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ELECTRIC POWER SECTOR REFORM ACT, 2005
NIGERIAN ELECTRICITY REGULATORY COMMISSION
(EMBEDDED GENERATION) REGULATIONS, 2012



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S. I. 66 of 2012

NIGERIAN ELECTRICITY REGULATORY COMMISSION (EMBEDDED GENERATION) REGULATIONS, 2012

In exercise of the powers conferred by section 96(1) and (2) (c) and (d) of the Electric Power Sector Reform Act, 2005 (“the Act”) and all other powers enabling it in that behalf, the NIGERIAN ELECTRICITY REGULATORY COMMISSION (“the Commission”) makes the following Regulations—

[31st Day of January, 2012]

Commence-
ment.

PART I—OBJECTIVE AND APPLICATION

1. The objective of these Regulations is to provide standard rules for Embedded Generation and distribution of electricity to ensure safe, secure and efficient electricity supply.

Objective.

2. These Regulations apply to users of Distribution Networks, embedded generator licensees, applications for embedded generation licences processed by the Commission and prospective embedded generation licensees, unless otherwise specified under these Regulations.

Application.

PART II— DISTRIBUTION PLANNING

3.—(1) Distribution Licensees shall be responsible for distribution planning, which includes—

Planning for
connection
to the
Distribution
Systems.

- (a) forecasting the future demand on its distribution system ;
- (b) analysing the impact of the connection of new facilities such as generation unit, loads, distribution lines or substations ;
- (c) planning the expansion of the distribution system to ensure its adequacy to meet forecast demand and the connection of new facilities ;
- (d) identifying and correcting problems on quality supply, power quality and system losses in the distribution system ; and
- (e) distribution planning and system studies.

(2) A Distribution Licensee shall conduct an annual system plan which shall indicate the capacity requirements over a five year period prior to informing the Commission.

(3) A Distribution Licensee shall consider the need for expansion of the distribution system and ensure that appropriate connections to the Distribution Systems are made.

(4) A Distribution Licensee shall ensure that the Embedded Generation Licensee is appropriately informed with respect to the maximum capacity of the networks, most suitable location to ensure reliability and minimal loss factor and other critical factors such as load balance.

4.—(1) A Distribution Licensee shall comply with service performance standards provided under Part 2 of the Distribution Code.

Distribution
Systems
performance
analysis.

(2) A Distribution Licensee shall ensure that the availability of the Distribution System is not less than 90 per cent.

PART III—CONNECTION OF EMBEDDED GENERATION

Classification of embedded Generation.

5.—(1) For the purpose of the application of these Regulations, the Embedded Generation ('EG') Units size definitions as contained in the Table set out in the Schedule to these Regulations shall apply.

(2) Notwithstanding the provision of sub-regulation (1) of this regulation, an Embedded Generation Licensee may evacuate power generated using the most appropriate and economical voltage level identified in the Table set out in the Schedule to these Regulations, based on tests conducted and paid for by an Embedded Generation Licensee.

(3) The maximum EG capacity allowed for a given Distribution System shall be a percentage of the peak system load of the Distribution Licensee's distribution system, which shall be determined by the Commission from time to time, except for an isolated Independent Electricity Distribution Networks ('IEDN').

(4) The Embedded Generating Units exceeding 5MW shall comply with applicable provisions of the Grid Code except those connected to an isolated IEDN.

(5) Generating units with capacity of 20MW and above shall be centrally despatched by the System Operation Licensee in accordance with the provision of the National Electric Power Policy ('NEPP').

Access and connection to the Distribution System.

6.—(1) A Distribution Licensee shall create access to the distribution system available to the Embedded Generation Licensee where there is capacity after reaching an agreement with the Embedded Generation Licensee on acceptable connection conditions including fees.

(2) The Distribution Licensee shall publish its policies, procedures, technical requirements, commercial arrangements, connection procedures and the standard charges and agreements associated with the connection of an EG Unit to its Distribution System.

(3) The Distribution Licensee shall negotiate in good faith and offer fair and reasonable terms for the connection of an EG Unit in accordance with the provisions of these Regulations and any other relevant regulatory instruments that may be issued by the Commission.

Requirements for the Connection of Embedded Generation Units.

