



ELIGIBLE CUSTOMER REGULATIONS, 2017

NIGERIAN ELECTRICITY REGULATORY COMMISSION

Simplified Summary

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Clean Tech Incubation & Acceleration Foundation
Energy Innovation Center





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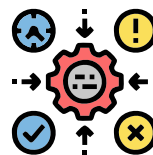


EXECUTIVE SUMMARY

The regulation governs the supply of electricity to eligible customers – whose eligibility may be declared by the Minister of Power from time to time

The Eligible Customer Regulation permits electricity generation companies (GenCos) and Independent Power Producers (IPPs) to by-pass the Bulk Trader (the Nigerian Bulk Electricity Trading Plc (NBET)) and distribution companies (DisCos) in order to sell electricity directly to "Eligible Customers" as defined by the regulation.

This Guide provides a simplified summary of the regulation for stakeholders across the power sector value chain. It provides much needed context to the regulation, including - description of the Minister's declarations, the target stakeholders, key provisions, rights and obligations of parties, rules, pricing and costs, required documentation by all parties, and current status of its implementation.



CONTEXT

Prior to the declaration of the eligibility criteria, customers were only permitted to purchase electricity from licensed distribution companies (DisCos) except for industrial, commercial, and residential customers (off-grid IPPs or captive generators) who generate their own power. Following a nationwide stakeholder consultation held by the Nigerian Electricity Regulatory Commission (NERC), the Eligible Customer Regulation was issued on the 6th of November, 2017.

The regulation governs the supply of electricity to eligible customers – whose eligibility may be declared by the Minister of Power from time to time, and in line with Section 27 of the Electric Power Sector Reform Act (EPSRA) 2005.

End use customers that meet the conditions specified in the declaration of the Minister may apply for Eligible Status upon provision of the requirements stated in the regulation.

LEGAL FOUNDATION

The legal foundation of the Eligible Customer Regulation is set out in the Electric Power Sector Reform Act (EPSRA) 2005. Section 27 of the EPSRA on Eligible Customers states that "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." The regulation follows the Minister's declaration. Section 26, sub-section (1) (a), (b), (d) also provides obligations under which eligible customers shall purchase power from the electricity generation company or Independent Power Producer.

STAKEHOLDERS



This regulation applies to electricity actors across the value chain of the electricity market. Key private sector beneficiaries include:

- High electricity consumers such as manufacturing, industrial, and commercial facilities.
- Independent Power Producers and Investors.
- Electricity Generation companies.
- Electricity Distribution companies.

OBJECTIVES



The objective of the regulation is to provide standard rules to achieve the following:

- Facilitate competition in the supply of electricity; promote the rapid expansion of generation capacity, as well as the opportunity for improvement in the quality of supply.
- Encourage third party access to transmission and distribution infrastructure as a precursor to full retail competition in the Nigerian electricity market.
- Allow licensed generation companies with un-contracted capacity to access un-served and underserved customers thus improving the financial liquidity of the electricity industry.
- Enhance the stability and operational efficiency of generation companies arising from the flatter load profiles of Eligible Customers and possibly lower technical losses, depending on the required network interconnection.

Eligible customers in this category must have entered into a bilateral agreement with the distribution licensee; licensed to operate in the location

MINISTERIAL DECLARATION LISTING THE FOUR CATEGORIES OF ELIGIBLE CUSTOMERS

- End user or group of end-users registered with NERC whose consumption is no less than 2MWhr/h connected to a metered 11kV or 33kV delivery point on the distribution network and subject to a distribution use of system agreement for the delivery of electrical energy
- End users or group of end-users connected to a metered 132kV or 330kV delivery point on the transmission network under a transmission use of system agreement for connection and delivery of energy
- End user or group of end users with consumption in excess of 2MWhr/h on monthly basis, and connected directly to a metered 33kV delivery point on the transmission network under a transmission use of system agreement. Eligible customers in this category must have entered into a bilateral agreement with the distribution licensee; licensed to operate in the location for the construction, installation and operation of a distribution system for connection to the 33kV delivery point.
- End user or group of end users, whose minimum consumption is more than 2MWhr/h over a period of one month and directly connected to the metering facility of a generation company, and who have entered into a bilateral agreement for the construction and operation of a distribution line with the distribution licensee licensed to operate in the location
- On 15th May, 2017, the Federal Minister of Power, Works & Housing, Babatunde Raji Fashola, declared these four categories of eligible customers in the Nigerian Electricity Supply Industry (NESI)

Site Aggregation Requirements

A group of end-users may combine multiple sites and apply for eligibility status from NERC with each application being considered on its own merit. In considering such applications, applicants must fulfil site aggregation requirements.

