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ELECTRIC POWER SECTOR REFORM ACT, 2005



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ELECTRIC POWER SECTOR REFORM ACT, 2005

ACT No. 6

AN ACT TO PROVIDE FOR THE FORMATION OF COMPANIES TO TAKE OVER THE FUNCTIONS, ASSETS, LIABILITIES AND STAFF OF THE NATIONAL ELECTRIC POWER AUTHORITY, TO DEVELOP COMPETITIVE ELECTRICITY MARKETS, TO ESTABLISH THE NIGERIA ELECTRICITY REGULATORY COMMISSION ; TO PROVIDE FOR THE LICENSING AND REGULATION OF THE GENERATION, TRANSMISSION, DISTRIBUTION AND SUPPLY OF ELECTRICITY; TO ENFORCE SUCH MATTERS AS PERFORMANCE STANDARDS, CONSUMER RIGHTS AND OBLIGATIONS; TO PROVIDE FOR THE DETERMINATION OF TARIFFS; AND TO PROVIDE FOR RELATED MATTERS

[11th March, 2005]

Commence
Ment.

ENACTED by the National Assembly of the Federal Republic of Nigeria —

PART I—FORMATION OF INITIAL AND SUCCESSOR COMPANIES AND THE TRANSFER OF ASSETS AND LIABILITIES OF THE NATIONAL ELECTRIC POWER AUTHORITY

1. The National Council on Privatisation shall, not later than six months after the coming into force of this Act, take such steps as are necessary under the Companies and Allied Matters Act to incorporate a company, limited by shares, which shall be the initial holding company for the assets and liabilities of the Authority.

Formation of
the initial
holding
company.
Cap. C 20
LFN 2004.

2. The shares of the initial holding company on its incorporation shall be held by the Ministry of Finance Incorporated and the Bureau of Public Enterprises in the name of and on behalf of the Federal Government of Nigeria.

Shareholding
in the initial
holding
company.

3.—(1) The National Council on Privatisation, shall by written notice in a Gazette fix the date, (in this Act known as the "initial transfer date"), on which the assets and liabilities of the Authority as specified in subsection (2) of this section shall be transferred to the initial holding company.

Transfer of
assets and
liabilities of
the Authority
to the initial
holding
company.

(2) The assets and liabilities vested in the Authority as at the initial transfer date and appearing on the audited balance sheets of the Authority, shall vest in the initial holding company.

(3) The vesting of assets and liabilities under subsection (2) of this section shall be provisional until final orders are issued by the National Council on Privatisation under this section.

(4) Within eight months from the initial transfer date, the National Council on Privatisation shall, on the finalisation of the opening balance sheet of the initial holding company, issue final order either confirming or specifying the transfer of assets and liabilities under subsection (2) and this Part applies with necessary modifications to the final order.

(5) The transfer of a liability or obligation under this section releases the Authority from the liability or obligation.

(6) All bonds, hypothecations, securities, deeds, contracts, instruments, documents and working arrangements that subsisted immediately before the initial transfer date and to which the Authority was a party shall, on and after that date, be as fully effective and enforceable against or in favour of the initial holding company as if, instead of the Authority, the initial holding company had been named therein.

(7) Any cause of action or proceeding which existed or was pending by or against the Authority immediately before the initial transfer date shall be enforced or continued, as the case may be, on and after that date by or against the initial holding company in the same way that it might have been enforced or continued by or against the Authority had this Act not been passed.

(8) No action or other proceeding shall be commenced against the initial holding company in respect of any employee, asset, liability, right or obligation that has been transferred to the initial holding company if, had there been no transfer, the time for commencing the action or other proceeding would have expired.

(9) A transfer under subsection (2) of this section shall not be deemed to—

(a) constitute a breach, termination, repudiation or frustration of any contract, including a contract of employment or insurance ;

(b) constitute a breach of any Act, regulation or by-law ; or

(c) constitute any event of default or force majeure ;

(d) give rise to a breach, termination, repudiation or frustration of any licence, permit or other right ;

(e) give rise to any right to terminate or repudiate a contract, licence, permit or other right ; and

(f) give rise to any estoppels.

(10) Subsection (9) of this section does not apply to the contracts as may be prescribed by the regulations.

(11) Subject to subsection (10) of this section nothing in this Act and nothing done as a result of a transfer under subsection (2) of this section shall create any new cause of action in favour of :

(a) a holder of a debt instrument that was issued by the Authority before the initial transfer date.

(b) a party to a contract with the Authority that was entered into before the initial transfer date.

(12) Any guarantee or suretyship which was given or made by the Federal Government of Nigeria or any other person in respect of any debt or obligation of the Authority, and which was effective immediately before the initial transfer of the principal debt or obligation, shall remain fully effective against the guarantor or surety on and after the initial transfer date in relation to the repayment of the debt or the performance

of the obligation, as the case may be, by the initial holding company to which the principal debt or obligation was transferred.

4. Stamp duty shall not be chargeable under the Stamp Duties Act in respect of any transfer made or transaction entered into pursuant to this Part on which, except for the exemption granted under this section, stamp duty would have been payable and in particular, and without derogation from the foregoing, no stamp duty shall be chargeable:

Exemption
from stamp
duty
Cap. 58 LFN
2004

(a) during the incorporation of the initial holding company and the successor companies or any subsequent increase to their authorised share capital, prior to the transfer of a majority interest to one or more private investors;

(b) in respect of any security issued in compliance with a transfer order issued under section 10 (7) ;

(c) where any convertible securities were issued in compliance with a transfer order issued under section 10 (7), in respect of the exercise of the conversion rights attached to any such security ; or

(d) in respect of any other transfer of rights and assets pursuant to this Part.

5.— (1) With effect from the initial transfer date, every person employed by the Authority immediately before that date shall be transferred to the service of either the Commission or the initial holding company, on terms not less favourable than those enjoyed by him immediately prior to his transfer.

Transfer of
emplo-
yees to the
initial holding
company and
to the
Commission.
etc.

(2) The service rendered by an employee transferred pursuant to subsection (1) of this section to the Authority shall be deemed to be service with the initial holding company for the purpose of determining employment-related-entitlements as specified in relevant laws of employment in Nigeria.

(3) Until such time as conditions of service are drawn up by the initial holding company or the Commission, as the case may be:

(a) the terms and conditions of service applicable to employees of the Authority shall continue to apply to every person transferred to the initial holding company or to the Commission as if every such person were still in the service of the Authority; and

(b) the initial holding company shall continue to contribute towards a pension scheme to which the authority was contributing in respect of persons in the employ of the Authority, prior to the initial transfer date.

6.— (1) The National Council on Privatisation may give the Board of Directors of the Authority directions in writing in order to ensure the proper transfer of the assets and liabilities of the Authority to the initial holding company, and the Board of Directors shall, without delay, comply with every such direction.

Direction to
the Author-
ity.

(2) Without derogation from subsection (1) of this section, directions given under that subsection may provide for :

(a) the cessation of all or any functions of the Authority;

(b) the termination of any contract entered into between the Authority and any person, provided that no such direction shall authorize the Authority to commit an unlawful breach of any such contract; and

(c) the production of any report and the provision of any information concerning the conduct of the Authority or the Board of Directors of the Authority or anything done by or on behalf of the Authority or the Board of Directors of the Authority.

Licensing of
the initial
Holding
company

7. On the initial transfer date, the Commission shall issue an interim licence, to the initial holding company, which shall be valid for a period not exceeding eighteen months.

Formation of
successor
Companies.

8. The National Council on Privatisation shall, not later than eight months after the formation of the initial holding company under section 1 of this Act, take such steps as are necessary under the Companies and Allied Matters Act to incorporate such number of additional companies, limited by shares, as the National Council on Privatisation may deem appropriate, which shall be the successor companies for assuming the assets and liabilities of the initial holding company including, but not limited to, companies with functions relating to the generation, transmission, trading, distribution and bulk supply and resale of electricity.

Shareholdings
in the successor
companies.

9. All the respective shares of each of the successor companies from the dates of their incorporation shall be held jointly in the name of the Ministry of Finance Incorporated and the Bureau of Public Enterprises for and on behalf of the Federal Government of Nigeria.

Transfer of
assets and
liabilities of the
initial holding
company to
the successor
companies.

10. — (1) The National Council on Privatisation shall, not later than one year from the initial transfer date, by an order, require the initial holding company to transfer employees, assets, liabilities, rights and obligations of the initial holding company to a successor company, as specified in the order.

(2) A transfer order shall be binding on the initial holding company, the transferee and all other persons.

(3) Subsection (2) of the section applies despite any general or special Act or any rule of law, including an Act or rule of law that requires notice or registration of transfers.

(4) A transfer order shall not require the consent of the initial holding company or the successor company, provided that consent of the transferee shall be required if the transferee is a person other than a successor company incorporated by the National Council on Privatisation under section 8.

(5) A transfer order may specify and describe, employees, assets, liabilities, rights or obligations to be transferred:

(a) by reference to specific employees, assets, liabilities, rights or obligations:

(b) by reference to any class of employees, assets, liabilities, rights or obligations; or

(c) partly in accordance with subsection (5)(a) of this section and partly in accordance with subsection (5)(b) of this section.

(6) With effect from the date specified in the relevant transfer order, all bonds, hypothecations, securities, deeds, contracts, instruments, documents and working arrangements that subsisted immediately before the subsequent transfer date and to which the initial holding company was a party shall, on and after that date, be as fully effective and enforceable against or in favour of the designated successor company as if, instead of the initial holding company, the designated successor company had been named therein.

(7) A transfer order may—

(a) require the initial holding company or the transferee to pay for anything transferred by or pursuant to the order and may specify to whom the payment shall be made;

(b) fix the amount of the payment; specify a method for determining the amount of the payment; or provide that the amount of the payment be determined by the National Council on Privatisation or a person designated by the National Council on Privatisation;

(c) require that the payment be made in cash, by set off, through the issuance of securities or in any other form specified by the order;

(d) fix the value of anything transferred by or pursuant to the order;

(e) specify a method consistent with international accounting practices for determining the value of anything transferred by or pursuant to the order;

(f) provide that the value of anything transferred by or pursuant to the order be determined by the National Council on Privatisation or a person designated by the National Council on Privatisation in a manner consistent with international accounting practices; provided that the value specified in the transfer order ought to have been calculated in accordance with international accounting practices;

(g) specify the date that a transfer takes effect and any interest in property that is transferred by the order vests in the transferee on that date;

(h) provide that a transfer shall not take effect until payment has been made for anything transferred by or pursuant to the order;

(i) provide that a transfer shall be deemed to have taken effect on a date earlier than the date the transfer order is made, but the effective date shall not be earlier than the day on which the relevant successor company was formed;

(j) provide that transfers specified in the order and other transactions associated with the transfers shall be deemed to have occurred in a sequence and at times specified in the order;

(k) require the initial holding company or a transferee:

(i) to enter into any written agreement or execute any instrument specified in the order; and

(ii) to register in accordance with the order any agreement or instrument entered into or executed under subsection 7(k)(i);

(l) provide that any liability or obligation that is transferred by the order may be enforced against the initial holding company, the transferee, or both of them; and that any right that is transferred by the order may be enforced by the initial holding company, the transferee, or both of them; or

(m) impose conditions on the exercise of powers by the transferee that are related to employees, assets, liabilities, rights or obligations transferred by the transfer order, including a condition that the powers be exercised only with the approval of the Commission.

(8) A transfer order may contain provisions dealing with other matters not specifically referred to in this Part that the National Council on Privatisation considers necessary or advisable in connection with a transfer.

Conclusive Evidence.

11.—(1) A statement, in a registered document to which a successor company is a party, that land described in the document was transferred to the person from the initial holding company by or pursuant to a transfer order, and any other statement in the document relating to the transfer order, shall be deemed to be conclusive evidence of the facts stated.

(2) Nothing in subsection (1) of this section creates, for any person, an interest in land that the initial holding company did not have.

Release from liability or Obligation.

12. Subject to section 10 (7) (I), the transfer of a liability or obligation under this Part releases the initial holding company from the liability or obligation.

Enforcement or Continuation of any cause of action or Proceedings.

