

REGULATION NO: NERC-R-0108

NIGERIAN ELECTRICITY REGULATORY COMMISSION

In exercise of the Powers to make Regulations conferred by Section 96(1) of the Electric Power Sector Reform Act 2005 (Act No.6 of 2005), the Nigerian Electricity Regulatory Commission makes the following Regulations for the Granting of Permits for Captive Power Generation.

Arrangement of Clauses

CHAPTER I GENERAL

1. Short Title and Commencement
2. Interpretation

CHAPTER II APPLICATION FOR A PERMIT

3. Form of application
4. Processing Fees
5. Acknowledgement of Application
6. Evaluation of Application
7. Approval or Refusal of Permit

CHAPTER III SURPLUS POWER

8. Generation of surplus power

CHAPTER IV TERM AND CONDITIONS OF PERMIT

9. Furnishing of detailed information to the Commission
10. Settlement of Dispute

CHAPTER V AMENDMENT AND RENEWAL OF PERMIT

11. Amendment of Permit Granted
12. Renewal of Permit

**CHAPTER VI
CANCELLATION OF PERMIT**

- 13. Procedure for Cancellation of Permit
- 14. Decision on Cancellation of Permit

**CHAPTER VII
MISCELLANEOUS**

- 15. Rehearing and Appeals
- 16. Withdrawal of Application
- 17. Amendment or Repeal of Regulations

NIGERIAN ELECTRICITY REGULATORY COMMISSION
Permits for Captive Power Generation Regulations, 2008

CHAPTER I

GENERAL

1. Short title and commencement

- (1) These Regulations may be cited as the **Nigerian Electricity Regulatory Commission (Permits for Captive Power Generation) Regulations, 2008.**
- (2) These Regulations shall come into force on the date on which it is approved by a resolution of the Commission.
- (3) These Regulations shall be signed by the Chairman who shall also cause the seal of the Commission to be affixed thereon.

2. Interpretation

- (1) In these Regulations, unless the context otherwise requires:

“Act” means the Electric Power Sector Reform Act, 2005, or any amendment thereof.

“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 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.

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

“Month” means a calendar month.

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

“Permit” means a permit granted by the Commission under this Regulation.

“Permit holder” means any person issued a permit by the Commission pursuant to the provisions of this Regulation.

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

“Schedule” means the Schedule appended to this Regulation.

“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 but not defined unless the context otherwise requires shall have the same meanings respectively assigned to them in the Act.

CHAPTER II

APPLICATION FOR A PERMIT

3. Form of application

- (a) Pursuant to Section 32(1)(a), 32(1)(e), and 32(2)(d) of the Act which empowers the Commission to preserve efficient industry and market structures, and to ensure the optimal utilization of resources for the provision of electricity services; to ensure the safety, security, reliability, and quality of service in the production and delivery of electricity to consumers; and to regulate persons engaged in the generation, transmission, system operation, distribution, and trading of electricity, any person wishing to construct, own, maintain, install, and/or operate a captive 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 this Regulation.
- (a) An Application shall be in the form specified in Schedule I of this Regulation and shall contain the information specified therein. The Application form shall be obtained from the office of the Commission or downloaded from the Commission’s website.
- (b) An application for a permit shall be addressed to the Secretary, and delivered by hand or sent by regular mail or courier to the Commission’s headquarters.
- (c) An application shall be signed and dated by the applicant or authorized representative of the applicant.
- (e) An Application shall be submitted in three paper copies and an electronic version in Microsoft Office software format.

- (f) All applications for permits must contain all the information specified in the Application form.

4. Application Fee

The Applicant shall upon submission of the Application form, pay a non-refundable fee as may be fixed by the Commission for the processing of the Application.

5. Acknowledgement of Application

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.

6. Evaluation of the Application

- (a) 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 the documents and information shall not exceed one month.
- (b) 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 issuance of a permit. The Commission shall acknowledge to the Applicant in writing that the Application has been duly made within thirty (30) days of the receipt of the complete Application.

