



# **NIGERIAN ELECTRICITY REGULATORY COMMISSION**

## **BUSINESS RULES OF THE COMMISSION**

### **DRAFT REGULATION NO. NERC-R-0306**

In exercise of the Powers conferred by Section 96 (2) (a) of the Electric Power Sector Reform Act 2005 (Act No. 6 of 2005), the Nigerian Electricity Regulatory Commission makes the following Regulations for the conduct of its proceedings and discharge of its functions, hereafter referred to as the Business Rules of the Commission.

#### Arrangement of Clauses

#### **CHAPTER I GENERAL**

- 1 Short Title and Commencement.
- 2 Definitions and Interpretations.
- 3 Legal Status.
- 4 Commission's Offices, Office Hours and Sittings.
- 5 Seal of the Commission.

#### **CHAPTER II GENERAL RULES CONCERNING MEETINGS OF AND PROCEEDINGS BEFORE THE COMMISSION**

- 6 Meetings of the Commission.
- 7 Proceedings before the Commission.
- 8 Authority to Represent.
- 9 Burden of Proof.
- 10 Initiation of Proceedings and Petitions.
- 11 Petitions and Pleadings before the Commission.
- 12 General Headings.
- 13 Affidavit in Support.
- 14 Presentation and Scrutiny of Petitions.
- 15 Service of Notices and Processes.
- 16 Reply and Objections.
- 17 Hearing of the Matter.
- 18 Power of the Commission to Seek Further Information.
- 19 Questions of Law May Be Referred to the High Court
- 20 Failure to Appear For Hearing.
- 21 Orders of the Commission.
- 22 Rehearing and Appeal.
- 23 Inspection of Records and Provision of Certified Copies.
- 24 Public Hearings.

### **CHAPTER III**

#### **INVESTIGATION, INQUIRY, COLLECTION OF INFORMATION**

- 25 Collection of Information.
- 26 Assistance of Experts.

### **CHAPTER IV MISCELLANEOUS**

- 27 Continuance of Proceedings
- 28 Proceedings Open To Public.
- 29 Publication of Petition.
- 30 Confidentiality and Non Disclosure.
- 31 Issue of Orders and Practice Directions.
- 32 Penalties.
- 33 Exemption from Liability.
- 34 Inherent Powers of the Commission.
- 35 General Power to Amend.
- 36 Power to Dispense With the Requirements of the Regulations.
- 37 Extension Or Abridgement Of Time Prescribed.
- 38 Validity of Proceedings and Orders.
- 39 Costs.
- 40 Enforcement of Orders Passed By the Commission.
- 41 Delegation.
- 42 Amendment or Repeal.

### **SCHEDULE I**

#### **ARBITRATION OF DISPUTES**

- 1 Arbitration.
- 2 Commencement of Arbitration.
- 3 Nomination of Arbitrators.
- 4 Procedure for Adjudication, Settlement and Passing of Award.
- 5 Cost of Arbitration.
- 6 Enforcement of Award.

**NIGERIAN ELECTRICITY REGULATORY COMMISSION**  
(Business Rules of the Commission) Regulations 2006

**CHAPTER 1**

**GENERAL**

**1. Short Title and Commencement**

(1) These Regulations may be cited as the Nigerian Electricity Regulatory Commission (Business Rules of the Commission) Regulations, 2006.

(2) These Regulations shall come into force on the date on which it is approved by a Resolution of the Commission.

(3) These Regulations shall be signed by the Chairman who shall cause the seal of the Commission to be affixed thereon.

**2. Definitions and Interpretations**

(1) In these Regulations, unless the context otherwise requires:

“Act” means the Electric Power Sector Reform Act, 2005;

“Chairman” means the Chairman of the Nigerian Electricity Regulatory Commission;

“Commission” means the Nigerian Electricity Regulatory Commission;

“Commissioner” means a Commissioner of the Commission appointed in accordance with the Act;

“Competent Authority” means Chairman, Commissioner or such other officer of the Commission designated from time to time for the purpose by the Commission, in accordance with these Regulations;

“Complaint” means and includes a written statement in which a person raises an issue about any matter in respect of which the Commission is empowered to act upon by the Act or Regulations;

“Deponent” means any person swearing to an affidavit;

“Officer” means a staff or authorized representative of the Commission;

“Person” includes an individual, company, partnership, or any other association of individuals, whether incorporated or not;

“Petition” means and includes all Petitions, applications, appeals, replies, rejoinders in respect of Petitions and supplemental pleadings in respect of any matter before the Commission;

“Proceedings” means and includes sittings and hearings (except public hearings) that the Commission may hold in the discharge of its functions under the Act;

“Public Hearing” means a hearing organized by the Commission on any matter on which it is empowered under the Act or Regulations which Public attendance is allowed and the Commission determines to be of significance interest to the general public;

“Receiving Officer” means the Secretary to the Commission or any person authorized by the Secretary for that purpose;

“Secretary” means the Secretary to the Commission;

“Vice-Chairman” means the Vice-Chairman of the Commission appointed in accordance with the Act.