13. Subject to section 10 (7) (I), any cause of action or proceeding which existed or was pending by or against the initial holding company immediately before the subsequent transfer date shall be enforced or continued, as the case may be, on or after the subsequent transfer date by or against the designated successor company in the same way that it might have been enforced or continued by or against the initial holding company.

Limitation of suit against a transferee.

14. An action or other proceeding shall not be commenced against a transferee in respect of any employee, asset, liability, right or obligation that had been transferred to the transferee if, had there been no transfer, the time for commencing the action or other proceeding would have expired.

A transfer shall not be deemed to constitute a breach of contract.

15.—(1) A transfer by or pursuant to a transfer order shall not be deemed to—

(a) constitute a breach, termination, repudiation or frustration of any contract, including a contract of employment or insurance;

(b) constitute a breach of any Act, regulation or bye-law;

(c) constitute any event of default or *force majeure*;

(d) give rise to a breach, termination, repudiation or frustration of any licence, permit or other right;

(e) give rise to any right to terminate or repudiate a contract, licence, permit or other right; or

(f) give rise to any estoppels.

(2) Subsection (1) of this section does not apply to such contracts as may be prescribed by the regulations.

(3) Subject to subsection (2) of this section, nothing in this Act and nothing done by or pursuant to a transfer order creates any new cause of action in favour of:

(a) a holder of a debt instrument that was issued by the initial holding company (or deemed to have been issued by it) before the date of its transfer as specified in the relevant transfer order;

(b) a party to a contract with the initial holding company or deemed to have been issued by it under section 4(5) that was entered into before the date of its transfer as specified in the relevant transfer order.

16. The initial holding company shall provide a transferee with all records or copies of records, that are in its custody or control and that relate to an officer, employee, asset, liability, right or obligation that is transferred by or pursuant to a transfer order, including personal information.

Provision of records, etc. to a transferee.

17. The National Council on privatisation may, at any time within one year after making a transfer order, make a further order amending the transfer order in any way that the National Council on Privatisation considers necessary or advisable, including such order or orders as may be necessary to rectify the transfer of any of the employees, assets, liabilities, rights and obligations pursuant to a verification or an audit of the employees, assets and liabilities of the initial holding company as at the date of the relevant transfer order, and this Part applies with necessary modifications to the amendment.

Further order amending a transfer order.

18. — (1) The National Council on Privatisation may make regulations —

Regulations.

(a) supplementing the provisions of this Part and governing the transfer of, employees, assets, liabilities, rights and obligations under this Part;

(b) prescribing contracts or classes of contracts to which section 15 (1) does not apply, subject to such conditions or restrictions as may be prescribed by the regulations.

(2) A regulation made under this section may be general or particular in its application.

Guarantee or
Surety.

19. Any guarantee or surety-ship which was given or made or is deemed to be given or made under section 3 (12) by the Federal Government of Nigeria or any other person in respect of any debt or obligation of the initial holding company, and which was effective immediately before the subsequent transfer of the principal debt or obligation, shall remain fully effective against the guarantor or surety on or after the subsequent transfer date in relation to the repayment of the debt or the performance of

principal debt or obligation was transferred.

Consideration
for the transfer

20. The consideration for the transfer of assets of the initial holding company to a designated successor company shall be as set out in a transfer order issued under

(a) the cessation of any or all functions of the initial holding company and its voluntary liquidation;

(b) the termination of any contract entered into between the initial holding company and any person, provided that no such direction shall authorise the initial holding company to commit an unlawful breach of any such contract; and

(c) the production of any report and the provision of any information concerning the conduct of the initial holding company or the Board of Directors of the initial holding company or anything done by or on behalf of the initial holding company or the Board of Directors of the initial holding company.

23. — (1) On the transfer date specified in the relevant transfer order, the Commission shall issue an appropriate interim licence, to each successor company, which shall be valid for a period not exceeding one year.

Licensing of
the successor
companies

(2) A successor company that has received an interim licence under subsection (1) shall, within six months thereafter, apply to the Commission for a regular licence in accordance with the provisions of Part IV of this Act.

24. — (1) The National Council on Privatization may, at any time and by such means as it deems appropriate, begin the process of privatisation of the successor companies that are holders of generation licences, distribution licences or a transmission licence, in accordance with the provisions of the Public Enterprises (Privatization and Commercialization) Act.

Processing of
privatization
of the
successor
companies.

(2) Until such time the Minister has made a declaration in accordance with subsection (3) of this section, the Commission shall prepare, each year, a report for the Minister as to the potential for competition in the Nigerian electricity supply industry and these reports shall present the Commission's analysis and recommendations as to whether the Nigerian electricity supply industry has developed to the point where a more competitive market ought to be established under section 26, having regard to:

(a) the degree of privatisation that has occurred;

(b) the existence of a sufficiently large number of potential competitive entities, so as to avoid the likelihood of an abusive market power; and

(c) the existence of other preconditions, including the necessary metering and information technology infrastructures, required for the operation of a more competitive electricity market.

(3) The Minister shall present to the President and the National Council on privatization and National Assembly, each report submitted by the Commission under subsection (2) of this section and when the Minister, in consultation with the President and the National Council on Privatization is satisfied that the electricity market in Nigeria has developed to the point where a more competitive market ought to be established pursuant to section 26 of this Act, having regard to the criteria described in paragraphs (a), (b) and (c) of subsection 2 of this section, and the Minister shall issue a declaration that a more competitive electricity market is to be initiated.

PART II — DEVELOPMENT OF A COMPETITIVE ELECTRICITY MARKET

Competition during the pre-privatisation stage

25. Immediately following the issuance of interim licences to the successor companies in accordance with section 23, and prior to the declaration by the Minister, under section 24 (3), that a more competitive market is to be initiated:

(a) the trading licensee holding a bulk purchase and resale licence under section 67(2), or an interim licence for this purpose, and to which the function of bulk procurement and bulk sale of power and ancillary services has been transferred pursuant to part I of this Act, shall engage in the purchase and resale of electrical power and ancillary services from independent power producers and from the successor generation companies, in accordance with its licence;

(b) the successor company that has been issued both a transmission licence and a system operation licence pursuant to section 65(2), or an interim licence for these purposes, shall engage in the transmission of electricity and in system operation, including the procurement of ancillary services, in accordance with its licence;

(c) successor generation companies shall, in accordance with their licences, sell electrical power to the trading licensee described in subsection (a), distribution companies and eligible customers, pursuant to the terms of any contracts formed with such distribution companies and eligible customers;

(d) successor generation companies shall, in accordance with their licences, sell ancillary services to the trading licensee described in subsection (a) or the successor company identified in subsection (b), pursuant to contracts that allow for the novation of the rights and obligations of the successor company identified in subsection (b) to an independent system operator in the event of a transfer of the obligation of system operation by the successor company to an independent system operator under section 26(7);

(e) independent power producers shall, in accordance with their licences, sell electrical power to either:

(i) the trading licensee described in subsection (a) pursuant to contracts that allow for the novation of the rights and obligations of the trading licensee described in subsection (a) to one or more other licensees, as specified in the contract, following the declaration of a substantially privatised market under section 24; or

(ii) distribution companies and eligible customers, pursuant to the terms of any contracts formed with such distribution companies and eligible customers.

(f) independent power producers shall, in accordance with their licenses, sell ancillary services to either:

(i) the trading licensee described in subsection (a), pursuant to contracts that allow for the novation of the rights and obligations of the trading licensee described in subsection (a) to one or more other licensees, as specified in the contract, following the declaration of a substantially privatised market under section 24; or

(ii) the successor company identified in subsection (b), pursuant to contracts that allow for the novation of the rights and obligations of the successor company identified in subsection (b) to an independent system operator in the event of a transfer of the obligation of system operation by the successor company to an independent system operator under section 26 (7).

26. — (1) Immediately following the declaration by the Minister, under section 24 (3), that a more competitive market is to be initiated:

Competition during the post privatisation stage.

(a) the trading licensee described in section 25 (a) shall not enter into any further contracts for the purchase of electrical power or ancillary services and it shall, in accordance with its licence, begin the process of novating its existing rights and obligations to purchase electrical power and ancillary services to other licensees;

(b) successor generation companies shall, in accordance with their licences, sell electrical power to distribution companies and eligible customers, under the terms of any contracts existing prior to the declaration by the Minister, pursuant to section 24 (3), or under the terms of any new contracts with distribution companies and eligible customer;

(c) successor generation companies shall, in accordance with their licences, sell ancillary services either to:

(i) the successor company identified in section 25 (b), under the terms of the contracts entered into prior to the declaration by the Minister, under section 24 (3), until such contracts are novated to an independent system operator, or under the terms of any new contracts with such successor company; provided that such contracts should allow for novation to the independent system operator in the same manner as specified in section 25 (d); or

(ii) the independent system operator, once it has been established under section 25 (d);

(d) independent power producers shall, in accordance with their licences, sell electrical power:

(i) to the trading licensee described in section 25 (a), under the terms of the contracts formed with that trading licensee prior to a declaration by the Minister, under section 24 (3), until such contracts are novated to distribution companies or eligible customers; and, following such novations;

(ii) to distribution companies and eligible customers, under the terms of any contracts formed with such distribution companies and eligible customers;

(e) independent power producers shall, in accordance with their licences, sell ancillary services:

(i) to the trading licensee described in section 25 (a), under the terms of the contracts formed with that trading licensee prior to the declaration by the Minister under section 24 (3), until such contracts are novated to distribution companies or eligible customers; and, following such novations;

(ii) to the successor company identified in section 25(b), under the terms of contracts entered into prior to the declaration by the Minister under section

24 (3), until such contracts are novated to an independent system operator, or under the terms of any new contracts with such successor company; provided that such contracts should allow for novation to the independent system operator in the same manner as specified in section 25(d); or

(iii) the independent system operator, once it has been established under subsection (7) of this section;

(f) the successor company identified in subsection 1 (b) of this section shall, in accordance with its licence purchase ancillary services pursuant to the terms of the contracts for ancillary services that it has entered into with successor generating companies and with the trading licensees described in subsection 1 (a) of this section and with independent power producers prior to the declaration under section 24 and it may also purchase ancillary services under the terms of contracts novated to it under section 25 (d) (i), until all such contracts are novated to an independent system operator established pursuant to subsection (7) of this section;

(g) distribution licensees shall purchase electrical power in accordance with their obligations to purchase under subsection 1 (b) and (d) of this section and pursuant to those obligations that have been novated to them under subsection 1 (a) of this section, and may also purchase other supplies of power from generation licensees and trading licensees, all in accordance with the terms of their respective distribution licences; and

(h) eligible customers shall purchase power in accordance with their obligations to purchase under subsections 1 (b) and (d) of this section and pursuant to those obligations that have been novated to them under subsection 1 (a) of this section, and may also purchase other supplies and powers from generation licensees or from trading licensees.

(2) The Minister shall recommend to the President for approval of market rules, to be developed by the system operator:

(a) for the operation of the national grid by the system operator; and

(b) for the establishment and governance of markets related to electricity and ancillary services.

(3) In respect of markets for electricity and ancillary services, the market rules may include provisions:

(a) governing the making and publication of market rules;

(b) settlement of payments among different participants;

(c) authorizing and governing the making of orders by the system operator, including orders:

(ii) authorising a person to participate in the markets; or
(iii) terminating, suspending or restricting a person's rights to participate in the markets; and

(d) concerning the administration and enforcement of the market rules, including provisions for market rule amendments, dispute resolution, penalties and market surveillance.

(4) A market rule may be general or particular in its application.

(5) The system operator shall publish the market rules in accordance with the Publication provisions within the market rules and shall make the market rules available for public inspection during normal business hours at the offices of the system operator.

(6) Amendments to the market rules shall be developed by the system operator in accordance with the amendment provisions in the market rules, provided that all amendments shall be approved by the Commission before they come into force and provided that the system operator shall, in accordance with the market rules, publish any proposed amendment to the market rules at least 22 days before the proposed amendment comes into force.

(7) At any time following the declaration of a substantially privatised market under section 24, the successor company identified in section 25 (b) may transfer the function of system operation to an independent system operator on such terms and conditions as the Commission may direct and on such transfer, the independent system operator shall be subject to the same powers and duties as have been imposed on the transferring successor company under this Act in relation to system operation.