- a. Each Eligible Customer in the sites to be aggregated is connected to the same Distribution Licensee's network, an independent electricity distribution network (IEDN) or an off-grid licensee and are connected to the same feeder.
- b. The applicant is a single legal entity which may be a special purpose vehicle who shall apply for eligibility status on behalf of the group of end-users and shall execute the transaction documents.
- c. There is a minimum consumption of 500KVA at each site and all located within the same geographical network as may be determined by NERC from time to time.

KEY PROVISIONS

Metering Requirements



An end-user seeking to attain eligibility status shall procure and install appropriate metering infrastructure at all trading points in compliance with the Metering Code and such meters shall have remote reading capability for the measurement of active power, reactive power, peak demand and profiling of real load.



Contractual Requirements

A group of end-users may combine multiple sites and apply for eligibility status from NERC with each application being considered on its own merit. In considering such applications, applicants must fulfil site aggregation requirements.

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c. There is a minimum consumption of 500KVA at each site and all located within the same geographical network as may be determined by NERC from time to time.

Financial Requirements

Applicants shall post a Letter of Credit or Bank Guarantee in favour of the Market Operator in accordance with the Market Rules to cover market administration charges, Transmission Use of System (TUoS) charges as well as other charges – "as may be approved by the Commission".

Criteria to Supply Power to Eligible Customers

A supplier may offer to sell electricity to an eligible customer if it possesses the required licences – generation license and trading license.

Procedure for Grant of Eligible Customer Status

The applicant and supplier shall provide documentary evidence to NERC showing completion of relevant preconditions and provision of supporting documents as required.

ELIGIBLE CUSTOMER

Rights

Network Access
Supplier Choice

Obligations

- Enter into a contract for supply with the licensee.
- Enter into a contract to access the transmission and distribution network.
- Comply with the requirements for off-take on contracted quantities of electricity.
- Meet all financial obligations in a timely manner.
- Notify the Commission of any change in corporate identity, address and service location.

SUPPLIER

Rights

The rights of the supplier are as provided in the Power Purchase Agreement (PPA), Transmission Use of System (TuOS), Distribution Use of System (DUoS), Market Participation Agreement and Terms and Conditions of licence.

Obligations

- Regularly submit all required data to the transmission or distribution licensees.
- Notify the eligible customer in writing about all types of services which are paid for by the customer as well as other possible conditions.
- An existing supplier whose supply contract is to be terminated shall not set any special additional condition outside the contract including unpaid obligations and shall be guided by the provision of the Market Rules.

RIGHTS AND OBLIGATIONS OF SERVICE PROVIDERS

The rights and obligations of the Service Providers - Transmission Service Provider, Market Operator, Distribution Service Provider, and System Operator - are as provided in the technical codes, market rules, agreements and licence terms and conditions.

ACCESS TO TRANSMISSION AND DISTRIBUTION NETWORKS

An eligible customer or its supplier shall be granted access to the transmission and distribution network for the purpose of delivery of electricity pursuant to the contract for use of network.

SWITCHING RULES

Approval of Power Purchase Agreements



NERC shall approve all Power Purchase Agreements (PPAs) with prospective suppliers before the commencement of service.

Exit from Distribution Licensee Network



An eligible customer that intends to exit from a distribution licensee's supply shall provide a minimum of 3 months' notice to the supplier. A waiver may be allowed for force majeure events but subject to verification by NERC.

Procedure for Supplier Switching

- Notification of intent to current supplier.
- Execution of a PPA with the new supplier and other industry agreements prior to terminating the existing PPA.
- Submission of executed PPA to NERC by new Supplier, and notification to the System Operator, Market Operator, supplier of last resort and NERC.
- Submission of data on accounting balance and metering data of the eligible customer to the previous and new supplier by the Market Operator.

