



NIGERIAN ELECTRICITY REGULATORY COMMISSION

GUIDELINES FOR SECONDARY ESCROW ACCOUNT MANAGEMENT

FOR

BILATERAL TRANSACTIONS BY ELECTRICITY DISTRIBUTION LICENSEES

May 2023

1.0 TITLE

This regulatory instrument may be cited as the *“Guidelines for Secondary DisCo Account Escrow Arrangements for Bilateral Transactions in the Nigerian Electricity Supply Industry”*.

2.0 PURPOSE

These guidelines provide the framework for the implementation of Secondary Escrow Account Arrangements to facilitate bilateral electricity supply contracts between electricity distribution companies (“DisCos”) and generation and/or trading licensees towards the improvement of power supply across the operating areas of the DisCos in compliance with the provisions of their License Terms and Conditions.

3. BACKGROUND

Pursuant to the mandates of the Commission in Section 32 of the Electric Power Sector Reform Act (“EPSRA”) 2004, the Commission approved the Central Bank of Nigeria – Nigerian Electricity Market Stabilization Facilities (“CBN-NEMSF”) comprising of a series of concessionary loans by the Central Bank of Nigeria (“CBN”) in support of the Nigerian Electricity Supply Industry (“NESI”) and the DisCos in particular to promote long term sustainability and efficiency of the power sector.

In its effort to support the real sector of the economy through improved quality and availability of electricity supply, the Central Bank of Nigeria (“CBN”) has provided several interventions under the program tagged the Nigerian Electricity Market Stabilisation Fund (“NEMSF”), with the most recent being long term low-interest loans for capital investment particularly in distribution companies. The mechanism for the recovery of the loans granted by CBN is an escrow account management of the revenue collections of the 11 electricity distribution companies. NESI-SSL is responsible for managing and disbursing funds pooled from the principal collection accounts. The CBN intervention's recovery mechanism provides for a first charge on market revenues after all statutory deductions and is supported by a regulatory directive in the tariff Orders issued by the Commission. As the terms of the NEMSF prioritise the repayment of the loans from the market revenue over other market obligations and given that the revenue collections of many DisCos are inadequate to fully cover all the short-term obligations, a payment waterfall framework is incorporated in the DisCos’ tariff Orders to ensure a fair distribution of the account balances net of NEMSF settlement.



The management of DisCos have posited that the combination of an escrow arrangement on the market revenue and the disbursement waterfall is a significant barrier to prospective third-party investors in the networks and other lenders towards improving efficiency and the reduction of Aggregate Technical Commercial and Collections ("ATC&C") losses. It is further noteworthy that the prospect of bilateral contracting for additional energy to load clusters and third-party investment in networks is curtailed as a result of the restrictions on the usage of market revenues. The Commission notes that targeted bulk power procurement and third-party investment contracts present an excellent opportunity of improving the liquidity position of many of the DisCos in the NESI.

Accordingly, the Commission considers that a provision for secondary DisCo escrow account arrangements to support specific bilateral transactions would facilitate improved energy offtake and investments in DisCos. This Guideline is thus issued to facilitate the implementation of bilateral transactions between DisCos and electricity generation licensees ("GenCos") or licensed electricity traders for the supply of electricity to DisCos' operating areas.

4. OBJECTIVES

The objectives of these Guidelines are to:

- a. Guide DisCos and their counterparties on the implementation of bilateral transactions in their franchise areas.
- b. Facilitate the adoption of Secondary Disco Account Escrow Arrangements to securitise Bilateral Transactions.
- c. Provide comfort to NESI-SSL and other Market Participants that the implementation of approved bilateral transactions shall not adversely impact payments to the market.
- d. Ensure proper accounting of collections from the bilateral transactions.
- e. Support improved energy offtake by DisCos
- f. Provide reliable power supply to targeted customers.
- g. Improve third-party investment in the DisCos' networks.
- h. Supplement collections to the Principal Collection Account to meet market obligations.

