



ORDER NO: NERC/2024/041

**BEFORE THE NIGERIAN ELECTRICITY REGULATORY COMMISSION
ORDER ON THE TRANSFER OF REGULATORY OVERSIGHT OF THE
ELECTRICITY MARKET IN EKITI STATE FROM THE NIGERIAN ELECTRICITY
REGULATORY COMMISSION TO THE EKITI STATE ELECTRICITY REGULATORY
BUREAU IN COMPLIANCE WITH THE ELECTRICITY ACT 2023 (AMENDED)**

Title

1. This regulatory instrument may be cited as the Order of *Transfer of Regulatory Oversight of the Electricity Market in Ekiti State from Nigerian Electricity Regulatory Commission ("NERC" or the "Commission") to the Ekiti State Electricity Regulatory Bureau ("EERB")*.

Commencement

2. This Order shall take effect from 1 May 2024.

Context

3. The Commission exercises regulatory oversight of the Nigerian Electricity Supply Industry ("NESI") as the apex sectoral regulator in accordance with powers conferred by the Electricity Act 2023 ("EA" or the "Act")
4. The electricity market in the Federal Republic of Nigeria was previously centralised and the move to decentralisation was achieved when presidential assent was granted to the amendment of relevant portions of the Constitution of the Federal Republic of Nigeria ("CFRN") on 17 March 2023.
5. Paragraph 14(b) Part II of the Second Schedule to the 1999 CFRN which provides that "*a House of Assembly may make laws for the State with respect to generation, transmission, and distribution of electricity to areas not covered by a national grid system within that State*" was amended to "*a House of Assembly may make laws for the State with respect to*

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generation, transmission, and distribution of electricity to areas within that State".

6. This amendment granted legislative autonomy to federating states in the Federal Republic of Nigeria by empowering the sub-national governments to legislate on the generation, transmission and distribution of electricity within each respective state.
7. Section 2(2) of the EA, which provides as hereunder, takes due legislative cognisance of the powers conferred on the federating states with the amendment to Paragraph 14(b) Part II of the Second Schedule to the 1999 CFRN -

Nothing in this Act shall invalidate -

- a. *any law passed by the House of Assembly of a State with respect to all aspects of generation, transmission, system operation, distribution, supply and retail of electricity within that State;*
 - b. *any law passed by the House of Assembly of a State regarding the establishment, promotion and management of State electricity power stations;*
 - c. *any law passed by the House of Assembly of a State to sanction the establishment of a state electricity market, the establishment of a state electricity regulatory authority or any entity by whatever appellation with powers to regulate such markets;*
 - d. *any collaboration between States and Local Governments and the Federal Government for rural electrification, or between States and Local Governments and distribution licensees to ensure electricity access to rural, unserved and underserved areas, promote investments in electricity or provision of electricity within States or Local Government Areas; or*
 - e. *any law passed by the House of Assembly of a State to sanction the establishment of a state electricity market and State Integrated Electricity Policy and Strategic Implementation Plan.*
8. Under the new legal framework for NESI, the Commission retains the role as central regulator with regulatory oversight on the inter-state/international generation, transmission, supply, trading and system operations as contemplated by section 63(7) of the EA which provides that



"notwithstanding the provision of subsection (1), it shall be the responsibility of the State Electricity Board or any State authority by whatever appellation, to grant licence for mini-grids, IEDN/IEDNOs and IETN, IETNOs and provide the framework for the operation of such licensees, including framework for investment in electricity utilities within the State: Provided that the Commission shall retain regulatory powers over mini-grids, IEDN/IEDNOs and IETN/IETNOs in any State of the Federation where such a State –

- a. has no legal and institutional framework in place for the regulation of mini-grids, IEDNs, IETNs or related electricity services; or
 - b. the operation of such IEDN/IEDNOs, IETN/IETNOs or electricity generation, transmission and distribution undertaking within any State of the Federation relies on any part of the national grid for its operations.
9. States that intend to establish and regulate intrastate electricity markets are expected to comply with the provisions of section 230 of the EA which provides that –

(2) A state of the Federation may at any time –

- a. Enact a law by whatever appellation to provide for the establishment of a state electricity market;
- b. Establish a state electricity regulatory authority for the State (the "State Regulator") and appoint a governing body and staff for the said entity;
- c. Deliver a formal notification of the events in paragraphs (a) and (b) above and request the Commission to transfer regulatory authority over electricity operations in the state to the State Regulator; and
- d. Deliver a formal notification of the events in paragraphs (a) and (b) to the relevant successor electricity distribution licensee (the "Successor Company"), with a copy to the National Council on Privatisation ("NCP") through the Bureau of Public Enterprises, requesting them both to ensure that the Successor Company takes the steps set out in subsection (3).

(3) Within 45 days of receiving formal notification of the enactment of the law under subsection (1), the Commission shall draw and deliver to

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the State Regulator a draft order setting out a plan and timeline for the transition of regulatory responsibilities from the Commission to the State Regulator, which transition shall be completed not later than 6 months from the date on which the formal notification in subsection (1) was delivered to the Commission.

