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1. PURPOSE

This manual outlines the licensing process for doing business in the electricity industry, the regulatory framework and how an Applicant should approach the application process.

This manual is intended for guidance only and is not a substitute for the requirements of any legislation or licence conditions. Applicants should get their own independent advice throughout the application process.

2. LEGISLATIVE FRAMEWORK

The Electric Power Sector Reform Act 2005 establishes the Nigerian Electricity Regulatory Commission (NERC) with regulatory powers vis-a-vis regulated companies in the electricity industry. The powers include tariff setting and regulation, supervision of market rules, performance monitoring, and overseeing the orderly transformation of the power sector to a more competitive environment.

Part Three of the EPSR Act details the role of NERC in regulating the electricity industry and also provides for licensing of market participants by NERC in the areas of generation, transmission, system operation, distribution and trading in electricity.

Prospective licence Applicants should carefully read the EPSR Act before making an application to NERC.

3. THE LICENSING PROCESS

The Act provides for the licensing of electricity market participants. The Act specifically prohibits the generation, transmission, system operation, distribution and trading in electricity without a licence and makes it an offence to do so, except as provided below.

3.1. Exemptions from the requirement to hold a licence

Despite the above, the Act allows a person to carry out the following activities without a licence:

1. construct, own or operate an undertaking for generating electricity not exceeding 1 megawatt (MW) in aggregate at a site;
2. construct, own or operate an undertaking for distribution of electricity with a capacity not exceeding 100 kilowatts (KW) in

3. aggregate at a site; or
such other capacity as NERC may determine from time to time.

4. LICENCE APPLICATION PROCEDURE

This manual sets out:

1. how to make an application;
2. how an application will be assessed by NERC; and
3. what happens if an application is refused.

4.1 How to make an Application

There are several steps which the application has to go through before a licence is granted. Prospective Applicants are encouraged to carry out feasibility studies to check industry and market conditions and also ensure that they can meet licence conditions and statutory obligations if granted a licence.

1. A prospective Applicant that requires a licence to carry on business in generation, transmission, system operation, distribution and trading in electricity must make an application in writing by filling out an *Application Form for the Issuance of a Licence by the Commission under the EPSR Act 2005*. These forms are available at the Commission.
2. The completed application form should be delivered (with the appropriate fees) to the Commission at its headquarters. An application shall be signed and dated by the authorised representative of the Applicant. An Application shall also be submitted in two paper copies along with an electronic copy in Microsoft Office software format contained in a CD-Rom.
3. The Applicant shall upon submission of the application form, pay a non-refundable fee as fixed by the Commission for the processing of the application .
4. The following documents/information must be sent with the application form:
 - i Identity of the Applicant.
 - ii Nature and scope of the operations for which a licence is

- sought;
- iii. Sufficient information to enable the Commission make a full assessment of the suitability of the Applicant to hold the licence; and
 - iv. Information to satisfy the Commission that an Applicant can meet the relevant licence conditions and has the technical and financial capability to comply with the terms and conditions of the licence.
5. An Applicant who owns or acquires more than ten (10) percent of the shares of a body corporate which has applied for or holds another licence issued by the Commission shall disclose such Interest to the Commission.
 6. Applicants must provide all information requested in the application form, as an application will not be reviewed until all relevant documents and information are provided.
 7. On receipt of the application, the Commission shall note thereon the date of its receipt and shall send to the Applicant an acknowledgment stating the date of the receipt.
 8. The Commission may upon review of the application require the Applicant to furnish, within a period to be specified by it, any additional information; provided however that the time between the receipt of the application and accompanying documents and date on which the Commission notifies the Applicant of the inadequacy of the documents and information shall not exceed thirty (30) days.
 9. Within thirty (30) days of receiving the Commission's acknowledgment that an application has been duly made, an Applicant shall (at his own expense) cause a notice of the application to be published both in:
 - i. a newspaper circulating in the area in which he intends to operate as a licensee; and
 - ii. a separate newspaper with national circulation.
 10. The Applicant shall cause a copy of each of the newspaper publications to be provided to the Commission.