7.—(1) The general requirements for the connection to an EG Unit are stipulated under Part 2, section 4.14 of the Distribution Code and any other requirement which may be applicable to the EG Unit as approved by the Commission.

(2) The Distribution Licensee shall discuss the general requirements stipulated under this Part at any preliminary discussion with the prospective EG and provide details of the general requirements in writing as part of any connection offer.

(3) A Distribution Licensee shall be relieved of its obligation to connect an EG Unit in the event that the Embedded Generator fails to fulfil the general requirements stipulated under these Regulations.

(4) Where there is a breach of any of the provisions of these Regulations, the Distribution Licensee shall notify the Embedded Generator Licensee and any other

party directly affected by the breach and shall advise the EG of the Distribution Licensee's policy and the procedures for handling disputes.

(5) The technical requirements at the connection point shall be as provided under Part 2, section 4 of the Distribution Code.

(6) The Distribution Licensee shall comply with all Codes and standards approved by the Commission from time to time.

8. In addition to the requirements under sub-regulation (5) of regulation 7 of these Regulations, operators of Renewable Energy Power Systems (REPS) shall ensure that where storage is not required, flexible generation shall exist to allow the intermittent and uncertain power to be absorbed into the network on a priority basis.

Specific requirements for connection of Renewable Energy Power Systems (REPS).

9. (1) A metering system of an Embedded Generation Licensee shall comply with the provisions of Part 3, Section 1.1.2 of the Distribution Metering Code ('DMC') provided that they are not participants in the market.

Metering.

(2) Where the Embedded Generation Licensee is a participant in the market, the provisions of the Grid Metering Code under Part 2 of the Metering Code shall apply.

10.—(1) A Distribution Licensee shall make available to the public, free of charge; the following information to ensure that connection of EG is consistent with the connection and operation standards—

Availability of Information.

(a) the guidelines for procurement of power ;

(b) the Distribution Licensee's connection and operations standards ;

(c) a copy of the standard terms and conditions of all agreements ;

(d) a statement of the policies, rules or conditions under which Embedded Generation may be curtailed or interrupted from time to time in order to ensure that the Distribution Licensee's connection and other operations standards are met ; and

(e) the relevant connection fees approved by the Commission.

(2) The information listed under sub-regulation (1) of this regulation shall be made available on the website of a Distribution Licensee and shall be forwarded to the Commission on a quarterly basis together with details of any amendment made by the Distribution Licensee.

11. The Distribution Licensee shall provide non-discriminatory open access to its Distribution System for use by Embedded Generation Licensee and any other licensee or prospective Generation Licensee.

Right to open Access.

12. The procurement of power shall be competitive and be in accordance with the provisions of the Bulk Generation Procurement Guidelines and Codes approved by the Commission.

Procurement Process.

13. A Distribution Licensee shall develop and publish a standard connection agreement for EG, setting out the commercial and technical responsibilities of the parties.

Connection Agreement.

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Connection
Charges.

14. The Distribution Licensee shall not, except as approved by the Commission, impose charges for the receipt, processing or consideration of responses to Request for Proposals (RFPs), for the issue of the connection offer or for the signing of Connection Agreement.”

Confidentiality
of
Information.

15.—(1) Information provided to a Distribution Licensee pursuant to the REPS shall be kept confidential by a Distribution Licensee except as otherwise agreed by the applicant to be disclosed to a third party.

(2) The obligation to keep confidential information includes—

(a) an obligation not to use the information for any purpose other than enabling the connection of the particular EG ; and

(b) an obligation to destroy the information as soon as is reasonably practicable or soon after the information is no longer required, or five years after receiving the information.

Annual
Reports.

16. A Distribution Licensee shall submit an annual report to the Commission not later than January 30th of each year stating—

(a) the number of responses to the REPS received ;

(b) the number of responses approved and those declined ;

(c) connections completed in that preceding year, stating the date of response and connection, and the rated capacity of the generation connected ;

(d) reconnection of disconnected EG in the preceding year, date of the disconnection, and the rated capacity of the generation disconnected ;

(f) the number from other EGs ; and

(g) technical challenges faced during the period, level of compliance with NERC's codes and any other relevant document.

Record
keeping.

17. A Distribution Licensee shall maintain records for not less than five years of all responses to REPS and other EGs received and the resulting outcomes, provided that such records shall include details of the length of time it took to procure and connect or decline a response and justification for these outcomes.