- (4) Where a State takes the steps provided in subsection (2), the Successor Company shall upon receiving formal notification from the Commission –
- a. Within 2 months of receiving the said notification, incorporate a subsidiary electricity distribution company under the Companies and Allied Matters Act (the "Additional Successor Company"); and
 - b. Transfer the assets, liabilities, employees and the relevant contractual rights and obligations of the Successor Company in that State (the "Transfer").
- (5) The Transfer shall –
- a. Not constitute a fraud on the creditors of the Successor Company; and
 - b. Be undertaken by agreement as to the treatment of relevant liabilities, between creditors, the Successor Company, the Additional Successor Company and, where necessary, the Commission, the State electricity regulatory authority and any other relevant 3rd party; and
 - c. Shall not impose a condition on the Government of a State to take on any of the liabilities of the Successor Company or guarantee their repayment.
- (6) The provisions of subsection (2) shall be implemented notwithstanding the provisions of any general or specific enactment of the National Assembly or any applicable law, rule or contract that requires notice, consent, approval or registration of such transfer and no stamp duty and capital gains tax shall be chargeable or levied by the relevant tax authorities in respect of the Transfer.
- (7) On completion of the Transfers under subsections (2) and (3), whichever occurs later in time, the Commission shall have no further

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regulatory responsibility whatsoever for electricity market activities carried on entirely within the State to which regulatory responsibility has been transferred and for which the Additional Successor Company has been incorporated and conferred with assets, liabilities, employees, rights and obligations.

- (8) *An Additional Successor Company incorporated and licensed by a State Regulator as provided shall on completion of the transfers under subsections (2) and (3), and the issuance of a license, be under the regulatory oversight of the State regulator and shall have no further obligation to pay any form of license fees to the Commission.*
- (9) *Notwithstanding the provisions of section 63(1) and subsection (5), the generation, transmission, system operation and distribution of electricity in a State that has not exercised its option under subsection (2) shall continue to be regulated by the Commission in accordance with the provisions of this Act until such a time as that State exercises the option.*
- (10) *The Commission and all State regulatory authorities shall have a continuing obligation to foster and maintain a beneficial inter-institutional relationship amongst themselves and accordingly they shall establish an inter-governmental body to promote harmonious relationships with each other individually and as a group for coordinating the development of principles, standards and rules for the reduction of regulatory risk in the Federal and State electricity markets in the country.*
10. The Government of Ekiti State has initiated the implementation of the provisions of the recent amendment to the CFRN and the EA; and complied with the conditions precedent in the aforementioned laws, is desirous of assuming regulatory oversight of the intrastate electricity market in Ekiti State; has duly notified the Commission and requested for the transfer of regulatory oversight of the intrastate electricity market in Ekiti State in compliance with the provisions of the EA.
11. Section 230(3) of the Act mandates the Commission to develop a transition plan and timeline for the transfer of regulatory oversight of the intrastate electricity market from NERC to EERB upon receipt of a formal notification from the State.



Objective

12. This Order seeks to –

- a. Commence the process of the transfer of regulatory oversight for the intrastate electricity market in Ekiti State from the Commission to EERB in accordance with the CFRN and the EA.
- b. Provide a transition plan for the transfer of regulatory oversight for the intrastate electricity market in Ekiti State from the Commission to EERB in accordance with the CFRN and the EA.
- c. Address ensuing transitional matters arising from the transfer of regulatory oversight for the intrastate electricity market in Ekiti State from the Commission to EERB.

THE COMMISSION HEREBY ORDERS AS FOLLOWS –

- A. BEDC Electricity PLC (“BEDC”) is hereby directed to incorporate a subsidiary (“BEDC SubCo”) under the Companies and Allied Matters Act for the assumption of responsibilities for intrastate supply and distribution of electricity in Ekiti State from BEDC.
- B. BEDC shall complete the incorporation of BEDC SubCo within 60 days from the effective date of this Order and, BEDC SubCo shall apply for and obtain a licence for the intrastate supply and distribution of electricity from EERB.
- C. BEDC shall identify the actual geographic boundaries of Ekiti State and carve out its network in Ekiti State as a standalone network with the installation of boundary meters at all border points where the network crosses from Ekiti State into another state.
- D. BEDC shall –
 - i. Create an Asset Register of all its power infrastructure located within Ekiti State;
 - ii. Evaluate and apportion contractual obligations and liabilities attributable to BEDC’s operations of its subsidiary in Ekiti State;
 - iii. Identify all the applicable trading points for energy offtake for the operations of BEDC SubCo in Ekiti State.



- iv. Confirm the number of employees that are required to provide service to Ekiti State as a standalone public utility; and
 - v. Transfer the identified assets for operations in Ekiti State, contractual obligations, liabilities and employees to BEDC SubCo.
- E. The Commission shall prepare register of licensees, permit holders, certificate holders and holders of any other authorisations from the Commission in Ekiti State. The register shall be delineated along the lines of authorised activities and use of the national grid for their activities. A transfer of regulatory oversight notification shall be issued by the Commission to the companies in the register whose activities are limited within Ekiti State informing the entities of the transfer/assumption of regulatory oversight for their activities by EERB. All cross-border transactions involving the national grid shall be subject to the approval of the Commission in accordance with the CFRN and EA.
- F. BEDC shall confirm to the Commission the contractual details for the supply of energy and capacity that shall supply BEDC SubCo in Ekiti State, and where reliance shall be made on the national grid or other interstate sources of generation; BEDC SubCo shall seek appropriate authorisation/approval from the Commission in accordance with the CFRN and EA.
- G. EERB shall have the exclusive responsibility of determining and adopting an end-user tariff methodology applicable within its area of regulatory oversight. Where BEDC SubCo receives electricity from grid connected plants, the contracts and tariffs applicable for generation and transmission services shall be approved by the Commission. The final end-user tariffs approved by EERB shall be the exclusive tariffs that apply in Ekiti State and all tariff policy support for end-use customers in Ekiti State shall be the responsibility of the Ekiti State Government.
- H. All transfers envisaged by this order shall be completed by 22 October 2024.

Dated this 22nd day of April 2024



Sanusi Garba
Chairman



Dafe C. Akpeneye
Commissioner
Legal, Licensing & Compliance