27. The Minister may issue a directive to the Commission specifying the class or classes of end-use customers that, from time to time, shall constitute eligible customers under this Act.

Ministerial directives respecting eligible customers.

28. If the Minister determines, following consultation with the President, that a directive given under section 27 will result in decreasing electricity prices to such an extent that a trading licensee or a distribution licensee would have inadequate revenue to enable payment for its committed expenditures or is unable to earn permitted rates of return on its assets, despite its efficient management, the Minister may issue further directives to the Commission on the collection of a competition transition charges from consumers and eligible customers, the distribution of the funds collected to the trading licensee described in section 25 (a) and to distribution licensees, and the duration of the competition transition charge.

Ministerial directives respecting competition transition charges.

29. The Commission shall establish the amount of the competition transition charge and the arrangements for the collection and distribution of the competition transition charge, all in accordance with the Minister's directive or directives issued under section 28.

Commission's determinations respecting competition transition charges

Public hearing respecting competition transition charges.

30. Prior to the making of the determinations set out in section 29, the Commission shall hold a public hearing to obtain the views of any interested parties.

PART III — ESTABLISHMENT, FUNCTIONS AND POWERS OF THE
NIGERIAN ELECTRICITY REGULATORY COMMISSION

Establishment of the commission.

31. — (1) There is established a commission to be known as the Nigerian Electricity Regulatory Commission, which shall be a body corporate with perpetual succession which can sue or be sued in its corporate name and subject to this Act, perform all acts that bodies corporate may by law perform.

(2) The headquarters of the Commission shall be at Abuja.

Objects and functions of the Commission.

32. — (1) Subject to this Act, the Commission shall have the following principal objects:

(a) to create, promote, and preserve efficient industry and market structures, and to ensure the optimal utilisation of resources for the provision of electricity services;

(b) to maximise access to electricity services, by promoting and facilitating consumer connections to distribution systems in both rural and urban areas;

(c) to ensure that an adequate supply of electricity is available to consumers;

(d) to ensure that the prices charged by licensees are fair to consumers and are sufficient to allow the licensees to finance their activities and to allow for reasonable earnings for efficient operation;

(e) to ensure the safety, security, reliability, and quality of service in the production and delivery of electricity to consumers;

(f) to ensure that regulation is fair and balanced for licensees, consumers, investors, and other stakeholders; and

(g) to present quarterly reports to the President and National Assembly on its activities.

(2) For the furtherance of the objects referred to in subsection (1) of this section, the Commission shall perform the following functions:

(a) promote competition and private sector participation, when and where feasible;

(b) establish or, as the case may be, approve appropriate operating codes and safety, security, reliability, and quality standards;

(c) establish appropriate consumer rights and obligations regarding the provision and use of electricity services;

(d) license and regulate persons engaged in the generation, transmission, system operation, distribution, and trading of electricity;

(e) approve amendments to the market rules ;

(f) monitor the operation of the electricity market ; and

(g) undertake such other activities which are necessary or convenient for the better carrying out of or giving effect to the objects of the Commission.

(3) In the discharge of its functions, the Commission shall consult, from time to time, and to the extent the Commission considers appropriate, such persons or groups of persons who may or are likely to be affected by the decisions or orders of the Commission including, but not limited to licensees, consumers, potential investors, and other interested parties.

33. —(1) The Minister may issue general policy directions to the commission on matters concerning electricity, including directions on overall system planning and co-ordination, which the commission shall take into consideration in discharging its functions under section 32 (2), provided that such directions are not in conflict with this Act or the Constitution of the Federal Republic of Nigeria

General policy directions.

34. — (1) Subject to subsections (2) and (3) of this section, the Commission shall consist of seven full time Commissioners appointed by the President subject to confirmation by the Senate.

Appointment of Commissioners

(2) In selecting potential nominees, the President shall ensure that individuals are chosen, from both the public and private sectors, for their experience or professional qualifications in the following fields or areas of competence :

(a) generation, transmission, system operation, distribution or marketing of electricity ; and

(b) law, accountancy, economics, finance or administration.

(3) The seven Commissioners shall be appointed to reflect one Commissioner per geo-political zone and a chairman from any zone.

35.—(1) Subject to this Part, a Commissioner shall hold office for a period of five years, provided that, to ensure continuity in the Commission, the period of appointment of the first seven Commissioners shall be as follows :

Terms of office and conditions of service of Commissioners.

(a) the Chairman shall be appointed for five years ;

(b) the Vice Chairman and other Commissioners shall be appointed for four years.

(2) A Commissioner shall not continue in office after the expiry of his term.

(3) Subject to section 36, a Commissioner shall hold office on such terms and conditions as the President may fix in relation to commissioners generally.

(4) A Commissioner whose term of office has expired is eligible for reappointment for another term and no more.

(5) All appointments or re-appointments of Commissioners shall be made before expiry of their term of office in accordance with section 34 of this Act.

Conditions
for
appointment
as
Commissioner.

36.—(1) A person shall not be appointed as a Commissioner who:

(a) is neither a citizen of Nigeria nor permanently resident in Nigeria; or

(b) has a financial interest in any business connected, either directly or indirectly, with generation, transmission, system operation, distribution or trading of electricity in Nigeria, or is engaged in any activity (whether for remuneration or otherwise) connected with any such service or system, or is a relative of a person who has such
~~or interest as is engaged in such an activity unless the President is satisfied that the~~

(i) in Nigeria, in respect of an offence; or

(ii) outside Nigeria, in respect of an offence involving financial impropriety or any conduct which, if committed in Nigeria, would constitute an offence; or

(c) if he becomes disqualified under sections 36 (1) (a), (b), (c) or (d), to hold office as a Commissioner; or

(d) if he is required under section 38 to vacate his office; or

(e) when he attains the age of 70 years, whichever is earlier,

38 — (1) The President shall require a Commissioner to vacate his office if the commissioner;

Dismissal or suspension of Commissioners.

(a) has, subject to section 36 (2), been found to have conducted himself in a manner that renders him unsuitable as a Commissioner, including a contravention of section 43 or section 57 (2); or

(b) has failed to comply with any term or condition of his office fixed by the President under section 35 (3); or

(c) is mentally or physically incapable of efficiently carrying out his functions as a Commissioner; or

(d) the Commissioner is convicted of an offence in respect of which a sentence of imprisonment without the option of a fine has been imposed, whether in Nigeria or outside.

(2) A commissioner shall not be removed unless the request is supported by a simple majority vote of the Senate.

39. Subject to section 40 (6), on the death of, or vacation of office by a Commissioner, the President shall nominate a candidate to fill that vacancy, and submit that nomination to the Senate, within one month, in accordance with section 34.

Filling of vacancies in the Commission.

40. — (1) The President shall designate one of the Commissioners as Chairman who shall be the Chief Executive and Accounting Officer of the Commission and another Commissioner as Vice-Chairman.

Chairman and Vice-Chairman of the Commission

(2) A Commissioner whose term of office has expired is eligible for reappointment for another term and no more.

(3) The Vice-Chairman shall retain his position as Vice-Chairman until his term of office as a Commissioner is expired,

(4) The Vice-Chairman shall perform the Chairman's functions whenever the Chairman is for any reason unable to perform them.

(5) The Chairman or Vice-Chairman may at any time resign his office as such by one month's notice in writing to the President.

(6) Whenever the office of Chairman or Vice-Chairman falls vacant, or on the death of the Chairman or Vice-Chairman, the President shall, within three weeks, select another Commissioner to fill the vacancy under section 39.

Meetings and
procedure of
the
Commission.

41. — (1) The Commission shall meet for the dispatch of business as often as is necessary or expedient and, subject to this section, may adjourn, close and otherwise regulate its meetings and procedure as it thinks fit.

(2) The chairman or, in his absence, the Vice-Chairman shall preside at all meetings of the Commission.

(3) All decisions of the Commission shall be on the basis of majority of the members present and voting.

(4) The quorum for the meeting of the Commission shall be four and subject to section 43, at all meetings of the Commission each Commissioner present shall have one vote on each question before the Commission and, in the event of an equality of votes, the Chairman shall have a casting vote.

(5) For a meeting of the Commission to review any previous decision or order taken by the Commission, the quorum shall be no less than the Commissioners present when the decision was taken or order was made.

(6) Without derogation from subsection (1) of this section, 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 the Commissioners for discussion, this subsection shall not apply to such matter.

Remuneration
and expenses
of
Commissioners.

42. — (1) Commissioners shall be paid from the funds of the Commission:

(a) such remuneration, if any, as the Commission may from time to time determine, having regard to the recommendations of the National Salaries, Incomes and Wages Commission; and

(b) such allowances, if any, as the Commission, may from time to time determine, having regard to the recommendations of the National Salaries, Incomes and Wages Commission, to meet any reasonable expenses incurred by such Commissioners in connection with the business of the Commission.

(2) While making recommendations, the National Salaries, Incomes and Wages Commission shall have due regard to the following principles:

(a) the specialised nature of work to be performed by the Commission;

(b) the need to ensure the financial self-sufficiency of the Commissioners;

(c) the salaries paid in the private sector to individuals with equivalent responsibilities, expertise and skills; and

(d) the nature of the expenses incurred by the Commissioners, including national and international travel expenses.

43.— (1) if a Commissioner :

(a) acquires or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Commission;

(b) owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the Commissioner's private interests coming or appearing to come into conflict with his functions as a Commissioner;

(c) knows or has reason to believe that a relative of the Commissioner:

(i) has acquired or holds a direct or Indirect pecuniary interest in any matter that is under consideration by the Commission; or

(ii) owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the Commissioner's private interests coming or appearing to come into conflict with his functions as a Commissioner ; or

(d) If for any reason the private interests of a Commissioner come into conflict with his functions as a Commissioner, the Commissioner shall forthwith disclose the fact to the Commission.

(2) A Commissioner referred to in subsection (1) of this section shall take no part in the consideration or discussion of, or vote on, any question before the Commission which relates to any contract, right, immovable property or interest referred to in that subsection.

(3) A Commissioner shall, prior to accepting his appointment to the Commission, make a declaration of assets in accordance with paragraph 11 of the Fifth schedule to the Constitution of the Federal Republic of Nigeria, 1999 and shall terminate all other engagements for gain, including appointment to any office in the Public Service

(4) A Commissioner who contravenes subsection (1), (2) or (3) of this section commits an offence and is liable on conviction to a fine not exceeding fifty thousand Naira or imprisonment for a period not exceeding three months or to both such fine and imprisonment.

44.—(1) 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 authorised.

(2) If a Commissioner referred to in section 43 takes part in the consideration of a matter in which his private interests are in conflict with his functions as Commissioner, the other Commissioners may subsequently ratify any such decision or action.

Commissioners
to disclose
certain
connections
and interests.

No invalidity
of decisions
and acts of the
Commission.

Proceedings of
the
Commission.

45. — (1) The Commission shall be entitled to conduct its proceedings, consultations and hearings at its headquarters or at any other place in Nigeria.

(2) The Commission shall make regulations for the discharge of its functions and for the conduct of its proceedings, consultations and hearings, including procedures for the participation of licensees, consumers, eligible customers and other persons.

Decisions and
orders of the
Commission.

46. — (1) The Chairman shall ensure that all Commission decisions and orders ;

(a) contain the basis for the decision or order;

(b) are properly recorded in writing; and

(c) are accessible to the public at reasonable times and places.

(2) The Commission shall issue written reasons in respect of any decisions or orders affecting the existing rights of any person, if the affected person requests such written reasons.

(3) The Commission may issue written reasons in respect of any other decision or order as the Commission deems necessary.

(4) Every recommendation, declaration, decision or order of the Commission, if purporting 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.

(5) The Commission may make interim orders pending the final disposition of a matter before it.

Commission
to give notice
to interested
parties.

47. — (1) The Commission may hold a hearing of any matter, which under this Act or any other enactment is required or permitted to conduct or on which is required or permitted to take any action and the Commission shall hold public hearing on matters which the Commission determine to be of significant interest to the general public.

Commission
to consult
experts on
technical
questions.

