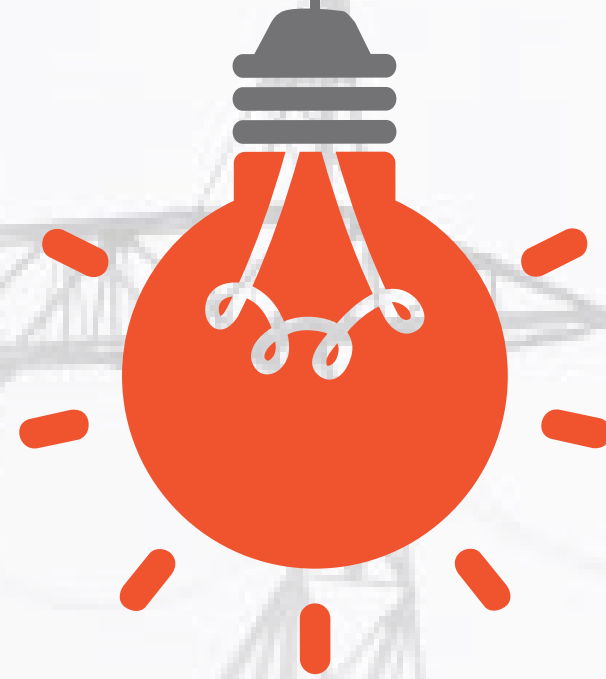
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OVERVIEW

**Nigerian Electricity Regulatory Commission
(Application for Licences (Generation,
Transmission, System Operations, Distribution &
Trading) Regulations, 2010**



The Nigerian Electricity Regulatory Commission's Application for Licences (Generation, Transmission, System Operations, Distribution & Trading) Regulations, 2010 ("the Regulations") was promulgated on the 14th of April, 2010 to repeal the Application for Licences (Generation, Transmission, System Operations, Distribution & Trading) Regulations, 2006. The Regulations provide clarifications and guidelines on issues that pertain to license applications and the requirements for submitting licence applications, the approval of which is to be determined by the Nigerian Electricity Regulatory Commission (NERC or the Commission). The Regulations is divided into six (6) chapters and a schedule, consisting of a total of twenty-one (21) 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

NERC is empowered by the Electric Power Sector Reform Act, 2005 (EPSRA)², 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 Regulations for the Application for Licences is one of 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 (Application
for Licences (Generation, Transmission, System
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OBJECTIVE



Primary objective of the Application for License Regulations

The Regulations for Application for Licence was introduced for the purpose of:

- Providing guidelines for the application of licences in the Nigerian Electricity Industry
- Overseeing licensing matters and licensed operations within the electricity sector



KEY PROVISIONS

**Nigerian Electricity Regulatory Commission (Application
for Licences (Generation, Transmission, System
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KEY PROVISIONS



Licence Application

Licence applications are to be made in writing and addressed to the Chairman of the Commission to be delivered either in person or sent by mail or courier services. The Application must be submitted in three (3) paper copies along with an electronic version in Microsoft Office Format in a CD-ROM device.⁴ An Application form is to be obtained from the Commission's office or downloaded directly from the official website of the Commission. It may contain the following information, among other things:

1. Particulars and details of the Applicant
2. Legal status of Applicant
3. Type of licence required
4. Environmental Impact Assessments (EIA)
5. Financial information of the Applicant
6. Description of project.⁵

The Applicant will be required to pay a non-refundable fee for the processing of the submitted application. This fee is fixed by the Commission in accordance with the provisions of the Regulations for Licence and Operating Fees, 2010.⁶



When NERC reviews the application for the first time, it may require some additional information to be submitted by the Applicant

NERC will notify the Applicant of the required additional information within one (1) month.

When the Applicant fails to submit the required additional information within sixty (60) days following the request, the application will lapse.