11. The notice shall stipulate that any objections or representations in connection with the application shall be made to the Commission within twenty-one (21) days from the publication of the notice.
12. The Commission shall provide the form of the text to be used by the Applicant in the said notice.
5. ASSESSMENT OF AN APPLICATION FOR A LICENCE BY THE COMMISSION

In performing its licensing functions, the Commission's primary focus is balancing the interest of market participants and the protection of Nigerian consumer interests with respect to price, quality and consistency of power supply. NERC must also pay attention to the factors contained in section 32 of the EPSR Act, which include the following:

- 1) create, promote and preserve efficient industry and market structures and ensure the optimal utilisation of resources for the provision of electricity.
- 2) maximise access to electricity services by promoting and facilitating consumer connections to distribution systems in both rural and urban areas.
- 3) ensure availability of adequate supply of electricity to consumers.
- 4) ensure prices charged by licensees are fair to consumers and are sufficient to allow the licensees finance their activities and to allow for reasonable earning.
- 5) ensure the safety, security, reliability and quality of service in the production and delivery of electricity to consumers.
- 6) ensure regulation is balanced and fair for licensees, consumers, investors and other stakeholders.
- 7) establish appropriate consumer rights and obligations regarding the provision and use of electric services.

In line with the above objectives, the key criteria for the grant of a licence include:

- a) The Applicant will comply with the provisions of the EPSR Act;

- b) The Applicant is a suitable entity to hold a licence and has the capacity to operate a viable business;
- c) With regard to a transmission, system operation and distribution licences, that the network and system have the relevant capacity for transmitting or distributing electricity in a safe manner; and open access is provided to all users with transparent and non-discriminatory prices;
- d) The Applicant will comply with all Commission rules, codes of conduct, standards, regulations and licence terms and conditions as to the service or system it intends to provide or operate;
- e) The grant of the licence is in the public interest;
- f) Any other matter prescribed by the Commission.

NOTE: Each licence granted by the Commission incorporates various terms and conditions that must be adhered to. Prospective Applicants should review the EPSR Act, which contains some of the licence conditions in Part IV.

6. CONSIDERATION OF AN APPLICATION

1. Interested parties may lodge objections with the Commission within twenty-one (21) days from the publication of the mandatory public Notice for Application.
2. No licence connected to an application shall be issued until all objections or representations received by the Commission have been considered.
3. Any petition with respect to an application shall be made available to the Applicant by the Commission for a reply.
4. Following the publication of the public notice and lapse of the time specified for filing objections, the Commission may proceed to place the application for hearing based on any objection filed in respect of the application.
5. The Commission shall give the notice of inquiry or hearing to the Applicant, the persons who had filed objections, and

such other authority, person or body as the Commission considers appropriate. The conduct of the hearing shall be in the form and manner prescribed by the Commission and shall be concluded within a period of thirty (30) days.

6. The Commission may refuse such an inquiry if in its opinion the objection is frivolous or vexatious.
7. The findings of the Commission at the inquiry/hearing shall be in writing.

7. APPROVAL OF A LICENCE

1. The Commission shall grant the appropriate licence to the Applicant if it is satisfied that:
 - i. The Applicant's documents are in order;
 - ii. Due consideration has been taken of all objections and representations;
 - iii. The Applicant is likely to comply with the provisions of the EPSR Act;
 - iv. The Applicant is likely to comply with all codes of conduct, standards, regulations and licence terms and conditions as to the service or system it intends to provide or operate; and
 - v. The grant of the licence is in the public interest.
2. The Commission shall process an application expeditiously and shall notify an Applicant of its decision or proposed decision as soon as practicable but within six (6) months of due acknowledgement of an application (as stipulated in the Act).
3. An Applicant who owns or acquires more than ten (10) percent of shares of another Applicant/licensee may be issued a licence subject to such conditions as the Commission may specify which may include:
 - i. that such Applicant divests its interest in the shares of the other Applicant/licensee; or

- ii. such other conditions including adherence to codes of conduct.
- 4. When the Commission has approved a licence, the Commission shall inform the Applicant of such approval and the conditions to be satisfied including the fees to be paid before the grant of the licence.

8. REFUSAL AND APPEALS PROCEDURE

8.1. Proposal to Refuse An Application

An application may be refused where:

- a) an application fails to meet the required criteria;
- b) the information supplied does not satisfy one or more of the objective criteria;
- c) the Commission finds the information submitted is false and misleading;
- d) The Applicant has failed to produce, when requested, additional information, within the required time.

8.2. Notification

Where the Commission intends to refuse an application, it shall:

- a) notify the Applicant in writing that it proposes to refuse the application and give its reasons for doing so and shall afford the Applicant an adequate opportunity to make representations on the matter;
- b) allow the Applicant twenty-one (21) days from the date of the notification to make representations as to why it opposes the Commission's proposal to refuse the application and provide further information if required. The Commission will consider any representations which are duly made and not withdrawn.