(2) Where the Commission is required to, or otherwise decides to, hold a hearing, all persons having an interest in such matter shall, as far as reasonably practicable, be notified of the questions at issue and given opportunities for making representations if they so wish.

Questions of
law may be
referred to the
High Court.

48. When any matter arises which entails the consideration of any professional or technical question, the Commission may consult such persons as may be qualified to advise thereon,

49. — (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 subsection (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.

50. — (1) Subject to this section, any person who is aggrieved by:

Rehearing and Appeals.

- (a) a decision of the Commission not to issue a licence;
- (b) any term or condition of a licence issued to him, or a refusal by the Commission to specify a term or condition in a licence;
- (c) a refusal by the Commission to renew a licence;
- (d) any amendment of a licence or a refusal by the Commission to amend a licence;
- (e) the cancellation of a licence;
- (f) the grant or refusal by the Commission to grant any approval or authority in terms of this Act;
- (g) the outcome of any arbitration or mediation by the Commission of a dispute between licensees;
- (h) a decision of the Commission with respect to prices or tariffs;
- (i) any other decision of the Commission; may apply to the Commission for review of the decision, order or refusal.

(2) The Commission may, reconsider, vary or rescind its decisions before issuing a final decision, in accordance with such procedures as the Commission may establish; provided that such review or reconsideration shall be completed within sixty days of the date it is requested.

51. — (1) On or before such date as the Minister may specify before the beginning of every financial year, the Commission shall prepare and submit to the minister a budget showing the expenditures which the Commission proposes to incur in respect of that financial year in order to carry out the functions of the Commission.

Annual Programmes and budgets of the Commission.

(2) During any financial year, the Commission may prepare and submit to the Minister a supplementary budget relating to expenditures which were inadequately provided for in the annual budget due to unforeseen circumstances.

(3) A supplementary budget shall be deemed to form part of the annual budget of the Commission for the financial year to which it relates.

(4) The Commission may vary a budget prepared under this section, provided that no variation may be made which has the effect of increasing the total amount of expenditure provided for in the budget.

52. The funds of the Commission shall consist of:

Funds of the Commission.

(a) fees, charges and other income accruing to the Commission from licensees and other things done by it in terms of this Act, excluding any fines or penalties recovered pursuant to this Act;

(b) funds allocated to the Commission by the National Assembly, pursuant to a

request by the Commission for additional funds required to meet its reasonable expenditures; and

(c) such other moneys as may vest in or accrue to the Commission, whether in the course of its operations or otherwise.

Surplus Funds
of the
Commission.

53. If, following an audit of the Commission's accounts under section 56, the auditors determine that a portion of the funds received pursuant to section 52 are surplus to the budgeted requirements of the Commission, such surplus funds shall be paid by the Commission to the Rural Electrification Fund established under Part IX of this Act, subject to approval by the National Assembly.

Financial year
of the
Commission.

54. The financial year of the Commission shall be the period of twelve months ending on the 31st December in each year or such other period as the Minister may, determine.

Accounts of
the
Commission.

55. — (1) The Commission shall ensure that proper accounts and other records relating to such accounts are kept in respect of all the Commission's activities, funds and property, including such particular accounts and records as the Minister may require.

(2) The Commission shall, not later than three months, after the end of the financial year, prepare and submit to the Auditor General of the Federation and National Assembly a statement of accounts in respect of that financial year.

(3) The Commission shall present quarterly reports on all its activities to the president and National Assembly.

Audit of the
Commissions
accounts.

56. — (1) The Commission shall appoint an auditor in accordance with the guidelines for the appointment of auditors issued by the Auditor-General of the Federation.

(2) The accounts kept by the Commission under section 55 (1) shall be examined by the auditor.

(3) The auditor shall within six months after the end of each financial year, make a report to the Commission and the Minister on the statement of accounts prepared under section 55 (2) and such report shall state whether or not, in the opinion of the auditor, the statement of accounts gives a true and fair view of the Commission's affairs.

(4) The Minister may require the Commission to obtain from its auditor such other reports, statements or explanations in connection with the Commission's operations, funds and property as the Minister may consider necessary, and the Commission shall forthwith comply with any such requirement.

(5) Notwithstanding the provision of subsections (4) of this section, the Minister shall authorise the Commission to publish its audited statement of accounts in two national newspapers within one month following the receipt of the auditor's report under subsection (3) of this section, and the Commission shall thereafter publish the statement of accounts in the manner that has been authorised.

Power of
auditors.

57. — (1) The auditor shall be entitled at all reasonable times to require to be produced to him all accounts and other records relating to each accounts which are

kept by the Commission or its agents and to require from any Commissioner or employee or agent of the Commission such information and explanations as in the auditor's opinion are necessary for the purposes of their audit.

(2) Any Commissioner or employee or agent of the Commission who fails without just cause to comply with a requirement of an auditor in terms of subsection (1) of this section commits an offence and is liable on conviction to a fine not exceeding twenty thousand Naira or to imprisonment for a period not exceeding months or to both such fine and imprisonment

58. Any agreement, contract or instrument approved by the Commission may be entered into or executed on behalf of the Commission by any persons generally or specially authorised by the Commission for that purpose.

Execution of contracts and instruments by the commission.

59. — (1) In addition to any report which the Commission is required by this Act to submit to the Minister, the Commission:

Reports of the commission.

- (a) shall submit to the Minister such other reports as the Minister may require; and
- (b) may submit to the Minister such other reports as the Commission considers advisable.

(2) The Minister shall publicly release any reports submitted pursuant to subsection (1) of this section, within two months following the receipt of such a report.

60. — (1) The Commission shall employ such persons as it considers expedient for the better exercise of the functions of the Commission.

Staff of the Commission

(2) The terms and conditions of service, including remuneration, allowances and pension benefits, of the staff of the Commission shall be as determined by the Commission.

(3) Subject to subsection (5) of this section, the Commission may assign to its staff such functions of the Commission as the Commission deems fit.

(4) Any assignment of functions under subsection (3) of this section may be made either generally or specially and subject to such reservations, restrictions and exceptions as the Commission may determine, and may be revoked by the Commission at any time.

(5) Anything authorised or required by or under this Act to be done by the Commission other than the making of final orders may be done by any member of the

PART IV - LICENCES AND TARIFFS

Licensing
requirement:
fines and
penalties.

62. — (1) No person, except in accordance with a licence issued pursuant to this Act or deemed to have been issued under section 98 (2), shall construct, own or operate an undertaking other than an undertaking specified in subsection (2) of this section, or in any way engage in the business of:

- (a) electricity generation, excluding captive generation;
- (b) electricity transmission;
- (c) system operation;
- (d) electricity distribution; or
- (e) trading in electricity.

(2) Notwithstanding subsection (1) of this section, a person may construct, own or operate an undertaking for generating electricity not exceeding 1 megawatt (MW) in aggregate at a site or an undertaking for distribution for electricity with a capacity not exceeding 100 kilowatts (KW) in aggregate at a site, or such other capacity as the Commission may determine from time to time, without a licence.

(3) The Commission may issue an interim licence for any or all of the activities specified in subsection (1) of this section to any person as specified under the Act for a period not exceeding eighteen months, or such shorter period as may be specified in this Act, if it determines that it is necessary in the public interest to do so.

(4) The Commission shall have the power to resolve disputes as to whether a person is engaging, or is about to engage in a business for which a licence is required under subsection (1) of this section.

(5) Any person who contravenes subsection (1) of this section commits an offence and is liable on conviction to a fine not exceeding five hundred thousand Naira or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

(6) The Commission shall have the authority to order any person who contravenes subsection (1) of this section to cease his operations, and to make such other orders including an order to another licensee to disconnect facilities, as may be necessary to prevent the continuation or reoccurrence of the contravention.

(7) The Commission shall have the authority to penalise a licensee for violations of his licence terms and conditions or to cancel such licence in accordance with the provisions of this Act.

63. — (1) A licensee shall comply with the provisions of his licence, regulations, codes, and other requirements issued by the Commission from time to time.

General duties
of licensees.

(2) Unless stayed by a court of competent jurisdiction, each licensee shall duly implement or follow, as the case may be, Commission orders and written notices, notwithstanding that the licensee has or may intend to take legal action challenging any such order or notice.

64. — (1) Subject to such terms and conditions as the Commission may fix in the licence, a generation licence shall, as the circumstances may require, authorise the licensee to construct, own, operate and maintain a generation station for purposes of generation and supply of electricity in accordance with this Act.

Generation
licences..

(2) Subject to this Act, the holder of a generation licence may sell power or ancillary services to any of the classes of persons specified in the licence.

(3) The Commission may issue generation licences to:

(a) one or more of the successor companies formed under section 8, herein described as a "successor generation company"; or

(b) one or more entities that are not successor companies formed under section 8, herein described as an "independent power producer."

65. — (1) Subject to such terms and conditions as the Commission may fix in the licence, a transmission licence shall authorise the licensee to carry on grid construction, operation, and maintenance of transmission system within Nigeria, or that connect Nigeria with a neighbouring jurisdiction.

Transmission
licences.

(2) The transmission licensee that is a successor company formed under section 8 may also have obligation to carry out system operation, including the procurement of ancillary services, pursuant to the terms of a system operation licence issued by the Commission to such licensee.

66. — (1) Subject to such terms and conditions as the Commission may fix in the licence, a system operation licence shall authorise the licensee to carry on system operation, including, but not limited to, the following activities as may be specified in the licence:

System
operation
licence.

(a) generation scheduling, commitment and dispatch;

(b) transmission scheduling and generation outage co-ordination;

(c) transmission congestion management;

(d) international transmission co-ordination;

(e) procurement and scheduling of ancillary services and system planning for long term capacity;

(f) administration of the wholesale electricity market, including the activity of administration of settlement payments, in accordance with the market rules; and

(g) such other activities as may be required for reliable and efficient system operation.

(2) All contracts for procuring ancillary services shall be awarded according to an open transparent and competitive manner, pursuant to a procedure established by the Commission, unless the circumstances require otherwise and the Commission allows or requires an alternative method.

Distribution
licences.

67. — (1) Subject to such terms and conditions as the Commission may fix in the licence, a distribution licence shall authorise the licensee to construct, operate and maintain a distribution system and facilities, including, but not limited to, the following activities as may be specified in the licence:

- (a) the connection of customers for the purpose of receiving a supply of electricity;
- (b) the installation, maintenance and reading of meters, billing and collection;
- and
- (c) such other distribution service as may be prescribed for the purposes of this section.

(2) A distribution licensee may also have the obligation to provide electricity to its distribution costumers, pursuant to the terms of a trading licence issued by the Commission to the distribution licensee.

(3) A distribution licensee that has a trading licence issued under subsection (2) of this section may purchase power for resale from another trading licensee and may, with the prior approval of the Commission, purchase power from other sources except for the rights and obligations of the trading licence described in section 25 (a) novated to a distribution licensee under section 26, all contracts for bulk purchase of power by a distribution licensee shall be awarded according to an open, transparent, and competitive manner, pursuant to a procedure established by the Commission, unless the circumstances require otherwise and the Commission allows or requires an alternative method.

Trading
licences.

68. — (1) A trading licensee shall be permitted to engage in the purchasing, selling, and trading of electricity and the Commission shall have the authority to determine the terms and conditions of trading licences as may be appropriate in the circumstances, and having due regard to the nature of the activities in which the licensee intends to engage.

(2) The Commission may also issue temporary bulk purchase and resale licence, giving the licensee, the ability to purchase electrical power and ancillary services from independent power producers and successor generation companies for the purpose of re-sales to one or more other licensees, or to an eligible customer.

(3) All contracts for purchase of electrical power and ancillary services by the holder of such temporary licence shall be awarded according to an open, transparent, and competitive manner, pursuant to a procedure established by the Commission, unless the circumstances require otherwise and the Commission allows or requires an alternative method.

Restriction
on licences.

69. — (1) A licensee shall not, except as provided in section 26 (7), assign or cede his licence or transfer his undertaking, or any part thereof, by way of sale, mortgage, lease, exchange or otherwise without the prior consent of the Commission provided that, should the Commission determine that in any instance the circumstances so require, it may establish licence terms and conditions providing its specific or general consent for any or all of the foregoing.