An application that has lapsed cannot be reactivated or restored, however, the Applicant may submit a new application after paying the prescribed fee for processing the application.⁷

If NERC discovers that the application is complete, it will pass a resolution that the application has been duly made within thirty (30) days. NERC will notify the Applicant and request that the Applicant publish it in the Statutory Public Notice.⁸

After receiving the notification, the Applicant will be required to publish a notice of the application in a manner prescribed by the Commission. The notice of the application must be published in two daily newspapers: local and national newspapers. The local newspaper must be one with wide circulation in the area where the Applicant intends to operate as a licensee. The publication will indicate the period within which an objection or representation may be made to the Commission. A Licence will not be issued unless the Commission has considered and considered any objections or representations received.⁹



Objections must be made in writing within twenty-one (21) days from the date of Public Notice. It must be filed in a petition form in two (2) paper copies and an electronic copy in Microsoft Office Software contained in a CD ROM, the details of which would be made available to the Applicant. A hearing/inquiry will be conducted, to be recorded in writing, following the lapse of time specified in the publication for filing of objections. The hearing is to be conducted within thirty (30) days, however, where the Commission believes that any objections is trivial or frivolous, the inquiry will be refused.¹⁰ Subsequently, the Commission will after due consideration either refuse or approve the application.¹¹ Where an application is refused, it is the responsibility of the Commission to communicate same to the Applicant in writing with reasons for the decision. The Applicant will be accorded the opportunity to make adequate representation to the Commission within twenty-one (21) days of receipt of notification of the refusal. Where an application is approved, it is to be communicated to the Applicant with the necessary conditions to be fulfilled along with the fees to be paid before the issuance of the licence.

Renewal and Amendment of Licence

Terms and conditions of licences may be amended on application to the Commission.¹² These terms may be amended:

- On application by the licensee to the Commission
- When the Commission receives a complaint from any consumer, eligible customer, consumer association, association of eligible customers or other licensee(s).
- At the Commission's discretion¹³



Application for amendment must be made nine (9) months before the licence expires.

NERC will amend a licence where¹⁴:

1. It is in the interest of the public to do so.
2. The licensee is not able to meet particular requirements set by the Commission in the terms and conditions of the licence.
3. The licensee has breached provisions of the EPSRA or any NERC Regulations, Market Rules and Network Codes.
4. There is a material change in the circumstances of the licence

The Applicant is required to publish a notice of the proposed licence in the form and manner required by the Commission, except in instances where the amendment is based on the Commission's own initiative, following which the responsibility for publication of the public notice will be the responsibility of the Commission.¹⁵

Where the amendment proposed is for the provision of service to an area occupied by the Federal Ministry of Defence for the purpose of defence, the Commission will need to obtain the consent of the Federal Ministry of Defence before the amendment.

An Application to renew a licence must be made to the Commission at least nine (9) months before the licence expires. The Applicant will pay a non-refundable fee to be fixed by the Commission periodically¹⁶ as specified in the Regulations for Licence and Operating Fees. The same process for issuing a fresh licence will be applied regarding an application for renewing a licence.



Extension of Licence Tenure

After licences have been issued, a license holder may apply for a licence tenure extension within the first five (5) years of the initial term of the licence. The form may be obtained directly from the Commission's office or can be downloaded from NERC's website. The Commission must decide on the application within three (3) months. The application for extension can only be granted once during a first licence tenure.¹⁷

Suspension and Cancellation of Licences

NERC may decide to suspend a licence on its own initiative or after receiving complaints from end-use customers, Consumer Association, Association of Eligible Customers, or other licensees. A licence will be suspended when the licensee is unable to fully discharge its functions or perform duties imposed on it based on the license terms and conditions. NERC will also suspend a licence where¹⁸:

1. The licensee carries out his business in a manner that poses as a threat to the health and safety of the public.
2. The licensee prevents investigation or inquiry by the Commission or refuses to submit documentation required by the Commission for the investigation
3. It is in the public interest to suspend the licence

The Commission will notify the licensee in writing the reason for the suspension and the licensee may make representations within thirty (30) days of receiving the notification from NERC. The Commission will subsequently communicate its decision to the licensee in writing. If NERC decides to suspend the licence, the date from which the suspension will take effect must be communicated to the licensee and the Commission may make an Order to empower another licensee to undertake the operations of the previously licensed undertaking to ensure continued provision of electricity services.¹⁹



A Licence may be cancelled for the following reasons:

- 1.If the licence was issued through fraud, or misrepresentation or failure of the licensee to disclose a fact that is substantial.
- 2.The licensee has intentionally violated the EPSRA, relevant and applicable legislation, NERC Regulations, Market Rules, Network Codes and Rules and Regulations.
- 3.The licensee has failed to observe the terms and conditions of the licence and it is stated in the licence that breach of such terms and conditions will result into a cancellation.
- 4.Where the licensee becomes bankrupt.
- 5.Where the licensee's financial position prevents it from discharging its functions and duties imposed by the licence²⁰