(2) Words or expressions used in these Regulations but not defined, unless the context otherwise requires, shall have the same meanings respectively assigned to them in the Act.

(3) Words importing any one gender includes the other gender and the singular includes the plural and vice-versa.

### **3. Legal Status**

The Commission is a body corporate with perpetual succession and a corporate seal with power to acquire and hold property, movable and immovable, to contract, and shall by its name be entitled to sue and be sued.

### **4. Commission’s Offices, Office Hours and Sittings**

(1) The headquarters of the Commission shall be in Abuja. Other places for offices of the Commission may from time to time be specified by the Commission.

(2) Unless otherwise directed by the Commission, the headquarters and other offices of the Commission shall be open from Monday to Friday, except on public holidays, which are so declared by the Federal Government of Nigeria. The headquarters and other offices of the Commission shall be open from 8:00 am to 5:00 pm and at such other hours as the Commission may direct.

(3) Where the last day of doing any act falls on a day on which the office of the Commission is not open, and because of this, the act cannot be done on that day, it may be done on the next day on which the office is open without any penalty.

(4) The Commission may hold sittings for hearing matters at the headquarters or any other place in Nigeria on days and times to be specified by the Commission.

### **5. Seal of the Commission**

(1) The Commission shall have a corporate seal.

(2) Every Contract Agreement entered into, Order made, notice issued or certified copy granted by the Commission and documents requiring the seal of the Commission shall be stamped with the seal of the Commission and shall be certified by the Chairman and Commissioner Legal Support & Licensing.

(3) The Secretary shall have the custody of the seal.

## **CHAPTER II**

### **General Rules Concerning Meetings of and Proceedings Before the Commission**

#### **6. Meetings of the Commission**

(1) Meetings of the Commission shall be held whenever necessary for the expeditious conduct of its business at such times at its Headquarters or at any other place in Nigeria as may be determined by the Commission.

(2) The Chairman shall direct the Secretary in writing to issue notices for the meetings and such notices shall be dispatched by hand, except in the case of an emergency meeting, at least 3 (three) working days before the date of the meeting.

(3) Meetings of the Commission may also be convened upon a written request for a meeting signed by at least three (3) Commissioners. Such a request shall contain the Agenda to be discussed at the meeting and shall be issued at least three (3) working days before the date of the meeting, except in the case of an emergency meeting.

(4) The Secretary, in consultation with the Chairman, shall prepare the Agenda for the meeting and the Agenda shall be dispatched along with the Notice of Meeting.

(5) Items to be discussed at the meeting shall be circulated to all Commissioners by the Secretary together with the Notice of Meeting, save that an Agenda may be amended at a meeting.

(6) The Chairman or in his absence, the Vice-Chairman, shall preside at all meetings of the Commission. In the absence of both the Chairman and the Vice-Chairman, a Commissioner shall act as the Chairman for that meeting and this shall be on a rotational basis among the Commissioners.

(7) The Secretary shall keep written minutes of all the Commission's meetings and copies of the minutes shall, after approval by the Chairman, be circulated to all Commissioners together with the notice for the next meeting.

(8) The quorum for the meeting of the Commission shall be four (4).

(9) Decisions of the Commission shall be on the basis of simple majority of the Commissioners present and voting; provided however that in the event of an equality of votes, the Chairman shall have a casting vote.

(10) If any previous Decision or Order taken by the Commission is to be reviewed at a meeting, the quorum at that meeting shall be no less than the Commissioners present when the Decision was taken or Order was made.

(11) The Commission may conduct its business by means of written resolutions signed by all the Commissioners; provided that if any Commissioner requires that a matter be placed before all Commissioners for discussion, a meeting shall be convened in that event.

## **7. Proceedings before the Commission**

(1) The Commission may from time to time hold such proceedings as it may consider appropriate in the discharge of its functions under the Act. The Commission may appoint an officer or any other person whom the Commission considers appropriate to present the matter as the Commission's representative in the proceedings.

(2) All matters which the Commission is required under the Act to undertake and discharge through hearings shall be done in the manner specified under the Act and in these Regulations.

(3) Except where the Commission may provide otherwise for reasons to be recorded in writing, all matters affecting the rights and or interests of a licensee or any other person or class of persons shall be undertaken and discharged through consultations or hearings in the manner specified in these Regulations.

(4) It shall be open to the Commission to permit any association or other bodies corporate or any group of consumers to participate in proceedings before the Commission on such terms and conditions including the nature and extent of participation as the Commission may consider appropriate.

(5) The Commission may as and when considered appropriate, establish a procedure for recognition of associations, groups, fora or bodies corporate as registered associations for the purpose of representation before the Commission.

## **8. Authority to Represent**

(1) A person may authorize a legal practitioner or a member of any statutory professional body, as the Commission may from time to time specify, to represent him and act and plead on any proceedings before the Commission.

(2) The person may also appear himself or authorize any of his employees to appear before the Commission and to act for and plead on his behalf.

(3) The Commission may from time to time specify the terms and conditions subject to which a person may authorize any person to act and plead on his behalf.