(2) No licensee shall, without the prior written consent of the Commission, acquire by purchase or otherwise, or affiliate with, the licence or undertaking of any other licensee or person that is in the business of electricity generation, transmission, system operation, distribution, or trading, other than as provided for in sections 65(2), 67(2) and 68, provided that the Commission may, as part of its consent, impose conditions such as, but not limited to, adherence to codes of conduct approved by the Commission.

70. — (1) An application for a licence shall be made to the Commission in the form and manner prescribed and be accompanied by the prescribed fee and such information or documents as may be prescribed or as the Commission may require.

An application for a licence.

(2) Within thirty days after applying for a licence under subsection (1) of this section, the applicant shall, at his own expense, cause a notice of the application to be published in a newspaper circulating in the area in which he intends to operate as a licensee, and in a separate, national circulation, newspaper in accordance with such directions as may be given by the Commission, stating the period, prescribed by the Commission, within which objections or representation in connection with the application may be made to the Commission, and the Commission shall not issue any licence until all objections or representations received by the Commission have been considered and determined.

(3) An applicant for a licence who owns, or a licensee who acquires, more than ten per cent or such other percentage as the Commission may specify, of the shares in a body corporate which has applied for or holds another licence issued by the Commission shall disclose such interest to the Commission.

(4) Subject to subsection (5) of this section, if on consideration of an application that satisfies the requirements of subsection (1) of this section, the Commission is also satisfied that:

(a) the applicant is likely to comply with such provisions of this Act, including, without limitation, all codes of conduct, standards, regulations and licence terms and conditions, as apply to the service or system it intends to provide or operate and

(b) the grant of the licence is in the public interest; the Commission shall issue the appropriate licence, as the case may be, to the applicant.

(5) If on consideration of an application that satisfies the requirements of subsection (1) of this section, the Commission is not satisfied as to the additional matters referred to in subsection (4), it shall refuse to issue a licence to the applicant, but before refusing to issue the licence on the ground that it is not satisfied as to the matters referred to in subsection (4) of this section, the Commission shall notify the applicant in writing that it proposes to refuse the application and of its reasons for doing so, and shall afford the applicant an adequate opportunity to make representations in the matter.

(6) The period between the Commission's receipt of an application under subsection (1) of this section and all documents and information submitted in support

of it, and the date on which it notifies the applicant of the adequacy of the documents and information, shall not exceed one month.

(7) The period between the Commission's receipt of an application that satisfies the requirements of subsection (1) of this section, and the date on which the Commission notifies the applicant of its decision or proposed decision in accordance with subsection (4) or subsection (5), as the case may be, shall not exceed six months.

(8) Notwithstanding subsections (1) to (7) of this section, the Commission may establish simplified procedures for undertakings and businesses that are limited in size and scope so as to expedite the application and licensing process.

**Terms and
conditions of
licences.**

71. — (1) A licence shall be issued subject to such terms, and conditions as may be prescribed, or as the Commission may reasonably determine, including terms and conditions prescribing the use of a tariff methodology approved by the Commission under section 76.

(2) Without derogation from subsection (1) of this section, the terms and conditions of a licence may require the licensee to:

(a) enter into agreements on specified terms with other persons for the provision of or use of electric lines and associated equipment operated by the licensee;

(b) purchase power and other resources in an economical and transparent manner;

(c) refer disputes for arbitration, mediation, or determination by the Commission.

(3) In the case of a licence issued to an applicant referred to in section 70 (3), the licence may be issued subject to the condition that the licensee shall divest itself within a specified time of any holding of shares in another licensee or such other conditions, including adherence to codes of conduct, that the Commission determines to be in the public interest.

(4) In issuing or renewing a distribution licence, the Commission may impose a condition requiring the licensee to make such reasonable provision as may be specified by the Commission in the licence for the facilitation of rural electrification in the proximity of the service, having due regard to the tariff methodology established by the Commission under section 76.

(5) A licence may require the licensee to provide information to the Commission on a periodic basis, in such form and detail as the Commission may determine.

(6) Unless expressly indicated in the licence, the grant of a licence shall not hinder or restrict the grant of a licence to another person for a like purpose and, in the absence of such an express indication, the licensee shall not claim any exclusivity, provided that the Commission may allow a licensed activity to be exclusive for all or part of the period of the licence, for a specific purpose, for a geographical area, or for some combination of the foregoing

(7) A licence may contain terms and conditions for the licence to cease to have effect or to be modified or amended by the Commission in such circumstances as may be specified in the licence or as may be determined by the Commission.

(8) As a condition of its licence, every licensee shall, unless expressly exempted by its licence, prepare and submit to the Commission each year such accounting information as the Commission may require.

(9) The Commission shall include in each licence such details as it determines or are required regarding the rights and obligations of the licensee, and procedures to be followed, at the end of its licence term.

(10) A licence shall be valid for a period of up to , but not exceeding ten years, provided that the Commission may extend the period of a licence taking into account the nature of the undertaking or business, for an additional period not exceeding five years at a time it determines that it is in the public interest to do so.

(11) Every licence shall be deemed to contain a provision that the licensee comply with the market rules to the extent applicable to the licensee.

72. — (1) Subject to the provisions of this Act, the holder of a licence may apply for a renewal of the licence before it expires.

Renewal of licences.

(2) An application for renewal of a licence shall be made to the Commission in the form and manner and within the period prescribed by the commission, and it shall be accompanied by the prescribed fee, if any.

(3) Section 71 applies, mutatis mutandis, to the renewal of licences.

73. — (1) Subject to this section, the Commission may, at any time, amend a licence or any term or condition of a licence:

Amendment of licences.

(a) if the licensee requests the amendment; or

(b) if the amendment is pursuant to a condition of the licence imposed under section 71 (7); or

(c) upon receiving a complaint from any consumer, eligible customer, consumer association, association of eligible customers, or other licensee; or

(d) on its own initiative.

(2) Where a licensee makes an application for the amendment of a licence, the licensee shall publish a notice of the proposed amendments to the licence in accordance with such directions as may be given by the Commission, stating the period, prescribed by the Commission, within which objections or representations in connection with the amendments may be made to the Commission, and the Commission shall not amend any licence until all objections or representations received by the Commission have been considered and determined.

(3) In the case of an application proposing amendments to a licence of a licensee who provides services to an area covering a building or place occupied by the Federal Ministry of Defence for defence purposes, the Commission shall obtain the consent of the Federal Ministry of Defence before making the amendment to the licence.

(4) Before making amendments in a licence otherwise than on the application of the licensee, the Commission shall publish the proposed amendments, stating the

Period within which objections or representations may be made to the Commission, and the Commission shall not amend any such licence until all such objections or representations received by the Commission have been considered and determined.

Cancellation
of licences.

74.—(1) Upon:

(a) receiving a complaint from any consumer, eligible customer, consumer association, association of eligible customers or other licensee, or

(b) on its own initiative, the Commission may inquire into the conduct or functioning of any licensee in carrying out the licensee's obligations under this Act, rules or regulations, codes of conduct, or the terms and conditions of the licence.

(2) Subject to this section, and after an inquiry, including an opportunity for the licensee to show cause as to why the licence should not be cancelled, the Commission may cancel any licence if, in its opinion:

(a) the licence was issued through fraud or the misrepresentation or nondisclosure of a material fact by the licensee; or

(b) the licensee has willfully or unreasonably contravened any provision of this Act that is applicable to the licensee; or

(c) the licensee has failed to comply with any term or condition of the licence, the breach of which is expressly declared by such licence to render it liable to cancellation; or

(d) the financial position of the licensee is such that he is unable to fully and efficiently discharge the duties and obligations imposed by the licence.

(3) Before cancelling a licence under subsection (2) of this section, the Commission shall notify the licensee in writing of its intention to cancel the licence concerned and the reasons for doing so, and shall allow the licensee an opportunity to demonstrate, within 60 days following the delivery of such a notification, that circumstances have changed such that cancellation may no longer be warranted.

(4) If, at the expiry of the inquiry and any further opportunity to be heard, under subsections (2) and (3) of this section, the Commission is satisfied for any reason specified in subsection (2) of this section that it is in the public interest that the licence concerned should be cancelled, the Commission may, by notice in writing to the licensee, cancel the licence or take such other action as it considers appropriate.

(5) Notwithstanding subsections (2) to (4) of this section, instead of cancelling a licence, the Commission may allow the licence to remain in force, subject to such further terms and conditions as it may deem necessary to impose, and such terms and conditions shall form part of the licence.

(6) In the event that the Commission decides to cancel licence, it shall serve on the licensee a notice of cancellation fixing the date on which the cancellation shall take effect and the Commission may make orders in regard to the under taking of the licensee, including an order for the sale of the undertaking of the licensee, as are, in the opinion of the Commission, necessary for maintaining continuity in the provision of electricity service.

75 — (1) Without derogation from its powers under section 74, where the Commission is satisfied that a licensee is contravening, has contravened or is likely to contravene any of the conditions of the licence, the Commission may serve upon the licensee an order:

Enforcement
of licences.

(a) requiring the licensee to do, or not to do, such things as are specified in the order for the purpose of rectifying or avoiding any contravention or threatened

contravention of any condition of the licence; and

(b) Stipulating the period within which any requirement referred to in subsection (1) (a) of this section shall be commenced and completed; and notice of the order shall be published by the Commission in such manner as it considers appropriate to draw the attention of other persons affected or likely to be affected by the contravention or threatened contravention of the licence.

(2) Before serving an order in terms of subsection (1) of this section, the Commission shall serve a notice upon the licensee concerned:

(a) specifying the grounds upon which the order is to be issued and what the Commission considers reasonably necessary for the purpose of rectifying or avoiding any contravention or threatened contravention of any condition of the licence;

(b) stipulating the maximum period that the Commission considers reasonable for the implementation of any requirement it proposes to order; and

(c) allowing the licensee, to make representations to the Commission within such period from the date of service of the notice as it shall specify.

(3) After considering any representations made under subsection (2) (c) of this section, the Commission may serve, or refrain from or defer serving, an order in terms of subsection (1), or serve an order on different terms.

(4) An order served under subsection (1) of this section may specify a penalty for each day that the licensee subjected to the order is in default of compliance with the order, not to exceed ten thousand Naira for each such day.

76. — (1) The following activities are subject to tariff regulation:

Tariffs

(a) generation and trading, in respect of which licences are required pursuant to this Act, and where the Commission considers regulation of prices necessary to prevent abuses of market power; and

(b) transmission, distribution and system operation, in respect of which licences are required under this Act.

(2) Prices for the activities referred to in subsection (1) of this section shall be regulated according to one or more methodologies adopted by the Commission for regulating electricity prices and such tariff methodologies shall:

(a) allow a licensee that operates efficiently to recover the full costs of its business activities, including a reasonable return on the capital invested in the business;

(b) provide incentives for the continued improvement of the technical and economic efficiency with which the services are provided;

(c) provide incentives for the continued improvement of quality of services;

(d) give to consumers economically efficient signals regarding the costs that their consumption imposes on the licensee's business;

(e) avoid undue discrimination between consumers and consumer categories; and

(f) phase out or substantially reduce cross subsidies.

(3) The Commission shall take into account any subsidy provided by the power Consumer Assistance Fund under this Act or from any other source, whether direct or by way of favourable financing terms, or in any other manner, in establishing its tariff methodologies.

(4) Notwithstanding subsection (2) of this section the Commission shall have

the authority to establish tariff methodologies that reflect the terms and conditions of a contract between licensees or between a licensee and one or more eligible customers.

(5) Notwithstanding subsection (2) (e) of this section, in establishing tariff methodologies the Commission may differentiate among consumers on the basis of differences in total electricity consumption, the time periods on which electricity is consumed, load factors, power factors, voltage levels, location within the country and other such criteria as may affect the cost of providing a service and may allow a lifeline tariff for some consumers.

(6) Prior to approving a tariff methodology, the Commission shall give notice in the Official Gazette, and in one or more newspapers with wide circulation, of the proposed establishment of a tariff methodology, indicating the period within which objections or representations in connection with the same may be made to the Commission.