Reconnection to Distribution Licensee Network



- An eligible customer wishing to reconnect to a distribution licensee's supply network shall provide a minimum of 3 months' notice of intent.



Tariff

- The applicable tariff for the eligible customer on reconnection to the distribution licensee shall be at the prevailing tariff rates for customers in the same tariff class.

PRICING AND COST OF SUPPLY

Pricing



The price at which a supplier delivers power to an eligible customer may (in addition to capacity and energy charges negotiated in the PPA) include TUoS charges, DUoS charges, regulatory fees, ancillary service charges, and market administration and system operation charges.

Power Consumer Assistance Fund

The purpose of the fund is to subsidize underprivileged power consumers as specified by the Minister.

NERC may determine the rate of contributions to be made by Eligible Customers to the Power Consumer Assistance Fund in accordance with the Electric Power Sector Reform Act.

Competition Transition Charge

The Minister may upon consultation with the President, issue a directive for the collection of Competition Transition Charges (CTC) from eligible customers in accordance with Section 28 of the Electric Power Sector Reform Act. The purpose of the CTC is to compensate the Discos for the eligible customer leaving their network. This will be implemented if the Minister determines that the ECR will result in decreasing electricity prices to an extent where the Disco will have inadequate revenue to enable payment for its committed expenditures despite efficient management.

Metering, Billing and Settlement



Metering, billing and settlement of invoices for eligible customers shall be in line with the provisions of the Metering Code and the market rules.

Rural Electrification Fund



NERC may determine the contribution rates to be made by eligible customers to the Rural Electrification Fund in accordance with the Electric Power Sector Reform Act.

Balancing



Treatment of energy differences may arise when:

- An eligible customer is unable to take the generated contracted quantities; or
- A generator is unable to deliver contracted quantities.

OTHER PROVISIONS

Phasing of Implementation



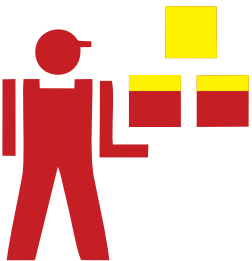
There shall be a phased approach to the introduction of declared classes of eligible customers as a precursor to the eventual introduction of retail competition and the licensing of traders in the medium-term market of the Nigeria Electricity Supply Industry (NESI).



Dispute Resolution

All disputes between parties in connection with this Regulation shall be resolved in accordance with the dispute resolution clauses of the respective agreements governing their relationship and the dispute resolution mechanism in the market rules (where applicable).

Supplier of Last Resort



A supplier of last resort shall act as the contingent supplier to an eligible customer in the event of a failure by the contracted supplier.