8.3. Final Decision to Refuse An Application

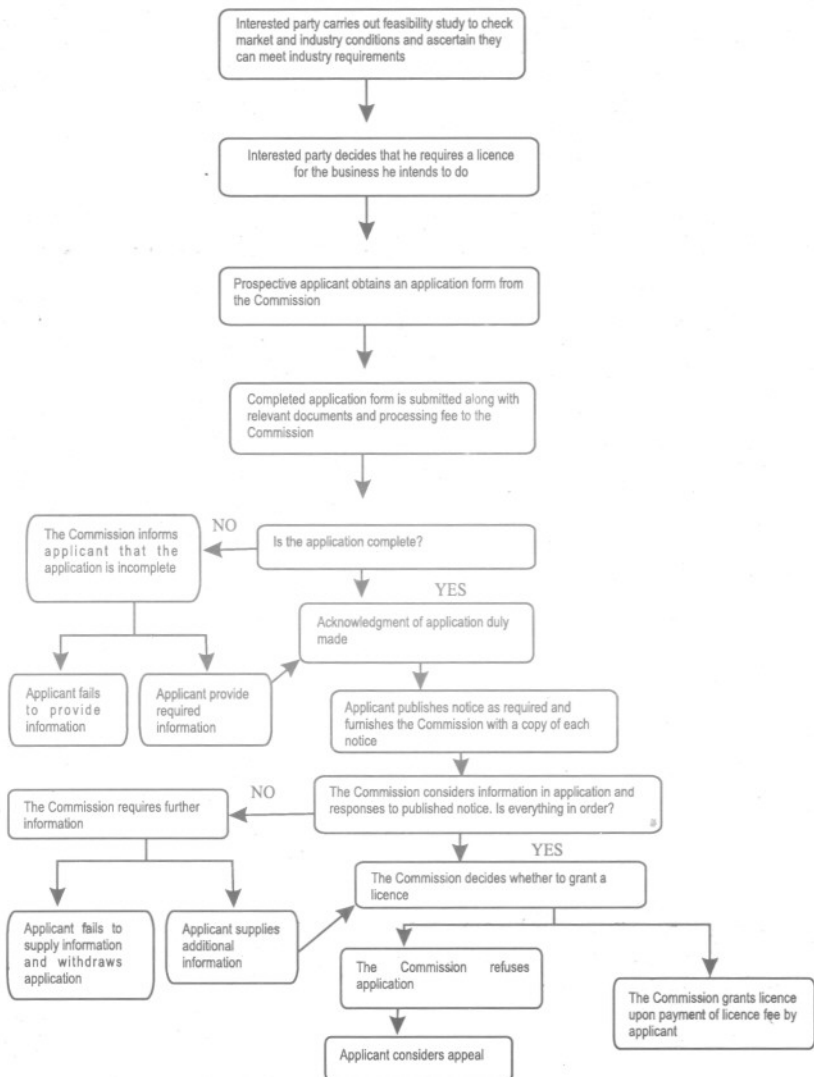
In the event that no representation is made within twenty-one (21)

days of the notification or the representation against a notification is unsuccessful, the Applicant will be notified in writing of the decision to refuse the licence. The notification will:

- a) where no representation has been made, re-state the reasons for refusal of the application; and
- b) where an unsuccessful representation was made, state the reasons for the refusal of the representation

An Applicant may appeal to the Commission for a review or re-consideration of an application, which has been refused.

THE LICENSING PROCESS



9. AMENDMENT, RENEWAL, SUSPENSION OR CANCELLATION OF LICENCE

1. After a licence is issued by the Commission, it is possible for such licence to be amended, renewed, suspended or cancelled. A licence may be amended on an application by the licensee or where the Commission receives a complaint from consumers or other licensees, or on the Commission's own initiative. Each application for an amendment shall be accompanied by prescribed fees and shall be in line with the procedure for the grant of a licence.

2. An application for a renewal of a licence must be made at least nine (9) months before the expiration of the licence, in the form specified by the Commission and accompanied by prescribed fees and shall be in line with the procedure for the grant of a licence.

3. A licence may be suspended or cancelled where the Commission is satisfied that enough grounds exist that may warrant the suspension. Further detail on the procedure for suspension or cancellation of licences is provided in the Regulations on Application for Licences, which can be obtained from the Commission.

