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ELECTRIC POWER SECTOR REFORM ACT

(No. 6 of 2005)

CAPTIVE POWER GENERATION PERMITS REGULATIONS, 2012**ARRANGEMENT OF REGULATIONS****CHAPTER I—APPLICATION FOR A PERMIT**

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SCHEDULES

PERMITS FOR CAPTIVE POWER GENERATION REGULATIONS, 2012

[26th July 2012]

Commence-
ment.

CHAPTER I—APPLICATION FOR A PERMIT

1.—(1) Any person wishing to construct, own, maintain, install or operate a captive power generating plant shall first apply for and obtain a permit issued by the Commission, on such terms and conditions as the Commission may fix in the permit, and in accordance with these Regulations.

Form of
Applica-
tion.

(2) An Application for a permit shall—

- (a) be in the form specified in the First Schedule to these Regulations ;
- (b) be addressed to the Chairman, and delivered by hand or sent by regular mail or courier to the Commission's headquarters ;
- (c) be signed and dated by the applicant or authorised representative of the applicant ;
- (d) be submitted in three bound paper copies and an electronic version in Microsoft Office software format ; and
- (e) contain all the information specified in the Application form.

2.—The Applicant shall upon submission of the Application form, pay a non-refundable fee as specified in the Second Schedule to these Regulations.

Application
Fee.

3. On receipt of the application, the Commission shall note thereon the date of its receipt, and shall send to the applicant an acknowledgement stating the date of receipt.

Acknow-
ledgement
of
Application.

4.—(1) The Commission shall evaluate the application, and may require the applicant to furnish, within a specified period, any additional information; provided that the time between the receipt of the application and the accompanying documents and date on which the Commission notifies the applicant of the inadequacy of any documents and information shall not exceed one month.

Evaluation
of the
Application.

(2) All additional information, whenever requested, shall be submitted in three bound paper copies along with an electronic version in Microsoft Office software format.

(3) If the Commission finds the application to be complete, it shall certify that the application has been duly made and is ready for consideration for the issuance of a permit and the Commission shall acknowledge the receipt of the application in writing within 30 days.

5.—(1) Upon due consideration of the Application, the Commission may issue or refuse to issue a permit.

Approval or
Refusal of
Permit.

(2) The period between the acknowledgement of receipt of the application as specified in regulation 6 (3) and the date on which the Commission notifies

the Applicant of its decision or proposed decision to approve or refuse the permit as the case may be, shall not exceed 3 months.

(3) Where the Commission has approved a permit, the Commission shall, within 10 days, inform the Applicant of such approval and the conditions to be satisfied, including the fees to be paid before the grant of the permit.

(4) If payment is not made by the applicant within 20 days, the grant of a licence shall lapse, and the Applicant will be required to submit a fresh application with the requisite application fee.

(5) Where the Commission has decided to refuse the issuance of a permit, it shall, within 7 days, notify the applicant in writing of its intention stating the reasons for the decision.

(6) The applicant shall have an opportunity to make adequate representations to the Commission within 21 days of the receipt of the notification from the Commission of the refusal of a permit.

(7) The Commission shall consider the representation made by the applicant and shall, if the representation is unsuccessful, or if no representation was made, duly notify the applicant in writing that the application for a permit has been refused.

(8) The Commission shall clearly state in writing the reasons for refusing a permit.

CHAPTER II—SURPLUS POWER

6.—(1) A Permit holder must apply for, and receive prior written consent of the Commission before supplying surplus power *not exceeding 1MW* to an off-taker.

(2) A Permit holder who intends to supply surplus power *exceeding 1MW* to an off-taker must apply for a generation licence in compliance with the provisions of Section 62(2) of the Act.

CHAPTER III—DISCLOSURE

7.—(1) All Captive Power Plants permit holders shall provide annual detailed information to the Commission on the operation of the plant, the health and safety standards and procedures in the plant, environmental issues arising from operation of the plant and such other information as the Commission may from time to time request.

(2) The Commission shall have power to enter and inspect the premises of a captive power facility at any time, to ensure compliance with applicable regulations and the terms and conditions of the permit.

(3) The approval of the Commission must be requested for and obtained prior to any planned major modification to the Captive Power Plant and the Commission's approval or otherwise shall be given within 15 days after the receipt of the request.

Generation
of surplus
Power.