5. ISLANDED BILATERAL TRANSACTIONS

5.1. Islanded Bilateral Transactions with Direct Connection to Generation Plant refer to the arrangements whereby a DisCo executes a bilateral contract with a GenCo where a feeder emanating from the GenCo feeds directly into a DisCo's



dedicated feeder(s) or customer clusters from where the power is distributed to consumers. The under-listed shall be considered in approving the implementation of Secondary Disco Account Escrow Arrangements for Islanded Bilateral Transactions of DisCos:

- a. A justification that the proposed bilateral transaction shall improve DisCos' overall liquidity position including commercial and collection efficiency, and ability to meet market obligations.
- b. All of DisCos' collection shall ONLY be made into the approved account and NESI-SSL shall have oversight of the approved Feeder Collection Account for effective monitoring.
- c. A minimum of 30% of the collections from any dedicated (sub/secondary) escrowed collection account for islanded bilateral transactions shall be swept to the Principal Collection Account before the settlement of monthly bilateral energy invoices.

5.2. Islanded Bilateral Transactions with Indirect Connection to Generation Plant

refer to the arrangements whereby a DisCo executes a bilateral contract with a GenCo (grid or embedded) to ***secure supply to dedicated feeder(s) or customer clusters not directly connected to the generation plant***. The under-listed shall be considered in approving the implementation of Secondary DisCo Account Escrow Arrangements for Islanded Bilateral Transactions of DisCos:

- a. A justification that the proposed bilateral transaction shall improve DisCos' overall liquidity position including commercial and collection efficiency, and ability to meet market obligations.
- b. All of DisCos' collection shall ONLY be made into the approved account and NESI-SSL shall have oversight of the approved Feeder Collection Account for effective monitoring.
- c. A minimum of 30% of the collections from any dedicated (sub/secondary) escrowed collection account for islanded bilateral transactions shall be swept to the Principal Collection Account before the settlement of monthly bilateral energy invoices.
- d. Independent Trading Meters at injection/trading points shall be installed and read by the Market Operator as part of the monthly market settlement.



6. MINIMUM REQUIREMENTS FOR SECONDARY DISCO ACCOUNT ESCROW ARRANGEMENTS FOR ISLANDED BILATERAL TRANSACTIONS IN DISCOS

The requirements shall include:

- a. Approval of the Commission for the bilateral transaction.
- b. Execution of Secondary Account Escrow Agreement of the parties with NESI-SSL.
- c. The DisCo shall comply with the Terms and Conditions for the participation in the Secondary Account Escrow Arrangement for islanded bilateral transactions.
- d. The DisCo shall comply with the prescribed reporting requirement for the transaction as required and in the format prescribed by the Commission and NESI-SSL.

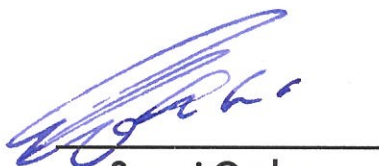
7. NON-ISLANDED BILATERAL TRANSACTIONS BY DISCOS

Non-Islanded Bilateral Transaction refers to a bilateral transaction where the intent is for additional power to the DisCo but the supply is not dedicated to specific feeder(s) or customer clusters within a DisCos' network. The approval of a non-islanded bilateral transaction by a DisCo that seeks to pool the bilaterally contracted energy with supply by NBET transaction shall be subject to:

- a. The provision of a Bank Guarantee in favour of NBET covering the estimated remittance gap for three months as may be determined by the Commission from time to time.
- b. A detailed justification demonstrating that the proposed transaction shall improve DisCos' overall liquidity position including commercial and collection efficiency, and ability to meet market obligations.
- c. Independent Trading Meters at injection points for supply shall be installed and read by the Market Operator as part of the monthly market settlement.

8. EFFECTIVE DATE

These Guidelines shall be effective from this ^{31ST} Day of May 2023



Sanusi Garba
Chairman



Musiliu O. Oseni
Commissioner
Market Competition and Rates