(7) In preparing a tariff methodology, the Commission shall:

(a) consider any representations made by licence applicants, other licensees, consumers, eligible customers, consumer associations, associations of eligible customers and such other persons as it considers necessary or desirable;

(b) obtain evidence, information or advice from any person who, in the Commission's opinion, possesses expert knowledge which is relevant in the preparation of the methodology.

(8) The Commission shall fix the date on which the tariff methodology shall come into operation and it shall cause notice to be given in the official gazette of that date.

(9) If it appears to the Commission that a tariff methodology should be changed, the Commission shall give notice in the Official Gazette, and in one or more newspapers with wide circulation, of the proposal to change the methodology, indicating the period within which representations in connection with the proposal may be made.

(10) After taking into account any objections or representations received in response to a notice issued under subsection (9) of this section, the Commission may confirm the proposed changes to the tariff methodology and the provisions of subsection (8) shall apply *mutatis mutandis*.

(11) Every person upon whom any function has been conferred or imposed in connection with setting tariffs, shall be bound by a tariff methodology that has come into operation under subsection (8) or subsection (10) of this section.

(12) Every licensee shall keep at his office a current copy of the tariff methodology applicable to that licensee and shall make a copy available for inspection on request by any person free of any charge during the licensee's normal working hours.

(13) Any fines or penalties levied against a licensee in terms of this Act or any other law or regulation shall not be rechargeable to the licensee's customers.

(14) Any person or licensee who contravenes or condones the contravention of the provision of subsection (13) of this section shall be liable to a fine two times the charge to the licensee's customers or to imprisonment of not more than one year or to both such fine and imprisonment.

PART V — ACQUISITION OF LAND AND ACCESS RIGHTS

77. — (1) Where a generation licensee, transmission licensee or a distribution licensee, or a proposed licensee for generation, transmission or distribution services, requires any land in connection with its obligations under its licence or a proposed licence, such licensee may apply to the Commission, in such form as the Commission may prescribe, for a declaration that the land is required for purposes of generation, transmission or distribution of electricity.

(2) The Commission may call for such further information as the Commission may deem necessary in connection with an application submitted under subsection (1) of this section and in considering the application made under subsection (1) of this section, the Commission may invite and consider submissions from the Commissioner of Lands of the State where the concerned land is situated.

(3) After holding such enquiry as the Commission may consider necessary, the Commission may, subject to such exceptions as it may have included in the relevant licence and subject to such further conditions as it may specify, declare that the land identified by the licensee, with such modifications to its boundaries as the Commission may specify, is required for the purposes of generation, transmission or distribution of electricity.

(4) No such declaration shall be given without granting to the person having an interest in the land under consideration an adequate opportunity to make representations against such declaration.

(5) The Commission shall not act under subsection (3) of this section unless it is satisfied, upon representations made by the licensee or proposed licensee concerned, that the electricity generation, transmission or distribution concerned is not otherwise practicable.

Special provisions relating to generation, transmission and distribution companies.

(6) Following a declaration by the Commission under subsection (3) of this Section, the President, shall issue a notice in the Gazette to the effect that the land is required by the Government of the Federation for the public purpose of the Federation.

(7) Notwithstanding the provisions of subsection (3) of this section, the exceptions and conditions mentioned therein shall include such exceptions and conditions as appear to the Commission to be necessary or expedient for the purpose of ensuring:

(a) that the physical environment is protected;

(b) that there is no greater damage to streets or interference with traffic than is reasonably necessary; and

(c) that funds are available for meeting any liabilities which may arise from the exercise of any rights or powers under subsection (1) of this section.

(8) Any person who is aggrieved by any decision of the Commission made under subsection (3) of this section may appeal against such decision in accordance with this Act

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(9) Where the President issues a notice under subsection (6), the Governor shall, in accordance with the provisions of section 28 (4) of the Land Use Act, revoke the existing right of occupancy respecting the land and grant a certificate of occupancy in favour of the concerned licensee in respect of the land identified by the Commission in such notice and the grant of such certificate, the right of occupancy over the land shall vest in such licensee to the exclusion of the previous holder of the right of occupancy respecting the land, who shall be entitled to claim compensation in accordance with the provisions of the Land Use Act.

(10) A generation licensee, transmission licensee and distribution licensee shall be entitled to access rights over lands, buildings and streets for discharging its obligations under its licence to the extent and in the manner prescribed in regulations issued by the Commission.

(11) If a licensee, who has been given a right of occupancy over land under subsection (8) of this section, ceases to require the land for the purposes of the licensed activity, then the licensee shall offer the land to the previous holder of the right of occupancy, for repurchase at an amount equivalent to the amount of compensation paid to the previous holder under subsection (9) and the provisions of the Land Use Act and if the previous holder declines the offer to repurchase, the licensee may offer the right of occupancy to any other person on such terms and conditions as the Commission may direct.

Use of certain
conduits for
electricity
purpose.

78. — (1) in this section:

“authority” includes a local authority and a statutory body; “conduit” includes a tunnel or subway;

“relevant conduit” means:

(a) a water main or any other conduit maintained by a water authority for the purpose of conveying water from one place to another; or

(b) a public sewer.

(2) The functions of an authority with control of a relevant conduit shall include the power to:

(a) carry out, or to authorise any person to carry out, any works in relation to that conduit for or in connection with the installation, maintenance, adjustment, repair or alteration of apparatus for purposes connected with the transmission or distribution of electricity;

(b) keep the electricity apparatus installed in that conduit or to authorise any other person to keep that apparatus so installed;

(c) authorise any person to enter that conduit to inspect electricity apparatus kept installed there;

(d) enter into agreements on such terms, including terms as to the payments to be made to the authority, as it deems fit, in connection with the doing of anything authorised by or under this section; and

(e) carry on an associated business consisting of the making and carrying out of such agreements.

(3) where any enactment expressly or impliedly imposes any limitation on the use to which a relevant conduit may be put, that limitation shall not have effect so as to prohibit the doing of anything authorised by or under this section.

(4) Where the doing by an authority with control of a public sewer of anything authorised by this section would, apart from this subsection, constitute a contravention of any obligation imposed (whether by virtue of any conveyance or agreement or otherwise) on a licensee, the doing of that thing shall not constitute such a contravention to the extent that it consists in, or in authorising, the carrying out of works or inspections, or keeping of apparatus, wholly inside a public sewer.

(5) Subject to subsection (3) and (4) of this section, subsection (2) of this section is without prejudice to the rights of any person with an interest in land on, under or over which a relevant conduit is situated.

79. — (1) Any person who desires to construct or extend any railway, road or any works for telecommunications shall:

(a) give one month's notice in writing to the Commission of his intention to commence such construction or extension; and

(b) furnish the commission with a plan of the proposed railway, road or telecommunication works, together with the particulars showing the manner and position in which the railway, road or telecommunication works are intended to be constructed or extended and carried on and such further information as the Commission may require; PROVIDED that this subsection shall not apply to the construction or extension of works or telecommunication works as may be prescribed by the Commission.

Notice of construction of railways roads and telecommunication works and control of other works.

(2) If it appears to the Commission that:

(a) the operation of or the equipment to be used in connection with railway, road or telecommunication works referred to in subsection (1) of this section is likely to affect injuriously or interfere with the work or maintenance of electricity lines or the carrying on by a licensee of a system; or

(b) any electricity line is being affected injuriously or interfered with by the construction or operation of or the equipment used in connection with;

(i) a railway, road or telecommunication work referred to in subsection (1), or

(ii) any railway, road or telecommunication work or other operation whatsoever; the Commission shall notify in writing the person constructing or operating the railway or works of the action which that person is required to make in order to remedy or prevent the injury or interference.

(3) A person referred to in subsection (3) of this section who, after receipt of a notice in terms of that subsection, proceeds with the construction or operation of the equipment concerned or continues to operate the railway, road or telecommunication works without complying with the terms of that notice shall be liable to any licensee for all loss and damage caused to the licensee by the person's failure to comply with the terms of that notice.

PART VI — CONSUMER PROTECTION AND LICENSEE PERFORMANCE STANDARDS

Consumer
protection
standards

80. — (1) The Commission shall develop, in consultation with the licensees, the following materials:

(a) customer services standards;

(b) customer complaint handling standards and procedures;

(c) codes of practice for the provision of assistance to special needs customers, such as the blind or disabled, the elderly or severely ill;

(d) procedures for dealing with, and assisting where necessary, customers who have difficulty in paying bills;

(e) procedures for applying for electricity service;

(f) procedures for disconnecting non-paying customers or for those breach of other terms and conditions of an applicable tariff or contract; and

(g) the information to be provided to consumers and the manner of its dissemination;

(2) Standards and procedures developed by the Commission shall be adhered to by the applicable licensees and shall be published by the applicable licensees in such manner and by such means as the Commission may direct.

(3) The Commission shall establish standards for compensation to consumers who do not enjoy regular power supply.

81. — (1) The commission shall develop, in consultation with licensees and other interested parties, the following performance standards and codes:

Performance
standard and
codes.

(a) standards of overall performance in connection with the provision of electricity supply services and in connection with the promotion of the efficient use of electricity by consumers;

(b) such technical codes and manuals as many be required for the safe, reliable, and efficient operation of the system; and

(c) such other standards, codes, manuals as the Commission may require

(2) Standards, codes and manuals approved by the Commission pursuant to subsection (1) of this section shall be binding on the applicable licensees and shall be published by the applicable licensees in such manner as the Commission may direct.

(3) Different standards may be determined for different licensees under this section.

PART VII—COMPETITION AND MARKET POWER

82. — (1) The Commission shall have a continuing responsibility to monitor the Nigerian electricity supply industry in regard to its potential for additional competition and to report on this subject, each year to the Minister and until such time as the Minister has made a declaration under section 24 (3), the content of these reports shall be as prescribed by section 24 (2), thereafter, the content of these reports shall consider whether any of the regulated services in the Nigerian electricity supply industry ought to be exempted from tariff regulation.

Competition
and market
power.

(2) Upon a finding by the Commission that it is in the public interest, the Commission, after consultation with the Minister, shall determine when, and under what conditions, a regulated service may be exempt from tariff regulation, provided that a licence from the Commission shall continue to be required.

(3) This section shall not be construed to limit the Commission's authority to determine such matters as whether to restrict the introduction of competition to certain geographical areas or to certain licensees or customers on a temporary or permanent basis.

(4) The Commission shall determine the pre-conditions and any transitional arrangements required for a service to be offered competitively, including, codes of conduct, rules regarding access to information, access to the electric system, and constraints against undue discrimination in the offering of services.

(5) The Commission shall also have an ongoing responsibility to consider, in respect of services in competitive markets, the prevention or mitigation of abuses of market power, in its decisions and orders regarding matters such as, but not limited to, licence applications and the grant of licences; licence terms and conditions; the setting of prices and tariffs; and whether or not to approve a merger, acquisition or affiliation.

(6) In discharging its ongoing responsibility to monitor the electricity businesses and markets to determine whether there is, or may be, an abuse of market power, the Commission shall be entitled to:

- (a) require information from licensees;
 - (b) undertake inquiries; and
 - (c) establish or contract with an independent entity to provide monitoring services.
- (7) In the event that the Commission determines that there is an abuse of market power, it may:
- (a) issue cease orders as may be required; and
 - (b) levy fines not exceeding fifty million Naira

PART VIII — THE POWER CONSUMER ASSISTANCE FUND

Establishment of the Power Consumer assistance Fund.

83. — (1) The Commission shall set up and administer a fund under the name "Power Consumer Assistance Fund" to be used for the purposes specified in subsection (4) of this section.

(2) The Commission shall keep and manage the money and assets of the Power Consumer Assistance Fund and shall handle the procedures for disbursement from the Power Consumer Assistance Fund under this Act.

(3) The Power Consumer Assistance Fund shall consist of the following capital and assets:

- (a) the contributions delivered under section 85; and
- (b) any subsidies received from the Federal Government of Nigeria as appropriated by the National assembly.

(4) The Power Consumer Assistance Fund shall be used to subsidise underprivileged power consumers as specified by the Minister.