Eligibility
for
procurement
of
Embedded
Generation.

18. Distribution Licensees intending to procure EG shall satisfy the provisions of sections 22.4.1 and 22.4.2 of the Market Rules prior to approval by the Commission.

PART IV—COMMISSIONING PROCEDURE

Testing and
Inspection.

19. An Embedded Generator shall—

(a) test and inspect the EG Unit in accordance with the provisions of Part 2, section 3.4 of the Distribution Code ;

(b) give adequate notice of the date for testing and inspection to the Distribution Licensee, who may send representatives or agents to the site to observe the testing and inspection ; and

(c) provide the Distribution Licensee with a written test report after completion of the testing and inspection, including satisfactory evidence that the metering installation complies with provisions of the Metering Code.

20. An Embedded Generation Licensee shall provide the information stipulated under Part 2 section 3.3.5 of the Distribution Code, prior to the commissioning of the EG Unit.

Information
Required
Prior to
Commission-
ing.

PART V—COMMERCIAL ARRANGEMENTS

21.—(1) An Embedded Generation Licensee and a Distribution Licensee shall enter into the various Network Agreements including Power Purchase Agreement, Connection Agreement or interface Agreement, Use of Networks Agreement, and Ancillary Services Agreement.

Network
Agreements.

(2) A Distribution Licensee shall develop and publish a template of the Agreements referred to in sub-regulation (1) of this regulation, with the standard terms and conditions approved by the Commission.

(3) An Embedded Generation Licensee and a Distribution Licensee may in their Power Purchase Agreement, determine the charges and any relevant security for such charges payable by a Distribution Licensee to an Embedded Generation Licensee for such capacity and energy that is made available to the Distribution Licensee.

22. —(1) A Distribution Licensee shall be entitled to impose reasonable charges approved by the Commission for connection to the Distribution System prior to implementation.

Network
Charges.

(2) The Distribution Licensee shall provide in the Connection Offer a disaggregation of the proposed charges which shall indicate the cost of the following—

- (a) dedicated connection assets required for the connection ;
- (b) extension of the existing asset ;
- (c) modification and augmentation of the existing network ;
- (d) metering and data collection; and
- (e) any provision for operation, repair and maintenance of relevant network assets.

(3) At the request of an Embedded Generation Licensee, the Distribution Licensee shall provide further disaggregation of the proposed connection charges including the design, construction and project management elements of the cost category items.

(4) The charges may be modified by the Distribution Licensee based on a request for an increase in access to a shared network capacity by a connected Embedded Generation Licensee.

(5) The cost of an extension or augmentation of a network being shared by more than one Embedded Generation Licensee shall be borne by all the beneficiaries.

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Tariff for Eligible Customers.

23. —(1) Pursuant to the provisions of the Act and subject to the declaration of Eligible Customers by the Minister, the Embedded Generation Licensee may enter into agreements with Eligible Customers and the end-user customer tariff shall be negotiated between the parties.

(2) An Embedded Generation Licensee shall agree with the Distribution Licensee on the use of its networks and the Distribution Use of System ('DUoS') charge shall be guided by the provisions of the Tariff Methodology approved by the Commission and in force at the time of agreement.

Tariffs for distribution and trading Licensee.

24. The Tariff Methodology in force as approved by the Commission, shall apply to agreements for purchase of power with Distribution and Trading Licensees, subject to the conditions specified under section 22.4.1-2(a) and (b) of the Market Rules.

Recovery of cost by Embedded Generation Licensee.

25. Where the Distribution Licensee cannot undertake the re-enforcements and extensions needed to evacuate the power generated into the network, the Connection Agreement shall provide for the recovery of the cost incurred by the Embedded Generation Licensee for any re-enforcements or extensions executed, based on an agreed timeline.

Feed-In-Tariffs.

26. Feed-In-Tariffs ('FITs') approved by the Commission, shall be applied for energy produced by Renewable Energy Embedded Generators and shall be fixed for a specified period, subject to periodic reviews and approval by the Commission.

PART VI — TECHNICAL AND NON-TECHNICAL LOSSES

Reduction of losses.

27. —(1) Cost of distribution losses shall be borne by the party responsible for such losses.

(2) All losses shall be calculated on a consistent basis by the parties at the interface boundaries.