10. CONFIDENTIALITY

Applicants must inform the Commission if information provided in respect of a licence application is confidential information.

11. CONSULTATION

Unless confidentiality is claimed in respect of a licence application, part of a licence application or information provided in support of an application, the application or information will be made available upon request or made accessible to the Public.

The Commission will consult with relevant government agencies, consumer groups, and independent experts in conducting its licensing functions. If that consultation requires the release of confidential information, the Commission will first advise the applicant and seek consent to the release of information.

The Commission reserves the right to release or refer to a licence application, part of a licence application or information provided in support of an application, notwithstanding a claim of confidentiality, if the

Commission believes that to do so is in the interest of the public.

12. PROCESSING FEES

An applicant shall, upon submission of the application form, pay a non-refundable fee for the processing of the application. On the Commission's prescribed processing fee, please refer to the Schedule on pages 13-15.

13. LICENCE FEES

All applications for a licence will be required to pay a licence fee as may be approved by the Commission from time to time. On the Commission's prescribed licence fee, please refer to the Schedule on pages 13-15

14. FURTHER INFORMATION

Enquiries concerning this bulletin should be addressed to:

Nigerian Electricity Regulatory Commission
Legal, Licensing and Enforcement Division

Adamawa House
Plot 1099 1st Avenue,
Off Shehu Shagari Way,
Central Business District, Abuja

Telephone: +234-9-6723205

E-mail: info@nercng.org

SCHEDULE OF LICENCE & OPERATING FEES

A. Grid-Connected Operations:

S/N	Licence Category	Validity Period (Years)	Application Fees	Licence Fees	Licence Amendment Application Fees	Annual Operating Levies
1.	Generation	10				
	a. Above 1MW - 10MW		N 50,000.00	US\$ 2,500.00	N 50,000.00	1.5% of Licence's Charges/kWh
	b. Above 10MW - 100MW		N 100,000.00	US\$ 25,000.00	N 100,000.00	"
	c. Above 101MW - 250MW		N 200,000.00	US\$ 50,000.00	N 200,000.00	"
	d. Above 251MW - 500Mw		N 300,000.00	US\$ 75,000.00	N 300,000.00	"
	e. Above 501MW - 1000MW		N 400,000.00	US\$ 100,000.00	N 400,000.00	"
	f. Above 1000Mw		N 500,000.00	US\$ 200,000.00	N 500,000.00	"
2.	Transmission**	10	N1,000,000.00	US\$ 250,000.00	N1,000,000.00	"
3.	System Operations**	10	N1,000,000.00	US\$ 250,000.00	N1,000,000.00	"
4.	Distribution	10	N1,000,000.00	US\$ 50,000.00	N1,000,000.00	"
5.	Trading	10	N1,000,000.00	US\$ 50,000.00	N1,000,000.00	"

* Generation capacity is the nearest integral value

** The Licence and fees for Transmission and System Operations apply to PHCN and its successor Companies only.

B. Off-Grid Operations:

S/N	Generator Capacity (MW)	Validity Period (Years)	Application Fees (N)	Licence Fees (\$)	Licence Amendment Application Fees (\$)	Annual Operating Levies
1.	Above 1-10	1	10,000.00	1,000.00	500.00	None
2.	11-20		10,000.00	2,000.00	1,000.00	
3.	21-30		10,000.00	2,500.00	1,250.00	
4.	31-40		10,000.00	3,000.00	1,500.00	
5.	41-50		10,000.00	3,500.00	1,750.00	
6.	51-100		20,000.00	5,000.00	2,500.00	
7.	Above 100		50,000.00	6,000.00	3,000.00	
8.	Distribution	10	100,000.00	10,000.00	5,000.00	1.5% of Tariff Charge/kWh

Initial Generator License is unit and location specific

Any material change in the generator unit or location shall require an amendment to the Licence

A Distribution Licence is location specific

Validity period cannot be pro-rated for less than a year

Generator capacity is the nearest integral value

Electrical Installation/Wiring:

S/N	Licence Category	Validity Period (Years)	Application Fees	Licence Fees	Licence Amendment Application Fees	Annual Operating Levies
1.	Category A (330/132kV)	5	N 100,000.00	N 5,000,000.00	N 100,000.00	N 500,000.00
2.	Category B (33/11kV)	5	N 50,000.00	N 500,000.00	N 50,000.00	N 50,000.00
3.	Category C (450V)	5	N 2,000.00	N 10,000.00	N -	N -