## **9. Burden of Proof**

The burden of proof shall be on the person seeking approval, making an application, filing a case or making a complaint before the Commission.

## **10. Initiation of Proceedings and Petitions**

- (1) The Commission may initiate proceedings; or commence proceedings following the complaint of an affected person.
- (2) When the Commission initiates the proceedings, it shall be by a notice issued by the Secretary of the Commission and the Commission may give such Orders and directions as may be deemed necessary for service of notices to the affected or interested parties for the filing of replies and rejoinders in opposition or in support of the Petition or subject matter of the proceedings in such form as the Commission may direct. The Commission may if it considers it appropriate, issue Orders for the advertisement of the proceedings inviting comments on the issues involved in the proceedings in such form as the Commission may direct.
- (4) While issuing the notice in proceedings initiated by the Commission, the Commission may designate an officer of the Commission or any other person whom the Commission considers appropriate to present the matter in the capacity of a Petitioner in the case.

## **11. Petitions and Pleadings before the Commission**

All Petitions to be filed before the Commission shall be typed and every page shall be numbered sequentially. The content of the Petition shall be divided appropriately into separate paragraphs which shall be numbered serially. The Petition shall be accompanied by such documents as may be necessary.

## **12. General Headings for Petitions**

The General Heading of all Petitions before the Commission and in all advertisements and notices shall be in the form set out in Annexure 1 herein. (Form 1)

## **13. Affidavit in Support of Petitions**

(1) Petitions filed before the Commission shall be supported by an affidavit and every such affidavit shall be in the form set out in Annexure II. (Form 2)

(2) Every affidavit shall be drawn up in the first person and shall state the full name, age, occupation and address of the deponent and the capacity in which he is signing and shall be signed and sworn before a person lawfully authorised.

(3) Every affidavit shall clearly and separately indicate statements, which are true to the-

- a. knowledge of the deponent;
- b. information received by the deponent; and
- c. belief of the deponent.

(4) Where any statement in an affidavit is stated to be true to the information received by the deponent, the affidavit shall also disclose the source of the information and a statement that the deponent believes that information to be true.

#### **14. Presentation and Scrutiny of Petitions**

(1) Petitions shall be filed in one (1) original and eight (8) copies along with an electronic version or as may be specified by the Commission. Each set of the Petition shall be complete in all respects. The fees, as may be prescribed by the Commission, where applicable, shall be payable along with the Petition.

(2) Upon the receipt of the Petition, the Receiving Officer shall acknowledge the receipt by stamping and endorsing the date on which the Petition has been presented and shall issue an acknowledgement with stamp and date to the person filing the Petition.

(3) In case the Petition is sent by ordinary mail or courier, a self-addressed and stamped envelope shall be included for acknowledgement. The date on which the Petition is actually received at the office of the Commission shall be taken as the date of the presentation of the Petition. An acknowledgement shall be dispatched to the Petitioner within three (3) business days by the Commission.

(4) The Receiving Officer shall verify the Petition for completeness and shall advise the person filing the Petition, in writing, of the defects in the Petition filed.

(5) If on scrutiny no defect in the Petition is found, the Petition shall be duly registered by the Commission.

(6) The Petition shall be scheduled for hearing within forty five (45) days from the date it is registered by the Commission. Where the Commission is unable to schedule the Petition for hearing within this time period or where the Petitioner requests for extension of time, the Commission may extend the time limit for such additional period as it may specify and shall give reasons for such extension; Provided however, that any such extension shall be preceded by at least seven day notice prior to the expiration of the forty five (45) days. An extension shall not be for more than thirty (30) days and the number of such extensions shall not exceed three (3). The Commission shall issue hearing notices.

(7) A Petitioner may withdraw his Petition at any time before it is scheduled for hearing by serving a notice to the Commission stating an intention not to proceed with the Petition. A Petition which is withdrawn is deemed struck out.

(8) The Commission may admit the Petition for hearing without requiring the attendance of the Petitioner. The Commission shall not make an Order refusing admission without giving the Petitioner an opportunity of being heard.

(9) If the Commission admits the Petition, it may give such Orders and directions, as may be deemed necessary, for service of notices to the respondent and other affected or interested parties, for the filing of replies and rejoinder in opposition or in support of the Petition in such form as may be prescribed by the Commission.



## **15. Service of Notices and Processes**

(1) Any notice or process to be issued by the Commission may be served by any of the following modes as may be directed by the Commission:

- (a) by hand delivery through a messenger;
- (b) by courier with due acknowledgement;
- (c) by publication in a newspaper in the case of notices or in cases where the Commission is satisfied that it is not reasonably practicable to serve the notices, processes, etc. on any person in the manner mentioned above;
- (d) by pasting the notice or process at the last known place of business of the person; or
- (e) in any other manner as considered appropriate by the Commission

(2) A Person who is a party to a Petition before the Commission may appoint an authorized representative to represent him in the Petition or Proceedings in accordance with Section 8 of these Regulations and such a person can be served notices and processes.

(3) Unless notice is provided to each party in a case before the Commission, a person acting on behalf of a party shall not contact a Commissioner or officer of the Commission regarding the merits of the case.