Contribution rates for the Power Consumers

84. — (1) The Commission shall determine the contribution rates to be sent by designated consumers and class of consumers and eligible customers to the power Consumer Assistance Fund and the subsidies to be disbursed from the Power Consumer Assistance Fund in accordance with policy directions issued by the Minister and subject to

Assistance Fund.

subsection (2) of this section.

(2) The Commission, while determining the contribution rates shall take into consideration the impact of such rates on eligible customers and consumers who have to assume the burden of such contributions.

Contribution payments for the Power

85 — (1) All consumers and eligible customers liable to make contributions under section 89 (1) shall make contributions to the Power Consumer Assistance Fund at the rates and for the duration specified by the Commission under section 84(1)

86. — Where the minister has determined that subsidy payments from the power Consumer Assistance Fund should be disbursed to distribution companies for electricity supplied to designated consumers, or classes of consumers, the Commission shall disburse the subsidy to such distribution companies at the rates and for the durations specified by the Commission.

Payments from the Power Consumers Assistance Funds.

87. — Any person who fails to pay to the Commission or a distribution licensee, within the prescribed time period, any amount owing under this Part shall be liable to a fine not exceeding three times the amount owed.

Fine for non Payment of money owed.

PART IX — RURAL ELECTRIFICATION

88. — (1) There is established an Agency, to be known as the Rural Electrification Agency, which shall be a body corporate capable of suing and being sued in its corporate name and, subject to this Act, of performing all acts that bodies corporate may by law perform.

Establishment and purpose of the Rural Electrification Agency.

(2) (a) The Agency shall consist of seven members six whom shall be appointed from the six geo-political zones

(b) The Minister shall draw up the structure of the Agency; provided that in the composition of the membership due regard shall be given to professional competence, stakeholder's interest and geographical spread.

(3) The head quarters of the Agency shall be at Abuja.

(4) The Minister shall, not later than one year from the date of commencement of this Act, prepare and submit for the approval of the president a sustainable and coordinated Rural Electrification Strategy and Plan for Nigeria.

(5) In preparing the Rural Electrification Strategy and Plan, the Minister shall invite and consider the submissions of the Commission and the Rural Electrification Agency.

(6) The Rural Electrification Agency, on such date each year as may be specified by the Minister, shall submit to the Minister annual audited statement of accounts of the Rural Electrification Fund

(7) The accounts shall be audited by auditors appointed by the Rural Electrification Agency with the approval of the Auditor - General of the Federation.

(8) The Agency shall not later than three months after the end of the financial year propose and submit to the Minister statement of accounts in respect of that financial year.

(9) The Minister shall, once in a quarter, submit to the President reports, prepared in consultation with the Rural Electrification Agency and the commission, on the progress and achievement of the Rural Electrification Strategy and Plan, which shall include information relating to:

- (a) the expansion of the main grid;
- (b) the development of isolated and mini-grid system; and

(c) renewable energy power generation.

(10) The Minister shall periodically evaluate the impact of the rural electrification programme.

(11) The Rural Electrification Agency shall set up and administer a fund under the name Rural Electrification Fund to be used for the purposes specified in subsection (13) of this section.

(12) The Rural Electrification Fund shall consist of the following capital and assets:

(a) any surplus appropriated pursuant to section 53 ;

(b) any fines obtained by the Commission pursuant to this Act;

(c) any donations, gifts or loans made by international agencies, State Governments, the Federal Government, local communities, businesses or any other entity;

(d) the contribution that may be made pursuant to section 90; and interest and other benefits accrued to the Rural Electrification Fund;

(e) monies appropriated by the National Assembly; and

(f) such percentage of the annual turnover of the licensee's as may be determined by the Commission.

(13) The purpose of the Rural Electrification Fund shall be to promote, support and provide rural electrification programmes through public and private sector participation in order to:

(a) achieve more equitable regional access to electricity;

(b) maximise the economic, social and environmental benefits of rural electrification subsidies;

(c) promote expansion of the grid and development of off grid electrification; and

(d) stimulate innovative approaches to rural electrification; provided that no part of the Rural Electrification Fund shall be used as subsidies for consumption.

Contribution
rates for rural
electrification.

89. — (1) To the extent required by the Rural Electrification Strategy and Plan and to cover any shortfall in the capital and assets of the Rural Electrification Fund, the Commission may determine the contribution rates to be sent to the Rural Electrification Fund by:

(a) eligible customers; and

(b) licensees as may be determined by the Commission.

(2) The Commission, while determining the contribution rates, shall take into consideration the impact of such rates on eligible customers and licensees who have to assume the burden of such contributions.

Contribution
payments for
rural
electrification.

90. — (1) All licensees and eligible customers liable to make contributions under section 89 (1) shall make contributions to the Rural Electrification Fund at the rates and for the duration specified by the Commission under section 89 (1).

(2) In making contributions to the Rural Electrification Fund, licensees and eligible customers shall pay contributions directly to the Rural Electrification Agency.

(3) All collections and payments shall be made in accordance with procedures established by the Rural Electrification Agency.

91. — (1) The Rural Electrification Agency shall, in consultation with the Minister:

Criteria for allocation of resources from the Rural Electrification Fund.

(a) establish objective and transparent criteria for the geographical allocation of resources from the Rural Electrification Fund and such criteria shall be determined taking into account:

- (i) the need for financial support from the Fund;
- (ii) progress in increasing rural electrification achieved through previous disbursements from the fund;
- (iii) the existence of local matching funding; and

(b) develop an open, competitive and transparent procedure for making disbursements from the Rural Electrification Fund to individual projects, including the establishment of eligibility and selection criteria.

(2) The eligibility criteria for the purposes of subsection (1) (b) of this section shall be determined taking into account:

- (a) the extent to which the proposed activity can demonstrate technical, economic and financial viability for a sustained period;
- (b) the extent to which the proposed activity demonstrates support for rural development taking into account the priorities of the local communities; and
- (c) the level of community and investor commitment to the proposed activity.

(3) The selection criteria for the purposes of subsection (1) (b) of this section, and the quantum of disbursement, shall be determined taking into account;

- (a) the resources available from the Rural Electrification Fund;
- (b) the cost of each new connection created under the project; and
- (c) other objective criteria that the Rural Electrification Agency may determine, such as tariff levels and quality of service.

92. Any person who fails to pay to the Rural Electrification Agency, within the prescribed time period, any amount owing under this Part shall be liable to a fine not exceeding three times the amount owed.

Fine for non-payment for amount owed.

PART X — OFFENCES

93. Any person who, in any declaration required to be made under this Act, makes any statement which he knows to be false or does not have reasonable grounds to believe to be true commits an offence and is liable on conviction to a fine not exceeding one hundred thousand Naira or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

False declarations.

Offences.

94. — (1) Any person who contravenes any provision of this Act or any regulations hereunder commits an offence and is liable on conviction, where no specific penalty is prescribed therefore:

(a) as a first offender, to a fine not exceeding one hundred thousand Naira or to imprisonment for a period not exceeding one year or to both such fine and imprisonment; or

(b) for subsequent convictions, to a fine not exceeding five hundred thousand Naira or to imprisonment for a period not exceeding three years or to both such fine and imprisonment.

(2) Any person who;

(a) fails or refuses to furnish a return or to supply information in the manner and in the time prescribed or furnishes a false or incomplete return or supplies false or incomplete information; or

(b) wilfully delays or obstructs an inspector or police officer in the exercise of the powers or duties conferred or imposed upon him by or under this Act; or

(c) fails or refuses, without reasonable cause, to give information to an inspector or a police officer when required to do so under section 95 or gives false or incomplete information;

commits an offence and is liable on conviction to a fine not exceeding one hundred thousand Naira or to imprisonment for a period not exceeding one year or to both such fine and imprisonment.

(3) Notwithstanding anything contained in any other law, any person who wilfully destroys, injures or removes equipment or apparatus of a licensee commits an offence and is liable on conviction to imprisonment for a period of not less than five years and not more than seven years.

PART XI — GENERAL

Inspectors.

95. — (1) The Commission may appoint persons employed by it to be inspectors for the purposes of this Act and shall furnish each person so appointed with a certificate stating that he has been appointed as an inspector.

(2) The inspectors shall, in addition to any other functions that may be assigned to them by the Commission, be responsible for inspecting undertakings to ensure the safety of operation and to investigate accidents.

(3) Subject to subsection (6) of this section, an inspector or a police officer may, at all reasonable times, enter the premises :

(a) of a licensee; or

(b) of any other person whereon he has reasonable cause to suspect an offence against this Act has been committed and shall have power to make such examination, inspection and inquiry and do such things as may appear to him necessary for

(4) Subject to subsection (6) of this section, all books, records, accounts and documents required to be kept by a licensee in terms of this Act shall be open to inspection at all reasonable times by an inspector or by a police officer.

(5) Subject to subsection (6) of this section, an inspector may inspect, at all reasonable times, a station or other equipment or apparatus or premises worked or used by or in the possession or under the control of a licensee.

(6) The powers of entry and inspection conferred by this section shall only be exercised in accordance with the consent of the person in charge of the premises concerned or in accordance with a search warrant issued by a magistrate having jurisdiction over such premises, upon an application made to such a magistrate by an individual appointed for such a purpose by the Commission.

(7) An inspector, or a police officer exercising powers conferred upon him by a search warrant issued under subsection (6) of this section, may seize any equipment, apparatus, book, record or document which he has reasonable cause to suspect will afford evidence of the commission of an offence against this Act and may retain it for so long as may be necessary for the purpose of any examination, investigation, trial or inquiry.

(8) An inspector shall, on demand by any person affected by the exercise of the powers conferred upon him by this section, exhibit the certificate issued to him under subsection (1) of this section.

96. — (1) The Commission may, make regulations prescribing all matters which by this Act are required or permitted to be prescribed or which, in the opinion of the Commission, are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Regulation.

(2) Without derogation from the generality of subsection (1) of this section, regulations made in terms of subsection (1) of this section may provide for any or all of the following:

(a) the administration of the affairs of the Commission, including, *inter alia*, the holding of meetings, hearings and proceedings, arbitration and mediation proceedings, the conduct of inquiries and investigations, becoming a party, the handling of information, the rules by which evidence shall be taken, and generally the conduct of its business;

(b) the duties, powers, rights, and obligations of a licensee;

(c) the procedure for applying for licences, requirements for information and documentation to be submitted by applicants;

(d) the procedure for amending or cancelling licences;

(e) the determination of the standards of performance that will be required from licensees;

(f) the information that will be required from licensees and the manner and form by which it shall be provided;

(g) the method and manner of valuation of services that may be charged by licensees for their services will be determined;

(h) fees, levies, and other charges that may be payable by licensees, eligible customers or consumers;

(i) the regulation of licensee investments, assets and properties, and the interest in such assets and properties, in connection with the electricity industry;

(j) customer-related matters, such as complaint handling procedures, practices concerning customers with difficulties paying bills, connection and disconnection procedures;

(k) the resource procurement policies of, and the associated contracting by, the licensees, including, as may be applicable, the review and approval of same;

(l) the regulatory treatment of rural electric schemes and investments;

(m) procedures for addressing licensee mergers, acquisitions, affiliate relationships and transactions;

(n) procedures for market power monitoring, mitigation and enforcement;

(o) the terms and conditions for the provision of system access by transmission and distribution licensees to other entities;

(p) fines and penalties that may be payable by licensees or consumers for violations of those things for which they may be levied under this Act; and

(q) such other regulations as may be required.

(3) Regulations made pursuant to subsection (1) may provide for the imposition of penalties not exceeding ten thousand Naira or, in default of payment, imprisonment for a period not exceeding six months for contravention of the regulations.

(4) Regulations made under this section shall be published in the official Gazette by the Commission.

97. — (1) If an inspector, a police officer, a Commissioner or an employee of the Commission acquires, in the course of his duties, information relating to the financial affairs of any person, or to any commercial secret, or if any other person indirectly acquires such information from an inspector, a police officer, a Commissioner or an employee of the Commission, he shall not for personal gain make use of such information, nor disclose it to any other person except:

(a) for the purpose of legal proceedings under this Act or any other law;

(b) to the extent that it may be necessary to do so for the purpose of this Act or any other law; and

(c) to another inspector and commissioner or employee of the Commission.