The Commission will notify the licensee in writing of its intention to cancel the licence where it is satisfied that grounds for cancellation exist. The licensee may make representation that the reason for cancellation no longer exists within sixty (60) days of the notification from the Commission. NERC may cancel the licence when it is satisfied that it is necessary to do so. In the alternative, rather than cancel the licence, NERC may impose further terms and conditions to the licensee or following cancellation, may order that the licence operation be undertaken by another licensee to ensure continued provision of electricity services.²¹



Withdrawal of Licence

NERC may withdraw a licence for a generating station that is not yet in operation:

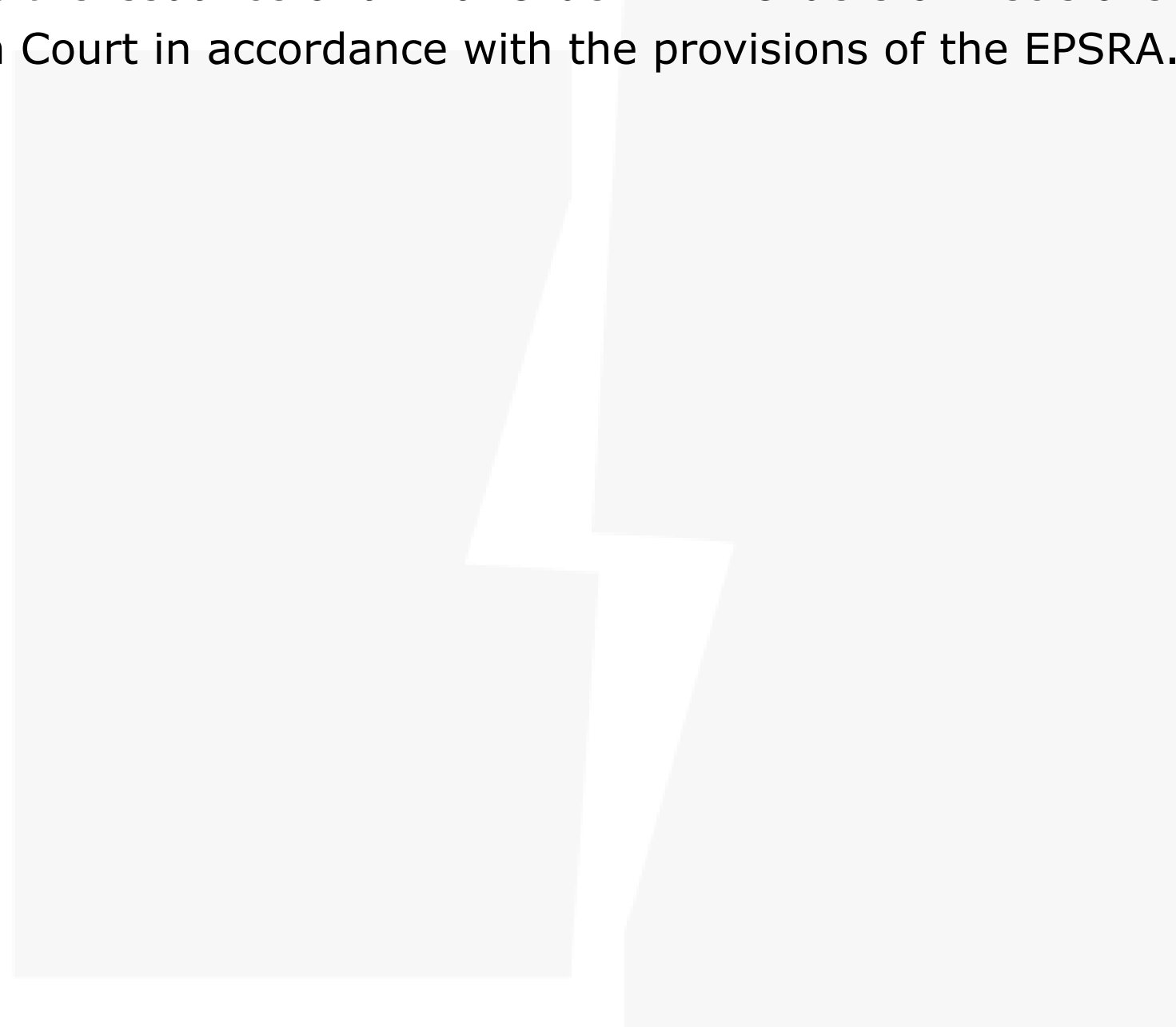
1. If the licence was obtained through fraud or misrepresentation or non-disclosure;
2. If the licensee breaches the provision of the Act or relevant enactment;
3. Where the licensee fails to comply with the licence conditions imposed on a milestone basis
4. If the licensee becomes bankrupt
5. If the licensee fails to commission the licensed generating station within three (3) years from the date of the grant of license.