(3) Each EG Units' metered generation and customer consumption should be scaled by a Distribution Loss Factor ('DLF').

(4) Distribution losses are assigned to market participants using DLFs which are determined by the System Operator using methodology that is agreeable to all participants.

(5) The Distribution Licensee shall embark on loss mitigation strategies to optimize revenue.

(6) Metering of customers and Embedded Generation Licensees shall be mandatory.

(7) Billing shall be consolidated in the master database system of the Distribution Licensee for proper energy accounting irrespective of metering technology.

(8) Mitigation methods for reducing technical losses shall include proper citing of EG Units, deployment of High Voltage Distribution Systems ('HVDS'), re-conductoring of undersized lines, use of low loss transformers and proper balancing of loads between line phases.

PART VII APPLICATION FOR A LICENCE

28.—(1) All applications and related proceedings before the Commission for grant of an Generation licence shall be governed by provisions of the NERC (Application for Licences) Regulations, 2010 and the NERC (Licence and Operating Fees) Regulations, 2010 or as may be amended.

Procedure for application.

(2) The period between the acknowledgement of receipt of a complete application, and the date on which the Commission notifies the applicant of its decision to approve or refuse the issuance of a licence shall not exceed six months.

(3) The application for licence shall be accompanied by the documents listed in the Schedule to these Regulations.

29. The Commission shall not issue a licence for an Embedded Generation Facility unless it is satisfied that sections 22.4.1 and 22.4.2 of the Market Rules have been complied with.

Mandatory condition for grant of licence.

PART VIII—ENGAGING IN OTHER REGULATED ACTIVITIES

30. —(1) An Embedded Generation Licensee shall not engage in the business of distribution, transmission, trading and system operations.

Prohibition from engaging in other Regulated Activities.

(2) Notwithstanding the provision of sub-regulation (1) of this regulation, an affiliate of the Embedded Generation Licensee may be licensed to engage in Regulated Activities provided the Commission is satisfied that the applicant will not abuse market power to the detriment of consumers or that appropriate safeguards exist to prevent such abuse.

(3) The Embedded Generation Licensee and its licensed affiliate shall prepare and keep separate accounts for each of the licensed activities.

(4) A Distribution Licensee may engage in Embedded Generation by incorporating a separate legal entity, and subsequently applying for a licence to be an Embedded Generation Licensee.

(5) An Embedded Generation Licensee and its affiliate shall comply with the Affiliate Code of Conduct approved by the Commission.

31.—(1) An Embedded Generation Licensee may connect to the transmission network whenever the need arises.

Connection to transmission network.

(2) An Embedded Generation Licensee intending to connect to the transmission network shall apply for an amendment of the Terms and Conditions of its Embedded Generation licence.

(3) Whenever the condition arises, modifications to the connection facilities shall be made to enable the connection to the transmission networks and such other conditions as interface issues, protection schemes and any other requirements as specified in the Grid Code.

(4) Where the Embedded Generation Licensee will fund the required re-enforcements, modifications and extensions on the transmission network in order to evacuate the power generated into the network, the Connection Agreement shall provide the terms for the recovery of the cost to be incurred by the Embedded Generation Licensee based on an agreed timeline.

PART IX—MISCELLANEOUS

Proceedings
before the
Commission.

32. All proceedings before the Commission under these Regulations shall be governed by the Business Rules of the Commission.

Amendment
or
revocation.

33. The Commission may amend or revoke, in whole or in part, the provisions of these Regulations.

Dispute
resolution.

34. Disputes between an Embedded Generation Licensee and Distribution Licensee, which are not resolved by the parties shall be handled in accordance with the Dispute Resolution Procedure in Rule 43 of the Market Rules, or the applicable Dispute Resolution Procedure approved by the Commission, from time to time.

Interpretation.