(4) Every notice or process required to be served on or delivered to any person may be sent to the person or his agent at the address furnished by him for service or at the place where the person or his agent ordinarily resides or carries on business or personally works for gain.

(5) Where a party serves a notice to the Proceedings, a proof of service or an affidavit of service shall be filed by the party with the Commission giving details of the date and manner of service of notices and processes.

(6) Where any Petition is required to be advertised it shall be advertised within such time as the Commission may direct and, unless otherwise directed by the Commission, in two (2) newspapers; one of which shall be a national daily newspaper and one having wide circulation in the local area.

(7) Any person filing a Petition before the Commission shall pay the appropriate filing fees as prescribed by the Commission. The cost of the proceedings shall be borne by the party or by such parties as the Commission may direct.

(8) The Commission may either strike out a Petition or give such other further directions, as it may consider appropriate, in default of compliance with the requirements of these Regulations or directions of the Commission as regards the service of notices or processes or the advertisement and publication thereof.

(9) No service or publication required to be done shall be deemed invalid by reason of any defect in the name or description of a person, provided that the Commission is satisfied that such service is in other respects sufficient, and no proceeding shall be invalidated by reason of any defect or irregularity unless the Commission, on an objection taken, is of the opinion that substantial injustice has been caused by such defect or irregularity or there are otherwise sufficient reasons for doing so.

## **16. Filing of Replies and Objections**

(1) Each person to whom the notice of inquiry or the Petition is issued (hereinafter referred to as the Respondent) who intends to oppose or support the Petition shall file the reply and the documents relied upon within such period and in such number of copies as may be fixed by the Commission. In the Reply filed, the Respondent shall specifically admit, deny or explain the facts stated in the notice of inquiry or the Petition and may also state such additional facts as he considers necessary for the just determination of the case. The reply shall be signed and supported by affidavit in the same manner as in the case of the Petition. The respondent shall also indicate whether he wishes to participate in the proceedings and be orally heard.

(2) The Respondent shall serve a copy of the reply along with the documents duly attested to be true copies on the Petitioner or his authorized representative and file proof of such service with the office of the Commission at the time of filing the reply.

(3) The Respondent shall file his reply to the Commission and the Petitioner not later than twenty-one (21) days after the receipt of the Petition.

(4) Where the respondent states additional facts as may be necessary for the just determination of the case, the Commission may allow the Petitioner to file a rejoinder to the reply filed by the respondents. The procedure mentioned above for filing of the reply shall apply mutatis mutandis to the filing of the rejoinder.

(5) (a) A person intending to file an objection or comment in regard to a matter pending before the Commission pursuant to the advertisement and publication issued for the purpose (other than the persons to whom notices and processes have been issued calling for reply) shall deliver to the Commission for that purpose, the statement of the objection or comments with copies of the documents and evidence in support thereof within the time fixed for the purpose.

(b) The Commission may permit such person or persons who file objections or comments as provided in clause (a) as the Commission may consider appropriate to participate in the Proceedings before the Commission if, on the report received from the Officer, the Commission considers that the participation of such person or persons will enhance the Proceedings and the Decision in the matter, so long as such admission and participation does not unduly delay the Proceedings.

(c) Unless permitted by the Commission, a person filing objections or comments shall not be entitled to participate in the Proceedings, but may remain as an observer. However, the Commission may take into account the objections and comments filed after giving such opportunity to the parties in the Proceedings as the Commission may consider appropriate.

## **17. Hearing of the Matter**

(1) The Commission may determine the manner, place and time of the hearings, consistent with such specific timing requirements as are set forth in the Act.

(2) The Commission may hold a pre-hearing for the purpose of determining the case for hearing. The Commission may seek expert opinion and may in this regard empanel a working group including experts for the purpose of establishing the facts for hearing.

(3) Except where the Commission determines otherwise, the Commission shall conduct its hearing in Panel of Three (3) Commissioners, one of whom shall serve as the Chairman. The Chairman shall be appointed by the Commission and shall have a casting vote.

(4) The Decision of the majority members of the Panel shall be held as final and be deemed as the Commission's Decision.

(5) The Commission may decide the matter on the pleadings of the parties or may call for the parties to produce further evidence as the Commission may consider appropriate; provided that;

(a) Where any oral evidence is led, the other party shall be entitled to cross-examine the witness.

(b) If the Commission directs evidence of a party to be led by way of affidavit, the Commission may, grant an opportunity to the other party to cross-examine the deponent of the affidavit.

(c) Evidence at the Proceeding shall be recorded by an Officer or person designated for the purpose by the Commission.

(d) The Commission may direct the parties to file written brief of arguments or submissions in any matter.

(6) The Commission shall not be bound strictly by the Rules of Evidence in Courts in the conduct of its Proceedings, but shall be at liberty to vary the Rules to meet the justice of the matter without compromising the rules of Natural Justice.

(7) A Party who joins the Proceedings after commencement of hearing shall be entitled to all records, evidence and pleadings tendered before he joined the hearing.