Furnishing
of detailed
information
to the
Commission.

(4) All emergency and unplanned modifications or augmentations of the Captive Power Plants' capacity shall be reported to the Commission within 24 hours of the said modification or augmentation.

(5) The Commission shall have authority to penalise a permit holder for the violation of any of the terms and conditions of the permit, or to cancel such permit in accordance with Chapter VII of these Regulations.

CHAPTER IV—ENFORCEMENT AND PENALTIES

8.—(1) The Commission shall have power to determine whether a person is engaging, or is about to engage in a business for which a Permit is required under regulation 3(1) of these Regulations. Enforcement.

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

(3) The Commission shall have authority to order any person who contravenes regulation 3(1) of these Regulations to cease his operations, and to make such other orders, as may be necessary to prevent the continuation or recurrence of the contravention.

9.—Any contravention of these Regulations shall be punishable under Section 94(1) of the Act. Penalties.

CHAPTER V—AMENDMENT AND RENEWAL OF PERMIT

10.—(1) The terms and conditions of a permit may be amended—

Amendment
of Permit.

(a) on application by the permit holder ;

(b) upon the Commission receiving a complaint from any consumer, eligible customer, consumer association, association of eligible customers, licensee or other permit holder ; or

(c) on the Commission's own initiative.

(2) Unless otherwise specified in writing by the Commission, each application for an amendment made by the permit holder shall be accompanied by a receipt for such fees as may from time to time be prescribed for processing the application.

(3) An Application for the amendment of a permit granted by the Commission shall be in the form specified in the third schedule to these Regulations.

11.—(1) An Application for the renewal of a permit granted by the Commission shall be made at least 3 months before the expiration of the permit and shall be in the form specified in the fourth schedule to these Regulations. Renewal of
Permit.

(2) Unless otherwise specified in writing by the Commission, each application for renewal shall be accompanied by a receipt of such fees as the Commission may prescribe for processing the application.

Procedure
for
Cancellation
of Permit.

Decision on
Cancellation
of Permit.

Rehearing
and Appeals.

(3) The procedure prescribed in Chapter II, in so far as it can be applied, shall be followed while dealing with an application for renewal of permit.

CHAPTER VI—CANCELLATION OF PERMIT

12.—(1) The Commission may on its own initiative or upon receiving a complaint or information from any consumer, eligible customer, consumer association, association of eligible customers or other permit holders, initiate an inquiry into the conduct or functions of any permit holder.

(2) The Commission may cancel a permit if it is satisfied that—

(a) the permit was issued through fraud or the misrepresentation or non-disclosure of a material fact ;

(b) the permit holder has willfully or unreasonably contravened any provision of these Regulations that is applicable to the permit holder ;

(c) the permit holder has failed to comply with any term or condition of the permit the breach of which is expressly declared to render it liable to cancellation ; or

(d) the permit holder becomes insolvent or is adjudged bankrupt ;

(3) If satisfied that enough grounds exist for the cancellation of the permit, the Commission shall give notice of proceedings for the cancellation of the permit to the permit holder and to such other persons, group of persons or body as it may consider necessary.

(4) The proceedings by the Commission on the cancellation of the permit, in so far as it is applicable, shall be in the manner prescribed by the Commission provided that :

(a) the Commission shall notify the permit holder in writing of its intention to cancel the permit and the reasons for doing so, and

(b) the permit holder shall be given the opportunity to demonstrate, within 60 days of the delivery of such notification, that the circumstances have changed such that the cancellation may no longer be warranted.

13.—(1) If the Commission decides to cancel the permit after complying with the laid down procedure, the Commission shall serve notice to the permit holder specifying the effective date from which the Permit holder shall cease further operations of the captive generation plant.

(2) The Commission may instead of canceling the permit, pass any other order imposing further terms and conditions subject to which the permit holder is permitted to operate thereafter.

CHAPTER VII—MISCELLANEOUS

14.—(1) Any person who is aggrieved by a decision of the Commission not to issue a permit, a refusal by the Commission to renew a permit, any amendment of a permit or a refusal by the Commission to amend a permit or the

cancellation of a permit, may apply to the Commission for review of the decision, order or refusal, within 30 days of service on it of the decision, order or refusal.

(2) The Commission shall in accordance with its Business Rules reaffirm, reconsider, vary or rescind its decision before issuing a final Order.