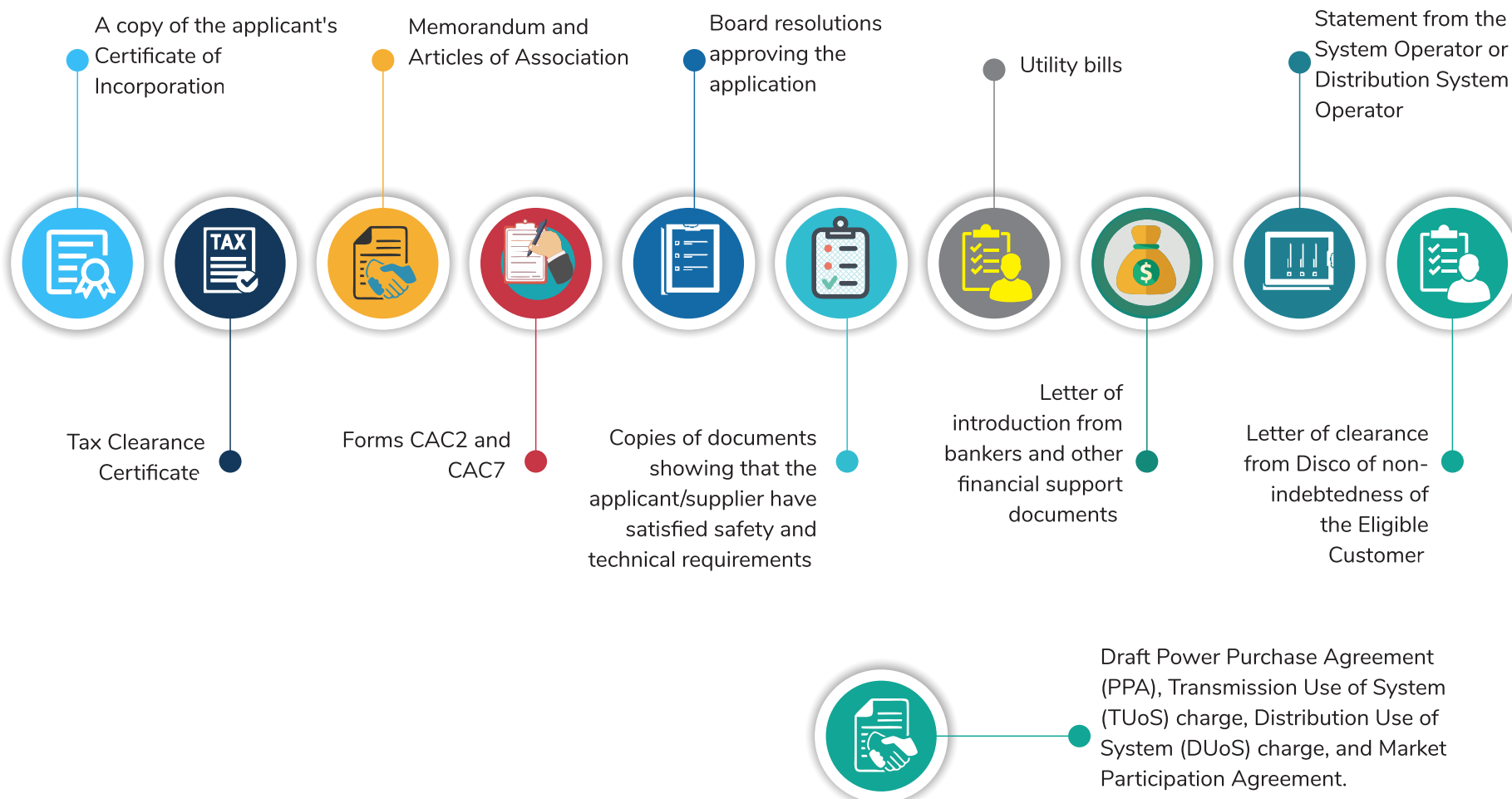
A distribution company shall act as supplier of last resort to an eligible customer operating within its network coverage area and the service shall be provided under a provisional arrangement at a price to be mutually agreed by the contracting parties.



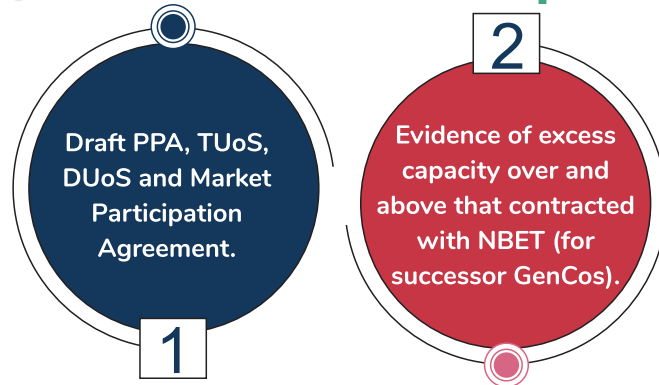
Application of other Regulations

The provisions of all other regulations, rules and codes of NERC shall be applicable to all other issues not covered by this regulation.

DOCUMENTATION FROM ELIGIBLE CUSTOMER (to be submitted in triplicate)



DOCUMENTATION FROM SUPPLIER (to be submitted in triplicate)



ELIGIBLE CUSTOMER REGULATION IMPLEMENTATION STATUS

As a legally binding regulation the Eligible Customer regulation is currently in the early stages of its implementation but not without challenges, some of which includes:

- Resistance by the DisCos when fully implemented could potentially reduce their revenue, by taking away their highest paying customers, especially given that the market is currently insolvent with tariff shortfalls.
- Complaints by the Manufacturers Association of Nigeria regarding delays in granting licenses to companies who meet the Eligible Customer criteria and who have applied for this license.