(a) A Person may with the permission of the Commission at any stage of hearing join the Proceedings as an observer.

## **18. Power of the Commission to Seek Further Information**

(1) The Commission may seek further information from parties before reaching a final Decision for the purpose of enabling it issue Orders.

(2) The Commission may seek evidence from witnesses and production of any document or other material objects obtainable in evidence, requisition of any public record from any office, examinations by an Officer of the Commission, the books, accounts or other documents or information in the custody or control of any person which the Commission considers relevant for hearing of a matter.

(3) The report or the opinion received from such person shall form a part of the record of the case and the parties shall be given the copies of the report or opinion of the person designated by the Commission. The parties shall be entitled to file their statement either in support or in opposition to the report or the opinion.

(4) The Commission shall duly take into account the report or the opinion given by the person and the reply filed by the parties while deciding the matter and if considered necessary, the Commission may ask the person to appear before it; Provided that the Commission shall not be bound by the report or adjudge the opinion given as conclusive.

### **19. Questions of Law May Be Referred to the High Court**

(1) If any question of law arises from an Order or Decision of the Commission, the Commission may, on its own initiative or at the request of any person directly affected by such Order, reserve that question for the decision of the High Court.

(2) Where a question has been reserved under sub clause (1) of this section, the Commission shall state the question in the form of a special case and file it with the Registrar of the High Court.

### **20. Failure to Appear for Hearings**

(1) Where, on the date fixed for hearing or any other date to which such hearing may be adjourned, any party or authorized agent or representative fails to appear when the matter is called for hearing, the Commission may, in its discretion:

(a) Strike out the Petition or Application if he is the Petitioner or Applicant; or

(b) proceed **ex parte** and hear and decide the Petition in default of defence; provided that the Commission may not proceed **ex parte** against the Respondent unless there is evidence of service of Notice of Hearing to the Respondent as provided for in Clause 14 (6)

(2) Where a Petition is Struck out in default of appearance or decided **ex parte**, the Person aggrieved may file an application within thirty (30) days from the date of such Striking out or **ex parte** Proceeding, as the case may be, to set aside of the Order made, and the Commission may set aside the Order on such terms as it deems fit, if the Commission is satisfied that there was sufficient cause for the non-appearance when the Petition was called for hearing.

### **21. Orders of the Commission**

(1) The Commission's Decisions and Orders shall be issued in writing and shall contain the basis for the Decision or Order and shall be accessible to the public at

reasonable times and places. Every Decision or Order of the Commission shall be signed by the Chairman, Vice Chairman or other Commissioners who conducted the proceedings and the official seal shall be affixed thereupon.

(2) The Commission may make at any stage, in any proceeding before it, such interim Orders that it may consider appropriate, amongst other things, to protect the interest of any of the parties to the proceedings or any other person including consumers or any class or classes of consumers.

(3) The Decision or Order of the Commission shall be dated and signed and the Order shall contain a brief statement of facts, the points or issues for determination, Decision thereon and the reasons for the Decision.

(4) Where any Commissioner has a dissenting opinion from the majority Decision, he shall give his dissenting Decision with reasons. The Parties shall however be bound by the majority Decision.

(5) All Orders purported to be signed by a person describing himself as the Chairman of the Commission or by a person describing himself as the Vice Chairman acting in the capacity of the Chairman, shall, unless the contrary is shown, be deemed to be made by the Commission and to have been so signed and may be proved by the production of a copy thereof purporting to have been so signed.

(6) If any question of law arises from an Order or Decision of the Commission, the Commission may, on its own initiative or upon the request of any person directly affected by such Order, reserve that question for the Decision of the High Court.

(7) Where a question has been reserved under sub clause (6) above, the Commission shall state the question in the form of a special case and file it with the Registrar of the High Court.

(8) An Order of the Commission in any proceedings shall become final unless an appeal for review is filed by any of the parties within thirty (30) days of the Order.

(9) The Order of the Commission shall remain in force unless modified, suspended, vacated or superceded by a further Order of the Commission.

## **22. Rehearing and Appeal**

(1) The Commission may on its own or on the application of any of the persons or parties concerned, within sixty (60) days of the making of any Decision, direction or Order, reconsider, vary or review such Decision, directions or Orders and make such appropriate Orders as the Commission deems fit.

(2) An application for such review shall be filed in the same manner as a Petition under Chapter II of these Regulations.

(3) The Commission may during a Rehearing, consider additional evidence not presented during the initial proceedings including facts arising after the original proceedings.

(4) The Commission may thereafter modify, amend, rescind or reaffirm the original Order by a new Order.

(5) Except as may be ordered by the Commission, the application for Rehearing or Appeal shall not act as a stay of the enforcement of an Order of the Commission.

### **23. Inspection of Records and Provision of Certified Copies**

(1) All records of Proceedings including documents, statements, photographs, recordings whether audio or video, shall be the exclusive property of the Commission and shall not be copied, printed, screened, published, quoted or broadcast without prior written approval of the Commission.

(2) Records of Proceeding shall be open for the inspection of the parties or their authorized representatives at any time either during the Proceedings or after the Orders are passed, subject to payment of the prescribed fees and complying with other terms as the Commission may specify.