(3) Such review or reconsideration shall be completed within sixty (60) days of the date it is requested.

15.—(1) An application for a permit may be withdrawn in writing by an applicant at any stage.

Withdrawal
of
Application.

(2) An application which has been withdrawn cannot be reactivated; provided however that such an application may be resubmitted as a new application and a new application fee shall be charged accordingly.

16.—(1) In these Regulations, unless the context otherwise requires—

Interpre-
tation.

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

“Captive Power Generation” means generation of electricity exceeding 1 MW for the purpose of consumption by the generator, and which is consumed by the generator itself, and not sold to a third-party ;

“Captive Power Plant” means a power plant of over 1MW in capacity set-up by the generator for its own use ;

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

“Commission” means the Nigerian Electricity Regulatory Commission ;

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

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

“Days” means working days, excluding Saturdays, Sundays, and public holidays declared by the Federal Government of Nigeria ;

“Licensee” means one who holds a license issued by the Commission ;

“Month” means a calendar month ;

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

“Permit” means a permit granted by the Commission under these Regulations ;

“Permit Holder” means any person issued a permit by the Commission pursuant to the provisions of these Regulations ;

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

"*Schedule*" means the Schedule appended to these Regulations ; and

"*Secretary*" means the Secretary of the Commission.

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

(3) Words or expressions used in these Regulations which are not defined shall have the same meanings respectively assigned to them in the Act.

Citation.

19. These Regulations may be cited as the Captive Power Generation Permits Regulations, 2012.

NIGERIAN ELECTRICITY REGULATORY COMMISSION

FIRST SCHEDULE

Regulations 3(2) (a)

APPLICATION FOR PERMIT FOR CAPTIVE GENERATION

Important Note : Your application is not complete unless all requirements herein are received and all questions are answered.

1.0. PARTICULARS OF APPLICANT

1.1. Applicant Information

Name:

Physical Address:

.....

Postal Address:

.....

Tel :

Fax:

Mobile Phone:

E- mail:

Website Address:

2. CONTACT PERSON INFORMATION

Name:

Physical Address:

Postal Address:

Tel:

Mobile Phone:

E-mail:

3.0. LEGAL STATUS OF APPLICANT

3.1. Indicate legal status of Applicant (Tick relevant option).

☐ Sole Proprietorship☐ Partnership☐ Public Limited Liability Company☐ Private Limited Liability Company☐ Cooperative Society☐ Others (please specify)

(Attach Certificate of Registration, Certificate of Incorporation, Memorandum and Articles of Association as applicable).

3.2. List and Particulars of Directors, Partners, Trustees, or other decision-making authorities :

| <i>Name</i> | <i>Address</i> | <i>Nationality</i> |
|-------------|----------------|--------------------|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

3.0. NATURE OF PERMIT

3.1. State whether Application is a fresh Application or Renewal

.....

3.2. State whether Applicant has an existing permit issued by the Commission or any Authority

.....

3.3. If the answer to 3.2 is yes, state the nature of the permit, date issued and the permit number

.....

.....

3.4. Has the Applicant ever been denied a permit or had its permit suspended or revoked by the Commission?

.....

3.5. If yes, give details of the denial, suspension or revocation

.....

.....

.....

4.0. MAIN BUSINESS ACTIVITIES OF APPLICANT

Please indicate the main business activities the Applicant is currently engaged in.

.....

.....

(Please attach Tax Clearance Certificate for the immediate past three years)

5.0. TECHNICAL CAPACITY

Please provide detailed statement of Applicant's technical competence to operate the Power Plant. *(Attach CVs of key technical personnel)*

.....

.....

.....

6.0. DESCRIPTION OF POWER PLANT**6.1. State Plant type**
.....**6.2. State total capacity of Power Plant**
.....**6.3. Location of the Power Plant**
.....
*(Please attach a detailed Schedule of Plant sizes and locations if applying for more than one location)***6.4. Is the Power Plant new? If no, please state number of years the plant has been in operation.**
.....