7. Approval or Refusal of Permit

- (a) After due consideration of the Application, the Commission shall issue or refuse to issue the permit.
- (b) The period between the acknowledgement of receipt of the Application as specified in Clause 6(b), 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 (three) months.
- (c) Where the Commission has approved a permit, the Commission shall inform the Applicant of such approval and the conditions to be satisfied, including the fees to be paid before the grant of the permit.
- (d) If the Commission intends to refuse the issuance of a permit, it shall notify the Applicant in writing of its intention stating the reasons for the decision.
- (e) The Applicant shall have the opportunity to make adequate representations to the Commission within twenty-one (21) days of the Applicant's receipt of the notification from the Commission of the refusal of a permit.

- (f) The Commission shall consider the representation made by the Applicant and shall, if the representation is unsuccessful, or no representation was made, duly notify the Applicant in writing that the Application for a permit has been refused.
- (g) The reasons for refusing the permit shall be clearly stated in writing by the Commission to the Applicant.

CHAPTER III

SURPLUS POWER

8. Generation of surplus power

- (a) 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.
- (b) 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 IV

DISCLOSURE

9. Furnishing of detailed information to the Commission

- (a) All Captive Power Plants shall provide annual detailed information to the Commission on the operation of the plant. The documents shall provide information on 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.
- (b) The Commission shall have the power to enter and inspect the premises of the captive power facility at any time, to ensure compliance with applicable regulations and the terms and conditions of the permit.
- (c) Approval of the Commission must be requested for and obtained prior to any planned major modification to the Captive Power Plant. The Commission's approval or otherwise should be given within 5 working days after the receipt of the request. All other modifications or augmentations of the Captive Power Plants' capacity shall be reported to the Commission within twenty-four (24) hours of the said modification or augmentation.

- (d) The Commission shall have the authority to penalize 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 this Regulation.

CHAPTER V

ENFORCEMENT AND PENALTIES

10. Enforcement

- (a) The Commission shall have the power to determine whether a person is engaging, or is about to engage in a business for which a Permit is required under Clause (3) (a) of this Regulation.
- (b) Unless stayed by a court of competent jurisdiction, each permit holder shall duly implement or follow, as the case may be, Commission orders and written notices, notwithstanding that the permit holder has or may intend to take legal action challenging any such order or notice.
- (c) The Commission shall have the authority to order any person who contravenes Clause 3 (a) of this Regulation to cease his operations, and to make such other orders, as may be necessary to prevent the continuation or reoccurrence of the contravention.

11. Penalties

Pursuant to Section 94(1) of the Act,

- (a) Any person who contravenes any provision of this Regulation hereunder commits an offence and is liable on conviction, where no specific penalty is prescribed therefore:
 - (i) as a first offender, to a fine not exceeding N100,000.00 (One Hundred Thousand Naira) only or to imprisonment for a period not exceeding 1 (one) year or to both fine and imprisonment.; or
 - (ii) for subsequent convictions, to a fine not exceeding N500,000.00 (Five Hundred Thousand Naira) only or to imprisonment for a period not exceeding 3 (three) years or to both fine and imprisonment.
- (b) A person commits an offence and is liable on conviction to a fine not exceeding N100,000.00 (One Hundred Thousand Naira) only or to imprisonment for a period not exceeding one year or to both such fine and imprisonment , if he
 - (i) 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
 - (ii) willfully 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

- (iii) fails or refuses, without reasonable cause, to give information to an inspector or a police officer when required to do so under Section 95 of the Act or gives false or incomplete information;

CHAPTER VI

AMENDMENT AND RENEWAL OF PERMIT

12. Amendment of Permit

- (a) The terms and conditions of a permit may be amended;
 - (i) on Application by the permit holder;
 - (ii) upon the Commission receiving a complaint from any consumer, eligible customer, consumer association, association of eligible customers, licensee or other permit holder;
 - (iii) on the Commission's own initiative.
- (b) Unless otherwise specified in writing by the Commission, each Application for an amendment made by the permit holder shall be accompanied by a receipt of such fees as may from time to time be prescribed for processing the Application.
- (c) An Application for the amendment of a permit granted by the Commission shall be in the form specified in Schedule II.