(3) Records of every Proceeding, except those parts which for reasons specified by the Commission as confidential or privileged, shall be open to inspection by any person other than the parties to the Petition either during the Proceeding or after the Orders have been passed and may make copies thereof, subject to such person complying with such terms as the Commission may specify.

(4) A Party to the Proceedings shall be entitled to obtain certified copies of the Orders, Decisions, directions and reasons in support thereof given by the Commission as well as the pleadings, papers and other parts of the records of the Commission to which he is entitled subject to payment of fee and complying with other terms which the Commission may specify.

### **24. Public Hearings**

(1) The Commission may hold a public hearing on any matter which it is empowered under the Act and which the Commission determines to be of significant interest to the general public.

(2) The Commission shall as far as reasonably practicable notify all persons having an interest in such matter and give them the opportunity to make representations if they so wish.

(3) Such notification may be by mail or by a paid advertisement published in two (2) newspapers; one of which shall be a national daily newspaper and one having wide circulation in the local area.

(4) Persons making representations may make written representations to be submitted by the date fixed by the Commission for such submissions; or may make oral representations on the date fixed for the public hearing.

(5) The Commission shall take into due consideration the representations made during the public hearing in making a Decision on the matter for which the public hearing was held.

**CHAPTER III**  
**INVESTIGATION, INQUIRY, COLLECTION OF INFORMATION**

**25. Collection of Information**

(1) The Commission may make such Order or Orders as it deems fit in accordance with the provision of the Act, for collection of information, inquiry, investigation, entry, search and seizure pursuant to warrant or by consent of the person in charge of the premises and without prejudice to the generality of its powers in regard to the following:

- a. The Commission may direct Officers or Consultants or any other person as the Commission considers appropriate to study, investigate or furnish information with respect to any matter within the purview of the Commission under the Act.
- b. The Commission may for the above purpose give such other directions as it may deem fit and specify the time within which the report is to be submitted or information furnished.
- c. The Commission may issue or authorize an Officer to issue directions to any person to produce before it and allow to be examined all books, records, accounts and documents required to be kept by a licensee under the terms of his licence or the Act.
- d. If any such report or information obtained as specified in these Regulations appears to the Commission to be insufficient or inadequate, the Commission or an Officer authorized for the purpose may give directions for further inquiry report and furnishing of information.

(2) In connection with the discharge of the functions under this Clause, the Commission may direct a notice of inquiry to be issued and proceed with the matter in a manner provided under Chapter II of these Regulations.

**26. Assistance of Institutions, Consultants and Experts**

(1) The Commission may, at any time, request the assistance of any institution, consultants, experts, including engineers, chartered accountants, legal practitioners, surveyors and such other technical and professional persons, as it may consider necessary, and ask them to study, investigate, inquire into any matter or issue and submit report or reports or furnish any information. The Commission may determine the terms and conditions for engagement of such professionals.

(2) If the report or information obtained in terms of these Regulations or any part thereof is proposed to be relied upon by the Commission in reaching a Decision on any Proceedings, the parties in the Proceedings shall be given a reasonable opportunity for filing objections and making submissions on the report or information.

**CHAPTER IV**  
**MISCELLANEOUS**

**27. Continuance of Proceedings**

(1) Where in any proceedings, any of the parties to the proceedings ceases to exist either by death or is adjudged as an insolvent, or in the case of a Company under liquidation/winding up, the proceedings may continue with the successors-in-interest, the executor, administrator, receiver, liquidator or other legal representative of the party concerned.

(2) The application for the successor-in-interest shall be filed within ninety (90) days from the event requiring the successors-in-interest to come on record and shall be in the form prescribed in Annexure III.

(3) The Commission may, for reasons to be recorded in writing, treat the Proceedings as abated if the Commission decides to dispense with the need to bring the successors-in-interest on record to continue with the case.

**28. Proceedings Open to Public**

The Proceedings before the Commission shall be open to the public; Provided that the Commission may, for reasons to be recorded in writing, order that the Proceedings of a particular case be conducted otherwise.

**29. Publication of Petitions**

(1) Where any matter is required to be published under the Act or these Regulations or as per the directions of the Commission, it shall be so published not less than five (5) working days before the date fixed for hearing unless otherwise directed by the Commission.

(2) Such publication shall give a heading and describe the subject matter in brief, except as otherwise directed by the Commission.

(3) Such publications shall be approved by the Commission.

**30. Confidentiality and Non-Disclosure**

(1) Records of the Commission, except those parts which for reasons specified by the Commission as confidential or privileged, shall be open to inspection by all persons, subject to the payment of prescribed fees and complying with such terms as the Commission may direct.

(2) The Commission may, on such terms and conditions as the Commission considers appropriate, provide for the supply of the certified copies of the documents and papers available with the Commission to any person.

(3) Except for use under these Regulations, a person shall not for gain make use of confidential information nor disclose it to any third party.



### **31. Issue of Orders and Practice Directions**

The Commission may, issue Orders and Practice Directions regarding the implementation of these Regulations and the procedure to be followed on various matters subject to the provisions of the Act and these Regulations.