(2) No Inspector, Police Officer, Commissioner or employee of the Commission shall, for personal gain, make use of any information acquired by him in the course of his duties for a period of five years after the date on which he ceased to be an inspector, Commissioner or employee.

(3) Any person who contravenes subsection (1) or (2) of this section commits offence and is liable on conviction to the forfeiture of any proceeds accruing to him on

Disclosure of confidential information and use of information acquired by, etc. for personal gain.

account of the contravention and to a fine not exceeding five hundred thousand Naira or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

PART XII— CONSEQUENTIAL AND TRANSITIONAL PROVISIONS

98.—(1) Any regulations, by-laws or notices which, immediately before the initial transfer date, were in force under the Electricity Act or the National Electric Power Authority Act shall continue in force, mutatis mutandis, as if they had been made by the Commission under this Act, and may be amended or repealed upon the issuance of regulations by the Commission in accordance with the provisions of this Act.

Consequential
and
transitional
provisions
Cap. 106 LFN
1990
Cap. 256
LFN 1990

(2) Any licence, certificate, authority or permit which was issued in terms of the Acts referred to in subsection (1) of this section and which had effect immediately before the initial transfer date shall continue to have effect, mutatis mutandis, for the remainder of its period of validity as if it had been issued under the appropriate provision of this Act.

(3) Any tariff, price, levy or surcharge which, immediately before the initial transfer date, was chargeable within any area in respect of the provision of electricity to consumers or to any particular consumer or any undertaker shall, on and after the initial transfer date and until alternative provision is made pursuant to this Act, continue to be chargeable in respect of the provision of electricity, to those or similar consumers by a licensee who provides electricity within the area concerned.

(4) Subject to this Act, any right in or over land or water which, immediately before the initial transfer date, vested in any person pursuant to the Electricity Act or the National Electric Power Authority Act shall, on and after the initial transfer date, continue to vest in the initial holding company concerned as if it had been acquired in terms of this Act.

(5) Subject to this Act, any permission granted, direction given or other thing whatsoever made, done or commenced which, immediately before the initial transfer date, had or was capable of acquiring force and effect pursuant to the Electricity Act or the National Electric Power Authority Act, shall, on and after the initial transfer date, continue to have, or, as the case may be, to be capable of acquiring, force and effect as it had been granted, given, made, done or commenced, as the case may be, pursuant to the equivalent provision of this Act.

(6) The provisions of the Utilities Charges Commission Act 1992, as amended, shall not apply to any person to whom a licence has been issued under this Act, in respect of the licensed activities of that person

99. The Electricity Act and the National Electric Power Authority Act as amended are hereby repealed.

Repeal of
Cap. 256
LFN 1990

PART XIII— INTERPRETATION AND CITATION

100.—(1) In this Act:

Interpretation.

“affiliate” in relation to a licensee means any holding company or subsidiary of the licensee or any subsidiary of a holding company of a licensee, and, unless the

Commission decides to the contrary, subsidiary status shall be presumed to arise from the ownership of or the power to vote, directly or indirectly, ten percent or more of the voting securities of such entity and holding status shall be determined accordingly ;

“ancillary services” means those functions necessary for reliable operation of a power system , which may include , but are not limited to, services that would provide or permit the following:

- (a) facilities scheduling , control and dispatch ;
- (b) reactive power and voltage control ;
- (c) frequency regulation ;
- (d) operating reserves ; and
- (e) black start ;

“Authority” means the National Electric Power Authority established pursuant to the National Electric Power Authority Act ;

“Bureau of Public Enterprises” means the Bureau of Public Enterprises established pursuant to the Public Enterprises (Privatisation and Commercialisation Act) ;

“captive generation” means generation of electricity for the purpose of consumption by the generator and which is consumed by the generator itself and not sold to a third party ;

“Code of Conduct” means any rules established by the Commission governing behaviour, relationships, and practices between licensees and their affiliates ;

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

“Companies and Allied Matters Act” means the Companies and Allied Matters Act Cap. 59 LFN 1990, as amended.

“Competition Transition Charge” means any charge established under section 29 of the Act;

“consumer” means any end-user of electricity who is a customer of a distribution licensee that is not an eligible customer and, for purposes of filing a complaint with the Commission and for any other reason that the Commission may determine a person who

is temporarily disconnected or otherwise without service provided that a person who has

applied for, but has yet to receive, service shall also be deemed to be a consumer ;

“control area” means a transmission system or interconnected transmission systems and interconnected generating units, bounded by metering and telemetry equipment that permits a system operator to apply a generation control scheme in order to :

- (a) match the electrical output of the generating stations within the control area and energy purchased from entities outside the control area, less energy

(b) maintain scheduled interchange with other control areas, within the limits of good utility practice;

(c) maintain the frequency of the control area's electric power systems within reasonable limits in accordance with good utility practice;

(d) maintain power flows on transmission facilities within appropriate limits to preserve reliability; and

(e) provide sufficient generating capacity to maintain operating reserves in accordance with good utility practice;

"Cross subsidies" means the subsidisation of one class or group of consumers by another class or group of consumers ;

"distribution" means the delivery of electricity over a distribution system;

"distribution licence" means a licence granted pursuant to section 67 ;

" distribution system" means the system of facilities, as defined by the Commission, consisting wholly or mainly of low voltage (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 system;

"Electricity Act" means the Electricity Act Cap. 106 LFN 1990, as amended;

" eligible customer" means a customer that is eligible, pursuant to a directive or directives issued by the Minister under section 27, to purchase power from a licensee other than a distribution licensee;

"generation" means the production at a generating station of electric power and other generation products such as, but not limited to, reactive power;

"generating licence" means a licence issued under section 64;

"generating station" means a station for generating electricity, including buildings, plant and machinery and all accessories used for that purpose and the site to be used for the station or accessories;

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

"Independent power producer" means an entity that is granted a generation licence under section 64 (3) (b) ;

"independent system operator" means a system operator that, under section 26 (7), is not affiliated with an entity holding a transmission licence;

"initial holding company" means the company formed under section I;

"Initial transfer date" means the date fixed by the National Council on Privatisation under section 3 (I) ;

"land" means land, tenements, hereditaments and appurtenances, or any estate or interest therein;

"licence" means a licence issued by the Commission under Part IV of this Act;

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

“lifeline tariff” means a tariff set by the Commission with prices that incorporate cross subsidies by other customers and which may be enjoyed by such group of consumers as the Commission may designate under section 76 (5) ;

“local authority” means a local government, municipal council, town council, rural district council or local board ;

“market power” means the ability of a seller or group of sellers to maintain prices above competitive levels, or to maintain stable prices while reducing the quality of product or service provided, for a significant period of time;

“market rules” means rules approved under section 26 (2) ;

“Land Use Act” means the Land Use Act Cap. 202 LFN 1990, as amended ;

“Minister” means the Honourable Minister of Power and Steel, or any other Minister to whom the President may from time to time assign administrative functions in respect of this Act ;

“National Council on Privatisation” means the council established under section 8 of the Public Enterprises (Privatisation and Commercialisation) Act ;

“National Electric Power Authority Act” means the National Electric Power Authority Act Cap. 256 LFN 1990, as amended ;

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

“Power Consumer Assistance Fund” means the fund established under Part VIII of this Act ;

“Public Enterprises (Privatisation and Commercialisation) Act” means the Public Enterprises (Privatisation and Commercialisation) Act ;

“relative” means spouse, child, parent, brother, sister, uncle, aunt, in-laws,

cousins, and, where applicable, their spouses ;

“six geo-political zones” for the time being means North Central (consisting of Benue State, Nassarawa State, Niger State, Kogi State, Plateau State, Kwara State FCT); North East (consisting of Bauchi State, Borno State, Gombe State, Yobe State, Adamawa State and Taraba State), North West (consisting of Kano State, Kaduna State, Katsina State, Jigawa State, Kebbi State, Sokoto State, Zamfara State), South-South (consisting of Delta State, Edo State, Rivers State, Akwa Ibom State, Cross River State, Bayelsa State), South East (consisting of Anambra State, Abia State, Enugu State, Ebonyi State, Imo State), South West (consisting of Lagos State, Oyo State, Ogun State, Ogun State, Ondo State, Ekiti State) under section 34 (2) of this Act ;

(b) any drift in the line of such street, highway or road;

(c) any approach, culvert, cutting, dam, ditch, drain, embankment, fence, grid, guard, kerb, parapet, subway or other work or thing belonging to or connected with or forming part of such street, highway or road; and

(d) any sanitary lane or private street;

"Successor company" means a successor company, formed pursuant to section 8 of this Act, to take over designated functions of the initial holding company;

"successor generating company" means the successor company that is granted a generation licence under section 64 (3);

"system operation" means the operation of one or more transmission systems and

"system operator" shall be construed accordingly;

"system operation licence" means a licence granted under section 66;

"tariff" means a tariff approved by the Commission pursuant to Part IV of this Act that specifies the prices, terms and conditions under which electricity service is to be provided;

"temporary bulk purchase and resale licence" mean a licence issued under section 68 (2);

"trading" means any form of marketing, brokering or intermediation in the sale of electricity, whether or not it entails the purchase of electricity for resale, or whether or not title is taken to the electricity sold;

"trading licence" means a licence issued pursuant to section 67;

"transfer order" means an order issued by the National Council on Privatisation pursuant to section 10 (1) of this Act;

"transferee" means a person to whom employees, assets, liabilities, rights and obligations are transferred by a transfer order;

"transmission" means the conveyance of electric power and energy over a transmission system;

"transmission licence" means a licence issued under section 65 ;

"transmission system" means a system, as defined by the Commission, consisting wholly or mainly of high voltage (greater than or equal to 132kV) electric lines for the conveyance of electricity within an undertaking or from one undertaking to another, including any transmission lines, transformers, switchgear and other works necessary for and used in connection with such electrical equipment, and the buildings as may be required to accommodate the transformers, switchgear and other works; and

"Undertaking" means any undertaking which generates transmits, distributes or supplies electricity, with all the assets and liabilities appertaining thereto.

101. This Act may be cited as the Electric Power Sector Reform Act. 2004.

Citation.

EXPLANATORY MEMORANDUM

This Act provides for the formation of companies to take over the functions, assets, liabilities, and staff of the National Electric Power Authority; develop competitive electricity markets; establish the Nigeria Electricity Regulatory Commission; provide for the licensing and regulation of the generation, transmission, distribution and supply of electricity ; enforce such matters as performance standards, consumer rights and obligations and to provide for the determination of tariffs.

SCHEDULE TO THE ELECTRIC POWER SECTOR REFORM ACT, 2005

<i>(1)</i> <i>Short Title of the Bill</i>	<i>(2)</i> <i>Long Title of the Bill</i>	<i>(3)</i> <i>Summary of the Contents of the Bill</i>	<i>(4)</i> <i>Date passed by Senate</i>	<i>(5)</i> <i>Date passed by House of Representatives</i>
Electric Power Sector Reform Bill, 2004	An Act to Provide for the formation of companies to take over the functions, Assets, liabilities and staff of the National Electric Power Authority, to develop competitive electricity markets, to establish the Nigeria Electricity Regulatory Commission, to provide for the licensing and regulation of the Generation, Transmission, distribution and supply of electricity; to enforce such matter as performance standard, consumers rights and obligations; to provide for the determination of tariffs, and for related matters.	This Bill seeks to provide for the formation of companies to take over the functions, assets, liabilities, and staff of the National Electric Power Authority; develop competitive electricity markets; establish the Nigeria Electricity Regulatory Commission; provide for the licensing and regulation of the generation; transmission, distribution and supply of electricity; enforce such matter as performance standards, consumer rights and obligations and to provide for the determination of tariffs.	19th August, 2004.	15th December, 2004.

I certify that this Bill has been carefully compared by me with the decision reached by the National Assembly and found by me to be true and correct decision of the Houses and is in accordance with the provisions of the Acts Authentication Act Cap. A2, Laws of the Federation of Nigeria, 2004.

IBRAHIM SALIM, CON
Clerk to the National Assembly
24th Day of February, 2005

I ASSENT.



CHIEF OLUSEGUN OBASANJO, GCFR
President of the Federal Republic of Nigeria
11th Day of March, 2005.