13. Renewal of Permit

- (a) An Application for the renewal of a permit granted by the Commission shall be made at least three (3) months before the expiration of the permit and shall be in the form specified in Schedule III.
- (b) 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.
- (c) 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 VII

CANCELLATION OF PERMIT

14. Procedure for Cancellation of Permit

- (a) 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 functioning of any permit holder.
- (b) The Commission may cancel a permit if it is satisfied that:
 - (i) the permit was issued through fraud or the misrepresentation or non-disclosure of a material fact; or
 - (ii) the permit holder has willfully or unreasonably contravened any provisions of this Regulation that is applicable to the permit holder; or
 - (iii) 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;
 - (iv) the permit holder becomes insolvent or is adjudged bankrupt; or
- (c) The Commission, if satisfied that enough grounds exist for the cancellation of the permit, 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.
- (d) 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:
 - (i) The Commission shall notify the permit holder in writing of its intention to cancel the permit and the reasons for doing so and;
 - (ii) The permit holder shall be given the opportunity to demonstrate, within sixty (60) days of the delivery of such notification, that the circumstances have changed such that the cancellation may no longer be warranted.

15. Decision on Cancellation of Permit

- (a) 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.

- (b) 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 VIII

MISCELLANEOUS

16. Rehearing and Appeals

- (a) 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 thirty (30) days of the decision, Order or refusal.
- (b) The Commission shall in accordance with its Rules of Proceedings reaffirm, reconsider, vary or rescind its decision before issuing a final Order.
- (c) Such review or reconsideration shall be completed within sixty (60) days of the date it is requested.

17. Withdrawal of Applications

- (a) An Application for a permit may be withdrawn in writing by an Applicant at any stage.
- (b) Applications which have 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.

18. Amendment or Repeal of Regulations

The Commission may amend or repeal the provisions of these Regulations.

THE COMMON SEAL OF NIGERIAN ELECTRICITY REGULATORY COMMISSION

Was affixed pursuant to the ORDER OF THE COMMISSION

On this 15th day of October, 2008.

DR. RANSOME E. OWAN
CHAIRMAN/CEO

Schedule I
NIGERIAN ELECTRICITY REGULATORY COMMISSION
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: _____

1.2 Contact Person Information

Name: _____

Physical Address: _____

Postal Address: _____

Tel: _____

Mobile phone _____

E-mail _____

2.0 LEGAL STATUS OF APPLICANT

2.1 Indicate legal status of Applicant (Tick relevant option)

- Sole proprietorship
- Partnership
- Public Limited Liability Company
- Private Limited Liability Company
- Cooperative Society
- Other (please specify)

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

2.2 List and Particulars of Directors:

Name	Address	Nationality

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

6.2 Location of the Power Plant

(Please attach a detailed Schedule of Plant sizes and locations if applying for more than one location)

6.3 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.

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

Schedule II

NIGERIAN ELECTRICITY REGULATORY COMMISSION

APPLICATION FOR AMENDMENT OF PERMIT FOR CAPTIVE GENERATION

IMPORTANT NOTE: Your Application must be accompanied by the appropriate Permit Amendment 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 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)

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 this _____ day 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

Schedule III

NIGERIAN ELECTRICITY REGULATORY COMMISSION

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)

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 this _____ day 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

SCHEDULE OF FEES PAYABLE FOR PERMITS FOR CAPTIVE GENERATION

S/N	Generator Capacity (MW)	Validity Period (Years)	Application Fees (Naira)	Permit Fees (Naira)	Amendment/Renewal Fees (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

- Captive Generation Permit is unit and location specific
- Any material change in the generator unit or location shall require an amendment to the Permit
- Validity period cannot be pro-rated for less than a year
- Generator capacity is the nearest integral