### **32. Penalties**

(1)The Commission may impose such penalties as it deems fit to ensure the effective discharge of its duties and compliance under the Act and these Regulations.

(2)The Commission shall have the Authority to impose penalties:

(a) for violations of licence terms and conditions in accordance with the provision of the Act.

(b) for failure to comply with the provisions of a licence, the Commission's Regulations, Codes and other instruments issued by the Commission.

### **33. Exemption from Liability**

No liability shall attach to the Commission or to any employee of the Commission or to a Commissioner for any loss or damage sustained by any person as a result of the bona fide exercise or performance of any function which, by or in terms of the Act, is conferred or imposed upon the Commission or the Commissioners.

### **34. Inherent Powers of the Commission**

(1) Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent powers of the Commission to make Orders as may be necessary in the public interest and to prevent the abuse of the process of the Commission.

(2) The Commission may adopt any procedure as long as it is in conformity with the Act notwithstanding that it is at variance with these Regulations.

(3) Nothing in these Regulations shall, expressly or impliedly bar the Commission to deal with any matter or exercise any power under the Act for which no Regulation has been framed, and the Commission may deal with such matters and functions in a manner it deems fit.

(4) The Commission may, by General, Special Order or Ruling remove any difficulty that may arise from giving effect to any provisions of these Regulations.

### **35. General Power to Amend**

The Commission may, at any time amend any defect or error in any proceedings before it.

### **36. Power to Dispense with the Requirements of the Regulations**

The Commission shall have the power, to dispense with the requirements of any of the Regulations in a specific case or cases subject to such terms and conditions as may be specified; Provided notice is given to the affected Parties.

### **37. Extension or Abridgment of Time Prescribed**

The time prescribed by these Regulations or by Order of the Commission for doing any act may be extended or abridged subject to the provisions of the Act.

### **38. Validity of Proceedings and Orders**

(1) Failure to comply with any requirement of these Regulations shall not invalidate any Proceeding merely by reason of such failure unless the Commission is of the view that such failure has resulted in miscarriage of justice.

(2) No Decision or act of the Commission or act done under the direction of the Commission shall be invalid on the ground that:

(a) there existed a vacancy or vacancies among the Commissioners; or

(b) there existed some defect in the constitution of the Commission at the time the Decision was taken or act was done or authorized.

### **39. Costs**

(1) Subject to such conditions and limitation as may be directed by the Commission, the cost of all Proceedings shall be awarded at the discretion of the Commission and the Commission shall have full power to determine by whom or out of what funds and to what extent such costs are to be paid and give all necessary directions for the aforesaid purposes.

(2) The costs shall be paid within thirty (30) days from the date of the Order or within such time as the Commission may, by Order, direct. The Order of the Commission awarding costs shall be executed in the same manner as the Order of a High Court.

### **40. Enforcement of Orders passed by the Commission**

The Commission shall ensure enforcement and compliance of the Orders passed by the Commission.

### **41. Delegation**

The Commission may, by General or Special Order in writing, delegate to any Commissioner, Officer of the Commission or any other person, subject to such conditions if any as may be specified in the Order, such of its powers and functions under the Act (except the power to adjudicate disputes and make final Orders under the Act) as it may deem necessary.

**42. Amendment or Repeal**

The Commission may amend or repeal the provisions of these Regulations.

## **SCHEDULE I**

### **ARBITRATION OF DISPUTES**

#### **1. Arbitration**

(1) Disputes between licensees arising from the operations of the Market Rules or Grid Code shall be referred to the Dispute Resolution Panel established by the Commission for resolution of the disputes through arbitration.

(2) The rules governing the establishment and procedure of the Dispute Resolution Panel are as provided in the Market Rules and shall govern such arbitrations.

(3) The arbitration of all other disputes arising between licensees under the Act or in respect of matters arising from the provisions of the Act between licensees and Consumers and third parties may be referred by the party or parties concerned to the Commission for resolution.

(4) Other disputes arising between licensees (not including disputes provided for in 1 and 2 above) or between licensees and Consumers or third parties which are referred to the Commission for arbitration shall follow the manner set out hereunder.

#### **2. Commencement of Arbitration**

(1) Any Party may commence arbitration under these Regulations by serving a Notice of Arbitration to the Commission and the other party to the dispute.

(2) The Commission shall thereafter issue notices to the parties concerned to show cause (if any) why the dispute should not be settled through arbitration.

(3) The Commission may, after hearing the parties to whom notices have been issued, and if satisfied that no reason or cause has been shown against the proposed arbitration, make an Order directing that the dispute or the matter be referred for settlement through arbitration by the Commission.

#### **3. Nomination of Arbitrators**

(1) The Commission may refer the matter for arbitration to a sole arbitrator or Tribunal of Three (3) arbitrators with requisite competence.

(2) The Arbitrator shall be and remain at all times independent of the parties and shall determine the dispute in an impartial and timely manner.