(Please note that NERC reserves the right to verify the accuracy of this information)

7.0. TECHNICAL DATA**7.1. Name Plate information and other relevant details:**

- (a) Installed Capacity
- (b) Fuel Type
- (c) Rated Power Factor
- (d) Reactive Power Capability
- (e) Noise Level *(State distance from Power Plant)*
- (f) Output Voltage
- (g) Unit Frequency
- (h) Unit Efficiency
- (i) Date of Installation
- (j) Make and Serial Number of Generator
- (k) Date of Manufacture of Generator

(Please provide single line diagram of the Power Plant showing the cable sizes and protective devices)

7.2. Please attach the Environmental Impact Assessment Approval. Where EIA is not applicable, give detailed information on effluents and discharges and how they will be managed.

Please remember to submit 3 hard bound copies and 1 soft copy of all documents.

8.0. DECLARATION BY THE APPLICANT :

The project is not unlawful or contrary to the interest of the Federal Republic of Nigeria. I/We hereby declare that the details stated above are, to the best of my/our knowledge, true and correct.

Dated this day of 20.....

THE COMMON SEAL OF THE WITHIN NAMED APPLICANT

.....
(Name of Applicant)

Has hereunto been affixed in the presence of:

Sign: Sign:

Name: Name:

MANAGING DIRECTOR/CEO SECRETARY/LEGAL ADVISER

Sworn to this day of 200.....at

BEFORE ME

.....
NOTARY PUBLIC/COMMISSIONER OF OATHS

.....
FOR OFFICIAL USE ONLY

- 1. Date of submission of Application
- 2. Fees Paid and Receipt Number.....
- 3. Results of Verification for completeness
- 4. Recommendation of NERC Legal Division
- 5. Recommendation of NERC Engineering, Standards and Safety.....
- 6. Decision of NERC
- 7. Issue date and expiration date of Permit
- 8. Effective date of amendment
- 9. Other Relevant information

SECOND SCHEDULE

regulation 4

SCHEDULE OF FEES PAYABLE FOR PERMITS
FOR CAPTIVE GENERATION

| S/No. | Generation Capacity (MW) | Valid Period (Years) | Processing Fees for New Applications | Permit Fess (Naira) | Processing Fees Amendment/ Renewal of Permits (Naira) |
|-------|--------------------------|----------------------|--------------------------------------|---------------------|---|
| 1. | Above 1 – 10 | 5 | 50,000.00 | 200,000.00 | 50,000.00 |
| 2. | 11—20 | 5 | 50,000.00 | 250,000.00 | 50,000.00 |
| 3. | 21—30 | 5 | 50,000.00 | 300,000.00 | 50,000.00 |
| 4. | 31—40 | 5 | 50,000.00 | 450,000.00 | 50,000.00 |
| 5. | 41—50 | 5 | 50,000.00 | 500,000.00 | 50,000.00 |
| 6. | 51—100 | 5 | 50,000.00 | 550,000.00 | 50,000.00 |
| 7. | Above 100 | 5 | 50,000.00 | 700,000.00 | 50,000.00 |

- ▣ A Captive Generation Permit is unit and location specific
- ▣ Any change in the capacity, generator unit or location requires an amendment
- ▣ Validity period cannot be pro-rated for less than a year
- ▣ Generator capacity is to the nearest integer

NIGERIAN ELECTRICITY REGULATORY COMMISSION

THIRD SCHEDULE

regulation 12(3)

APPLICATION FOR AMENDMENT OF PERMIT FOR CAPTIVE
GENERATION IMPORTANT NOTE:

Your Application must be accompanied by the appropriate Permit
Amendment Fee (See schedule of fees).

1.0 PARTICULARS OF APPLICANT

1.1 Applicant Information

Name:.....
Physical Address:
Postal Address:
Tel:
Fax:
Mobile Phone:
E-mail:
Website Address:

1.2 Contact Person Information

Name:
Physical Address:
.....
Postal Address:
.....
Tel:
Mobile phone.....
E-mail.....

2.1 Current Permit

(a) Permit Number
.....

(b) Expiration date of the permit
.....

(c) Has the Applicant ever been denied a permit or had its permit suspended,
cancelled and/or revoked by the Commission?

.....
If yes, give details of the denial, cancellation, suspension, and/or revocation.
.....

2.2 Previous Application(s)

(a) Have you applied previously for an amendment of the terms and
conditions of the permit?

.....
.....

(b) Has the Applicant ever been denied an application to amend the terms and conditions of the permit?

.....
.....
If yes, give details of the denial.
.....
.....