35. In these Regulations, unless the context otherwise requires :

“*Act*” means the Electric Power Sector Reform Act, 2005, as may be amended or re-enacted from time-to-time;

“*affiliate*” means as defined in section 100(1) of the Act ;

“*ancillary services*” means the same meaning as defined under the Act ;

“*businessday*” means a day other than a Saturday, a Sunday or a day which is declared as a public holiday by the Federal Government of Nigeria, State and Local Governments ;

“*Business Rules*” mean the Nigerian Electricity Regulatory Commission (Business Rules of the Commission) Regulations, 2006, and as amended ;

“*capacity*”, in relation to a distribution system, means the capability of the network to convey electricity under a range of load and generation conditions in accordance with reasonable and prudent operating practice ;

“*Commission*” means the Nigerian Electricity Regulatory Commission established under Part III of the Act ;

“*connect*”, in relation to Embedded Generation, means to be connected to a distribution system or to a consumer installation that is connected to a distribution system ;

“*Connection and Operation Standards*”, in relation to a Distribution Licensee or Embedded Generation—

(a) means requirements, as may be amended from time to time by a Distribution Licensee, that :

(i) are set out in written policies and standards of the Distribution Licensee ;

(ii) relate to the connection of embedded generation and the operation of the distribution system, including requirements relating to the planning, design, construction, testing, inspection, and operation of assets that are or proposed to be connected to the distribution network ;

(iii) are made publicly available in accordance with the provision of these Regulations ;

(iv) reflect, or are consistent with, reasonable and prudent operating practice ; and

(v) comply with the relevant provisions of the Technical Codes.

(b) includes the following, as may be amended from time to time by a Distribution Licensee—

(i) the Distribution Licensee's congestion management policy, as referred to in these Regulations ;

(ii) the Distribution Licensee's emergency response policies ; and

(iii) the Distribution Licensee's or Commission's safety standards ;

"*Connection Offer*" means a formal offer made by the Distribution Licensee to the Embedded Generation Licensee for connection to the distribution system ;

"*Connection Point*" means an entry or an exit point on a distribution network

"*consumer Installation*" includes :

(i) an electrical installation ; and

(ii) any fittings that are used, or designed or intended for use, by any person in or in connection with the generation of electricity so that electricity can be injected into a distribution system ;

"*Consumer*" means as defined in section 100(1) of the Act.

"*Dedicated Connection Assets*" means those assets installed for the purpose of connecting an embedded generation unit to the existing distribution system and which are expected to remain for the sole use of the Embedded Generation unit at all times over the lifetime of the installation ;

"*disconnect*" in respect of a connection, means to operate switching equipment so as to prevent the transfer of electricity through the connection ;

"*Distribution Code*" means the code and guidelines for the Nigerian electricity distribution system, for the time being or as may be determined and approved by the Commission from time to time ;

"*Distribution Licensee*" means a holder of a Distribution Licence granted under Part IV of the Act ;

"*Distribution System*" means the system of facilities, as defined by the Commission, consisting wholly or mainly of low voltage of less than 132KV electric lines used for the distribution of electricity from grid supply points to the point of delivery to consumers or eligible customers, and includes any electrical plant and meters operated in connection with the distribution of electricity, but shall not include any part of a transmission;

"*Eligible Customer*" means a customer that is eligible, pursuant to a directive or directives issued by the Minister under section 27 of the Act to purchase power from a licensee other than a Distribution Licensee;

"*Embedded Generation*" or "*EG*" means the generation of electricity that is directly connected to and evacuated through a distribution system;

"*Embedded Generator*" means Licensee generating electricity that is directly connected to and evacuated through a distribution system ;

“*Embedded Generation Licensee*” means a person who operates an embedded generation unit ;

“*Extension Assets*” means those assets installed to lengthen or otherwise extend the existing distribution system in order to facilitate the connection of an embedded generation unit and which are not for the sole use of the embedded generation unit;

“*Feed-In-Tariff*” means a policy mechanism designed to accelerate investment in renewable energy technologies by offering incentives to renewable energy producers;

“*Grid Code*” means instructions, rules, procedures, guidelines, etc for the operation and planning of an interconnected power system and accounting requirements relating thereto ;

“*HV network*” means the parts of the distribution system operating at a nominal voltage of 33 and 11 kV ;

“*Independent Electricity Distribution Network or IEDN*” means a distribution system not directly connected to a transmission system operated by the System Operations Licensee.

“*Isolated IEDN*” means an independent electricity distribution networks in the urban or rural area that is not connected to an existing distribution network.