Where the Commission decides to withdraw a licence, it shall notify the licensee in writing and give the licensee the opportunity to make representations against the intended withdrawal by the Commission within thirty (30) days from the date of the notification. A Licence that has been withdrawn cannot be reactivated, amended, renewed, or have the tenure extended. However, another fresh licence application may be submitted regarding the same generating station upon payment of the prescribed fee.²²



Appeals

A person or licensee who is dissatisfied with the decision of the Commission under the Regulations, may within twenty (21) days appeal and the Commission may review its decisions in accordance with its Rules of Proceedings, within sixty (60) days, before the issuance of a final Order.²³ All Orders or Decisions of the Commission are subject to judicial review by the High Court in accordance with the provisions of the EPSRA.





KEY STAKEHOLDERS

Nigerian Electricity Regulatory Commission (Application
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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.²⁴

The Commission is vested with the responsibility of monitoring and overseeing licensing activities to facilitate competition and prevent abuse of market power. In the process of monitoring licensing applications, the Commission is entitled to request for information from licensees. Where the Commission determines that there has been an abuse of market power, it is vested with the power to issue cease orders and levies.²⁵ The Commission has the power to amend or revoke the whole Regulation in whole or in parts.²⁶

The background of the slide features a faint, dark silhouette of a high-voltage power transmission tower, also known as a pylon, with its complex lattice structure and cross-arms. The tower is positioned centrally, extending from the bottom towards the top of the frame, and serves as a thematic backdrop for the text.

PRICING **AND TARIFFS**

**Nigerian Electricity Regulatory Commission (Application
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PRICING AND TARIFFS



The Regulations does not provide specifically for pricing and tariffs. Pricing provisions for the Regulation is detailed within the NERC Licence and Operating Fees Regulations.

INCENTIVES AND INVESTMENT OPPORTUNITIES

Nigerian Electricity Regulatory Commission (Application
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INCENTIVES AND INVESTMENT OPPORTUNITIES



NERC Application for Licence Regulations provides for the following opportunities:

- The Regulations specify that the tenure of licences can be extended via application. This makes the licence process straightforward for Users and prospective licensees.
- The Regulations promotes continuity by permitting other interested licensees to embark on licensed operations even after the license of the original licensee for the licensed operation has been suspended
- The Regulations provide that terms and conditions of licences can be subsequently amended. This opportunity encourages participation in the electricity sector when the regulations regarding licensing are not too stringent.



SANCTIONS AND PENALTIES

**Nigerian Electricity Regulatory Commission (Application
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SANCTIONS AND PENALTIES



There is no provision for sanctions and penalties in the Regulations.

Referenced Statutory Instruments

- Electric Power Sector Reform Act (EPSRA) No.6 LFN 2005
- Grid Code for the Nigerian Electricity Supply Industry 2008
- Metering Code 2008
- Distribution Code 2008
- NERC Regulations for Licence and Operating Fees 2010
- Market Rules for the Transitional and Medium stages of the Nigerian Electrical Power Sector, 2010

Endnotes

1 NERC Official website, Available at <https://nerc.gov.ng/index.php/component/remository/Regulations/NERC-Application-for-Licence-Regulation-2010/?Itemid=591>

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 96 (1) and (2) (c) & (d) Electric Power Sector Reform Act (ESPRA), No. 6 LFN 2005

4 Section 3 of the Regulations

5 Schedule 2

6 Section 6

7 Section 8

8 Section 9

9 Section 10

10 Section 11

11 Section 12

12 Section 13

13 Section 13 (a) (i-iii)

14 Section 13 (c)

15 Section 13 (f)

16 Section 14

17 Section 15

18 Section 16 (C) (i-v)

19 Section 16

20 Section 17

21 Section 16 (g)

22 Section 18

23 Section 19

24 Sections 31-61 of the EPSRA

25 Section 82 of the ESPRA

26 Section 21

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.

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