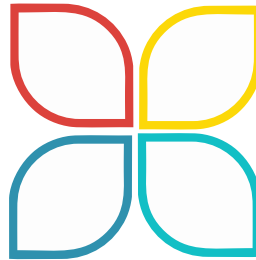
- On the part of the Nigerian Electricity Regulatory Commission (NERC), the Power Consumer Assistance Fund meant to subsidize underprivileged power consumers as specified by the Minister is currently not in place. This has led to the difficulty in determining who will benefit from the fund (including whether it will be granted based on energy consumption or economic status). This is largely due to lack of sufficient data.
- Also, a study to determine the contribution rates of eligible customers to the Rural Electrification Fund is yet to be carried out.

According to the Association of Power Generation Companies, nine power purchase agreements had been signed between electricity generation companies and eligible customers as of July 2018. As of August 2018, Mainstream Energy Solutions Limited (MESL), operator of the Kainji and Jebba hydropower plants, were delivering a cumulative 1,162.9MWH of electricity directly to several Eligible Customer firms, such as:

1. Xing 2
2. Xing 1
3. Asaka Cement
4. Kam Integrated Limited
5. Olam Flour Mills
6. Kam Steel
7. Lordsmith

ELIGIBLE CUSTOMER REGULATION IMPLEMENTATION STATUS (Cont'd)

Resistance by the DisCos

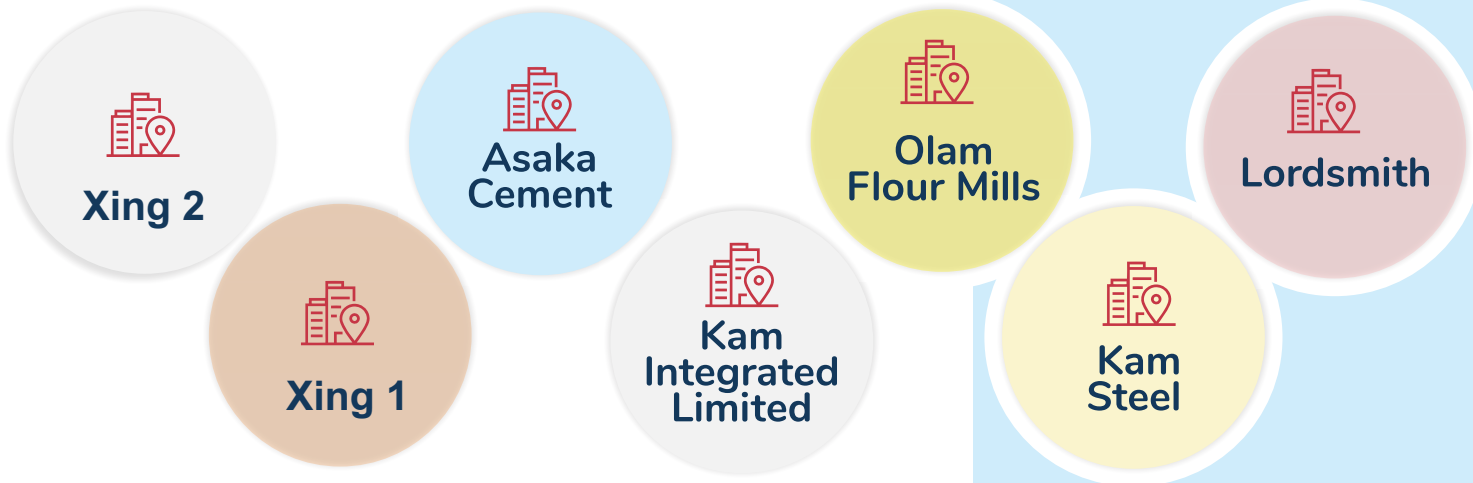


Complaints by the Manufacturers Association

Power Consumer Assistance Fund is currently not in place

Study to determine the contribution rates is yet to be carried out

7 Eligible Customer firms





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