“*Licence*” means a licence issued by the Commission under Part IV of the Act ;

“*Licensee*” means any person who holds a licence issued under Part IV of the Act ;

“*LV Network*” means the parts of the distribution system operating at a nominal voltage of 415 volts or less ;

“*Market Participant*” means any person who is party to a Market Participation Agreement, including the Market Operator ;

“*Market Rules*” means Market Rules for Transitional and Medium Term Stages of the Nigerian Electrical Power Sector 2010 approved under section 26(2) of the Act ;

“*Metering Code*” means the Nigeria Metering Code approved by the Commission for use in measuring the flow of energy within the transmission and distribution systems in the Nigerian electricity supply industry ;

“*Minister*” means the Minister in charge of Power ;

“*Non-Market Participant*” means any person who is not a party to a Market Participation Agreement.

“*Peak System Load*” means the maximum energy that can be supplied within the distribution system.

“*Reasonable and Prudent Operating Practice*” in relation to Embedded Generation, includes operating within the stipulated industry operating standards; and taking measures to avoid the injection of electricity from embedded generation that:

- (i) exceeds the capacity of the distribution system at the point of injection ; or
- (ii) results in excessive power flow at feeder points or a significant adverse effect on voltage levels ; or

(iii) results in a significant adverse effect on the quality and reliability of supply to other users of the distribution system ; and

(iv) the use or proposed use of reasonable and prudent measures to enable the connection of embedded generation ;

“*Regulated Activities*” means licensed activities such as generation, transmission, system operations, distribution and trading of electricity ;

“*Renewable Energy Power Systems or REPS*” means a power system that generates power using energy sources that replenishes such as solar energy, biomass, small hydro, and wind power etc.;

“*Standard Connection Agreement*” means a connection agreement approved by the Commission, and published by the Distribution Licensee ;

“*Successor Distribution Company*” means a successor company that is granted a Distribution License under section 67(1) of the Act ;

“*System Operator*” means the operator of one or more transmissions systems pursuant to a licence granted under section 66 of the Act ;

“*System Operation Licence*” means a licence granted under section 66 ;

“*Technical Codes*” means Grid Code, Distribution Code, Metering Code, Health & Safety Code and other codes approved by the Commission for the technical regulation of the electricity supply industry in Nigeria ;

“*Trading Licence*” means a licence issued pursuant to section 67 of the Act ;

“*Transmission*” means the conveyance of electric power and energy over a transmission system ;

(i) in these Regulations , any term used and not defined has the same meaning as in the Act, rules and codes of the Commission ; and

(ii) Any term that is defined under the Act and used in these Regulations, but not defined in these Regulations or the Rules, has the same meaning as in the Act.

36. These Regulations may be cited as the Nigerian Electricity Regulatory Commission (Embedded Generation) Regulations, 2012. Citation.

SCHEDULE

(Regulation 5 (1))

LIST OF MANDATORY REQUIREMENTS

The following documents shall be submitted by the applicant Embedded Generator :

- (i) Draft Power Purchase Agreement ;
- (ii) Draft Connection Agreement ;
- (iii) Draft Use of Distribution System Agreement ;
- (iv) Draft Ancillary Services Agreement ;
- (v) Draft Fuel Supply Agreement ;
- (vi) Environmental Impact Assessment Approval if capacity is 10MW and above, or Policy for managing effluents and discharges if capacity is below 10MW ;
- (vii) Registered Title deed ;
- (viii) Corporate Documents (Certificate of Incorporation, Memorandum and Articles of Association, etc).

(REGULATION 5)

TABLE—CLASSIFICATION OF EMBEDDED GENERATION

| <i>Technical Definition</i> | <i>Connection Voltage Level</i> |
|--|---|
| Small Size Units having a nameplate rating greater than 1MW and not more than 6MW | 11kV Medium Distribution Voltage |
| Large Size Units having a nameplate rating greater than 6MW and not more than 20MW | 33kV Medium Distribution Voltage |
| Greater than 20MW | 33kV Medium Distribution Voltage for every 20MW being evacuated |

MADE AT ABUJA this 31 st day of January, 2012

.....
DR. SAM AMADI
Chairman and Chief Executive Officer
Nigerian Electricity Regulatory Commission

EXPLANATORY NOTE

*(This note does not form part of these Regulations
but is intended to explain its purport)*

These Regulations provide a legal and regulatory framework for the issuance of licences to qualified operators to engage in Embedded Generation of electricity in Nigeria ; and to ensure compliance with set standards.