(3) The Commission shall not nominate a person as arbitrator to whom any of the licensees or other parties in the arbitration has a reasonable objection on grounds of possible bias or similar reasons, if the Commission considers the objection to be valid and justified.

#### **4. Procedure for Adjudication, Settlement and Passing of Award**

(1) The Arbitrator appointed may adopt such procedure, as he may consider appropriate with the consent of the third parties, that is consistent with the principles of natural justice and gives fair opportunity to the parties to the arbitration to resolve the dispute in a speedy manner.

(2) The Arbitrator shall issue directions to the parties including that pertaining to the filing of statement of claims, statement of defense, counter claims and all supporting documents.

(3) The Arbitrator shall have the power to direct the procedure of the arbitration including:

(a) Allowing submission of further evidence and the amendment of claim, defense, counter claim or response

(b) Ordering the parties to produce documents for inspection;

(c) Receiving and taking into account any oral or written evidence as the Arbitrator considers relevant;

(d) Appointing an expert to report on specific issues or taking legal advice;

(e) Proceeding with the arbitration if either party fails to comply with these Regulations or with the Arbitrator's directions, or if either party fails to attend any meeting or inspection ordered by the Arbitrator; provided however that such party must have been given adequate notice to that effect.

(4) In the event that the Arbitrator considers that the dispute may be resolved on documents only basis, he shall inform the parties and subject to their agreement, proceed to issue an award on the basis of the documents submitted by the parties. The Arbitrator shall however proceed on the basis of oral hearing and evidence if any of the parties is not in agreement with the issuing of an award on the basis of documents only.

(5) The Arbitrator shall make provisional awards subject to Commission's approval within seven (7) days.

(6) The Arbitrator after hearing the parties shall give a written award giving reasons for the Decision on all issues arising for adjudication and forward the award to the Commission within sixty (60) days of commencement of the Proceedings.

(7) The Commission shall give notice of the award given by the Arbitrator to the parties concerned within twenty one (21) days of the receipt of the award and shall give an opportunity to the parties to file for a review of the award within twenty one (21) days of the notice.

(8) In the event of a request for a review of the award, the Commission shall proceed to hear the parties on the award. The hearing shall be confined to the objections raised to the award.

(9) The Commission shall be entitled to make appropriate Orders, as it deems fit after giving the parties to the arbitration an opportunity for hearing. The Orders of the Commission shall be given within sixty (60) days of the filing for review.

(10) Where an Arbitrator is death or resigns his appointment or can no longer continue to act as arbitrator, the Commission shall nominate a replacement subject to clause 3 (3) of this Schedule and the proceedings shall commence de novo.

## **5. Cost of Arbitration**

(1) Fees prescribed by the Commission, shall be payable by the Claimant upon filing a Notice for Arbitration. In the event that the dispute is resolved amicably prior to the appointment of an Arbitrator by the Commission or the dispute is considered not suitable for determination by this procedure, the fees shall be refunded net of any cost to the Commission.

(2) Costs of the arbitration shall include registration fees, the Arbitrator's fees and expenses and other administrative costs in accordance with the prescribed rate fixed by the Commission.

(3) The cost of the arbitration and proceedings before the Commission shall be borne by such parties and in such sums as the Commission may direct. The Arbitrator in making his award may require one party to pay any part of the costs of the other party where the former has acted unreasonably in any manner including exaggerating its claim or otherwise caused the other party unnecessary delay or expense or hindered the timely process of the arbitration procedure.

## **6 Enforcement of Award**

Where a Party fails to abide by an arbitration award, the successful Party to the award shall apply to the High Court for enforcement of the award.

**Ref.No.**

**Annexure 1**

**Form 1**

**General Headings for Petition**

**BEFORE THE NIGERIAN ELECTRICITY REGULATORY  
COMMISSION**

**IN THE MATTER OF:**

(State, in brief, the purpose of the Petition or application)

**BETWEEN:**

(State the full Names and Addresses of the Petitioner/Applicant and the Respondent)

**Ref.No.**

**Annexure II**

**Form 2**

**General Headings for Affidavits**

**BEFORE THE NIGERIAN ELECTRICITY REGULATORY COMMISSION**

**IN THE MATTER OF:**

(State, in brief, the purpose of the Petition or application)

**BETWEEN:**

(State the full Names and Addresses of the Petitioner/Applicant and the Respondent)

**Affidavit in support of the Petition/Reply/Application**

I, AB of ..... aged ..... residing at ..... do hereby make oath and state as follows:

1. I am a Director/ Secretary/ ..... Of ..... duly authorized by the said Petitioner of ..... Ltd., the Petitioner to make this affidavit on its behalf.

2. The statements made in paragraphs ----- of the Petition herein now shown to me and marked with the letter "a" are true to my knowledge and the statements made in paragraph ..... are based on information and I believe them to be true.



**Annexure III**

**Form 3**

**Application for Successor-in-interest**

**BEFORE THE NIGERIAN ELECTRICITY REGULATORY COMMISSION**

Application No.

**IN THE MATTER OF:**

(State, in brief, the purpose of the application)

**BETWEEN:**

(State the full Name and Address of the Applicant and the Commission)