2.3 Proposed Amendment(s)

(a) State the Condition(s) of the permit to be affected by the proposed amendment

.....
.....
.....
(b) State reasons for proposed amendment to the terms and conditions of the permit (*please provide supporting documents*)

.....
.....
.....
(c) Any other relevant Information (*use additional sheets if appropriate*)

.....
.....

PLEASE REMEMBER TO SUBMIT.
3 HARD BOUND COPIES AND 1 SOFT COPY OF ALL DOCUMENTS

3.0 DECLARATION BY THE APPLICANT :

The project is not unlawful or contrary to the interest of the Federal Republic of Nigeria. I/we hereby declare that the details stated above are, to the best of my/our knowledge, true and correct.

DATED this.....day of..... 20.....

THE COMMON SEAL OF THE WITHIN NAMED APPLICANT

.....
(Name of Applicant)

Has hereunto been affixed in the presence of:

Sign:

Sign:

Name:

Name:

MANAGING DIRECTOR/CEO

SECRETARY/LEGAL ADVISER

Sworn to thisday of 200.....at

BEFORE ME

.....
NOTARY PUBLIC/COMMISSIONER OF OATHS

FOR OFFICIAL USE ONLY :

1. Date of submission of Application for Amendment
2. Fees Paid and Receipt Number
3. Results of Verification for Completeness
4. Recommendation of NERC Legal Division
5. Recommendation of NERC Engineering, Standards and Safety.....
.....
6. Decision of NERC
7. Issue Date and Expiration Date of Permit.....
.....
8. Effective Date of Amendment
9. Other Relevant Information
-

NIGERIAN ELECTRICITY REGULATORY COMMISSION

FOURTH SCHEDULE

regulation 13(1)

APPLICATION FOR RENEWAL OF PERMIT FOR
CAPTIVE GENERATION

IMPORTANT NOTE—Your Application must be accompanied by the appropriate Permit Renewal Fee (*See schedule for Fees*).

1.0 PARTICULARS OF APPLICANT :

1.1 Applicant Information

Name:.....
Physical Address:.....
Postal Address:
Tel:
Fax:
Mobile Phone:
E-mail:
Website Address:

1.2 Contact Person Information

Name:
Physical Address:
Postal Address:
Tel:
Mobile Phone.....
E-mail.....

2.1 Current Permit

(a) Permit Number

.....

(b) Expiration date of the permit

.....

(c) Has the Applicant ever been denied a permit or had its permit suspended, cancelled and/or revoked by the Commission?

.....

If yes, give details of the denial, cancellation, suspension, and/or revocation.

.....

2.2 Previous Application(s)

(a) Have you applied previously for a Renewal of your Permit?

.....

.....

(b) Has the Applicant ever been denied an application to renew the Permit?

.....

.....

If yes, give details of the denial.

.....

.....

2.3 Term of Proposed Renewal

(a) How many years does the applicant want to renew the permit for?

(Note: Renewal cannot be for more than the term of the Permit being renewed)

.....

.....

.....

(b) Any other relevant Information *(use additional sheets if appropriate)*

.....

.....

.....

.....

.....

Please remember to submit 3 hard bound copies And 1 soft copy of all documents.

3.0 DECLARATION BY THE APPLICANT :

The project is not unlawful or contrary to the interest of the Federal Republic of Nigeria. I/we hereby declare that the details stated above are, to the best of my/our knowledge, true and correct.

DATED this.....day of..... 20.....

THE COMMON SEAL OF THE WITHIN NAMED APPLICANT

.....

(Name of Applicant)

Has hereunto been affixed in the presence of:

Sign:

Sign:

Name:

Name:

MANAGING DIRECTOR/CEO

SECRETARY/LEGAL ADVISER

Sworn to thisday of 200.....at

BEFORE ME

.....

NOTARY PUBLIC/COMMISSIONER OF OATHS

FOR OFFICIAL USE ONLY :

1. Date of submission of Application for Renewal
 2. Fees Paid and Receipt Number
 3. Results of Verification for completeness
 4. Recommendation of NERC Legal Division
 5. Recommendation of NERC Engineering, Standards and Safety
 6. Decision of NERC
 7. Issue date and expiration date of current Permit
 8. Date of Renewal and New expiration of the Permit.....
 9. Other Relevant information
-
-

MADE at Abuja this 26th day of July 2012.

DR SAM AMAIDI
Chairman/Chief Executive Officer
Nigerian Electricity Regulatory Commission